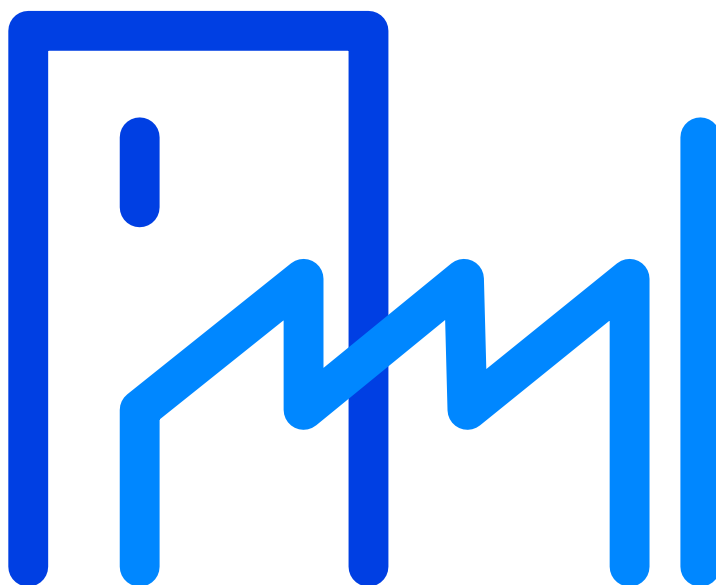


CENTRAL AND EASTERN EUROPE

Real Estate

Survey | 2018/2019



We are delighted to present this fifth edition of our Real Estate Survey. The survey is aimed at private and institutional investors, developers and construction companies in Central and Eastern Europe seeking a quick overview of the legal framework in CEE countries.

The positive feedback we have received as well as many new legal developments motivated us to prepare the new edition. This new edition offers up-to-date and soundly-based legal knowledge in concise form. As such, it sets a solid foundation for investment decisions in the CEE region.

Specializing in CEE and with offices in ten countries in Central and Eastern Europe, bnt would be glad to support you while investing in the region.



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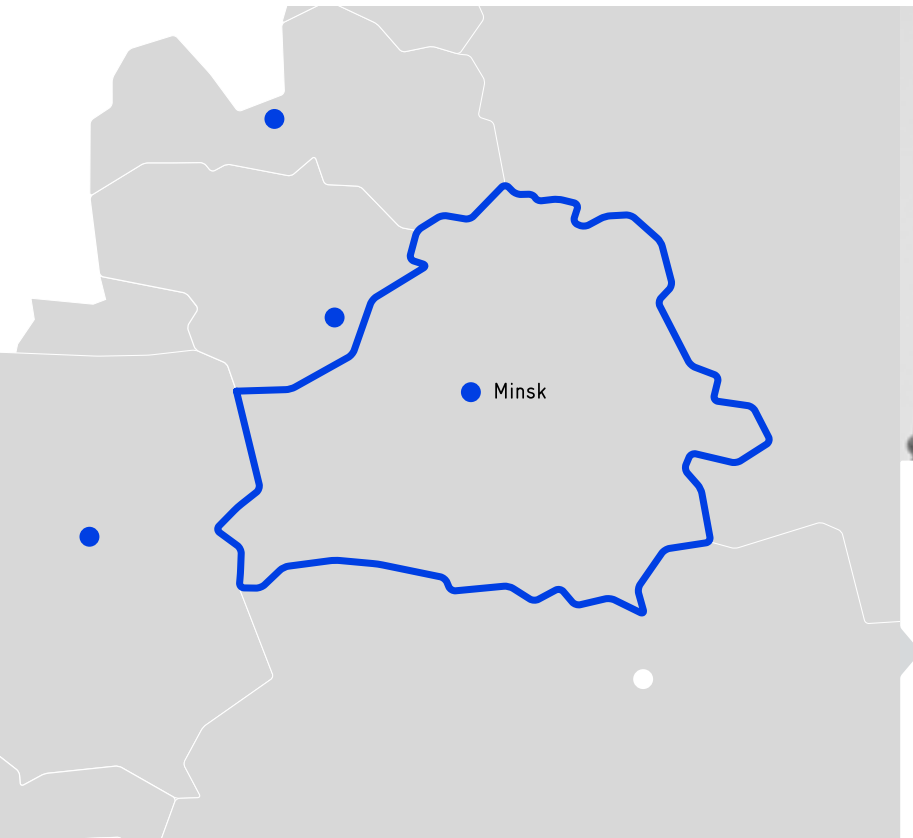
This survey reflects legal regulations in the respective countries as of May 2018. Amendments that came into force after May 2018 were not considered. Although all information was thoroughly researched and analyzed, this survey and the information contained in it cannot replace individual legal consultation. We have an experienced contact person in each of the ten CEE countries who will gladly assist you with any questions.

Table of contents

Belarus	5
Bulgaria	11
Czech Republic	17
Estonia	22
Germany	27
Hungary	32
Latvia	38
Lithuania	43
Poland	49
Slovakia	54

Belarus

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› 1. Land register

- The state register of real property is a publicly accessible register kept by the national land registry office with local authorities responsible for state registration.
- The land register is kept electronically. Some information about specific real property is also available on the internet. Further information (in the form of access to the entirety of the records) is available only to those authorized by law.
- All legally relevant information related to real property is kept and recorded in the land register (creation, change and destruction of real property, origin, transfer, change and termination of rights and shares as well as restrictions and liabilities).
- The contents of the land register enjoy public faith unless a contrary court decision is issued.
- The related administrative costs are low.

› 2. Acquisition of real property

- As a general rule, neither a real property purchase contract nor other agreements related to real property need to be notarized, though there are exceptions.
- The sales contract itself as well as the transfer of title must be registered in the land register in fulfillment/performance of the contract.
- Existing encumbrances remain unaffected by the transfer of ownership.
- Private landed property can only be disposed of along with the buildings standing on it. Vice versa, when buildings are sold, the rights to the land on which they stand pass to the new acquirer.
- Foreign citizens and foreign companies may not in principle obtain ownership of land, though they can rent it. They may also acquire buildings and premises, in which case the land on

which they stand is leased to them.

- Agricultural and forest land and land in nature conservation areas can principally only be used for their stated purpose. The intended purpose can be changed only in cases provided for and governed by law.

› 3. Taxes

- Buildings and premises are subject to property tax. The annual property tax amounts to 0.1% of the value of real property for a natural person and 1.0% for a legal entity.
- Real property is subject to land tax. If the state lets a plot for rent, only rent is to be paid. The amount of land tax (or rent) depends on the land register value, area, use of land and its location.
- Value added tax is currently 20%. Exemption from value added tax is granted when simplified taxation (taxation of turnover) is chosen.
- There is no property transfer tax. If a seller makes a profit when selling, the profit is taxable. If the seller is a legal entity, capital gains tax is applied at a rate of 18%. A natural person has to pay only 13%. However, specific cases are excluded from taxation altogether.

› 4. Special-purpose vehicles

- The usual legal forms for such companies are that of a limited liability company (OOO) or a joint-stock company.
- Concerning OOOs, there are no requirements related to the minimum contribution to the share capital. The minimum equity of a closed joint-stock company is approx. 1,000 EUR and that of an open joint-stock company is approx. 4,000 EUR.
- There are no restrictions regarding foreign participation.

- In practice, establishing and registering a company takes up to about half a month on average.
- Registration expenses are low because no notarial certification of corporate documents is needed.

› 5. Acquisition risks

- A purchase is validly concluded once the purchase contract has been registered. The registrar checks the information in the register for the property which is to be transferred. If the information in the contract does not match the information in the register, the contract cannot be registered and cannot become legally effective. This means that risks associated with the transfer of ownership are relatively low.
- A purchaser who obtains an asset for consideration from a non-owner becomes the owner if they did not know or could not have known at the time about the unlawfulness of their transaction. The former owner may only demand that the item be surrendered if the item was lost, stolen or otherwise removed from them (or another person to whom the item was entrusted). If an item was obtained from the non-owner for no consideration (i.e., free of charge), the owner has at all times the right to demand that it be surrendered to them.
- A person who possesses a piece of real property continuously for 15 years attains ownership of it (acquisitive prescription).
- Performing a due diligence exercise for the acquisition of real property or of a special-purpose company is recommended.

› 6. Public building law

- The most important stages of the construction process are the following:
 - i) preliminary planning (obtaining registration documents, fulfilling technical conditions for planning and construction, project planning, assigning a land plot),

- ii) planning, state examination of the project documentation, other measures and issuance of a building permit,
- iii) execution of construction works under technical construction supervision and control of the project parties,
- iv) commissioning, including official building inspection and registration in the land register.

- After concluding an investment agreement with the Republic of Belarus, investors may carry out the planning and construction works in stages, whereby the planning of any upcoming construction project stage can be carried out simultaneously with the completion of the current construction stage. Under investment treaties, investors enjoy additional benefits.

› 7. Renting

- A lease agreement must take the written form and must explicitly state the amount of rent, otherwise the contract is considered invalid.
- A lease agreement does not need to be registered in the real property register.
- Purchase of a rental building does not lead to termination of the contract.
- A lease agreement for buildings or premises is usually concluded for 3 years. Shortening the term of lease is not possible without the explicit consent/approval of the tenant. A lease agreement can also be concluded for an unlimited period.
- Foreigners can be tenants without restriction.
- The legal period of notice for a lease agreement is 3 months for every party unless otherwise agreed in the contract.
- Agricultural land can be rented for agricultural purposes to private companies and scientific institutions as well as to natural persons. Forest areas are mainly rented to state forestry organizations or scientific institutions.

- Rent of state-owned real property, the percentage of which is very high in Belarus, is subject to special rules, especially regarding the amount of rent and the procedure for awarding such rental properties which usually takes place in the form of auctions.

8. Loans (credit)

- A credit agreement is a special type of loan agreement. Only a bank or other credit and financial institution can be a lender as a party to a credit agreement. Loan agreements can be concluded by anyone.
- Credit may be granted both in Belarusian rubles and in foreign currencies; credit in foreign currencies is however rare (and may e.g. be used for an import deal).
- A loan between Belarusian companies is only allowed in Belarusian rubles.
- Loans are usually interest-bearing. The statutory interest rate is set in accordance with the refinancing rate of the National Bank. The parties to the agreement can agree upon a fixed or variable interest rate.
- Interest rates have no upper or lower limit. Exceptions are possible in the case of loans by foreign companies in favor of Belarusian companies. For example, an interest rate of more than 14% p.a. on such a loan granted in Euro or USD requires the consent of the National Bank.
- In particular, diverse state restrictions are applicable to loans in foreign currencies, to international transactions related to a maximum interest rate and default charges, and to transfers of a claim under a loan contract to a foreign company.
- Parties are free to choose the applicable law, although domestic agreements are usually subject to Belarusian law.
- Early repayment of credit is possible when approved by the loan creditor if the parties agreed upon it in the contract.

9. Securities – lien on real property

- Real property can be mortgaged. Real property is always mortgaged together with the buildings and facilities constructed on it.
- Only claims under a loan agreement with a bank can be secured by a lease right to a land plot. Such an agreement should be concluded with a Belarusian bank or an international finance institution such as IFC, EBRD etc.
- Assets which the mortgagor (borrower) will acquire only in the future may, with certain restrictions, also be the subject of a pledge.
- Mortgaged real property is not handed over to the mortgagee (lender).
- A mortgage contract must be in written form. Notarization is required only if notarization of the claim secured by the mortgage is also necessary.
- The rights resulting from a mortgage may be recorded in a mortgage certificate.
- A mortgage contract is legally effective from the moment it is officially registered by the state. As for a mortgage of future assets, the contract is valid from the moment in which the written deed was executed.
- A mortgage contract states the object of the mortgage, its name, location and identifying particulars, its value as well as the content and value of the claim to be secured.
- The mortgage contract itself and the rights connected with the real property (e.g. accrual, transfer, expiration of real property rights) are subject to state registration in the uniform state register of real property (land register).
- The land register is publicly accessible.
- When property or other rights to mortgaged real property are transferred, the collateral remains in existence. The mortgagee's successor acquires the rights and obligations of the original mortgagee.

- Creating several pledge titles to the same property is allowed. The sequence (priority) of such liens is determined in accordance with the land register records.
- A mortgage expires when the secured claim expires. Liquidation of the claim (mortgage) is registered in the land register.
- A mortgagee's rights can be certified/guaranteed. A mortgage certificate is a registered security.
- When mortgaged property is sold, the mortgage remains in existence regardless of the buyer's good faith.

10. Enforcement

- Realization of a mortgage occurs on the basis of a court decision or notarially certified contract.
- Realization is carried out by way of public auction.
- Several mortgages can be established over the same property. In this case, claims by junior mortgagees are satisfied after those of senior mortgagees from the proceeds remaining after realization of the mortgaged property.
- The ranking (priority) of mortgagees is determined in accordance with the entry in the land register.

11. Other securities

- Other securities include mainly pledged claims, the lease right to a land plot, pledge titles to shares and stock as well as a pledge over an entire enterprise.
- Contracts creating a security interest must be in written form and must contain statutory provisions.
- A pledge of a lease right to a land plot or of an enterprise requires registration in the land register.
- The only claims that can be secured by a pledge

title to an entire enterprise are those where the value of the claim amounts to at least half the value of the enterprise and the claim falls due no sooner than within one year after the enterprise was pledged.

- Cancellation of a pledge title occurs when the secured claim is cancelled or at the request of the pledgor (based on pledgee's negligence related to the pledged property).

12. Debtor's insolvency

- Insolvency proceedings consist of the following stages:
 - i) protection period (opening proceedings) during which measures are taken aimed at protecting the debtor's property and grounds for opening insolvency proceedings are examined,
 - ii) insolvency proceedings (final proceedings) which are started in the case of a debtor's insolvency (inability to pay) or excessive debts.
Two options are possible in the framework of insolvency proceedings: restructuring of the debtor aimed at protection against insolvency and re-establishing economic activity and solvency, or liquidation if restructuring brings no result.
- Insolvency proceedings can also be brought to a close by voluntary settlement without going through the final proceedings.
- The fact that insolvency proceedings have been initiated must be published in the print media and in the uniform state insolvency register which is accessible online.
- The term for the registration of claims is two months from the moment in which the commencement of insolvency proceedings was announced.
- Claims secured by a mortgage rank fourth/next to last in priority and are settled after other creditors' claims.

- Debtor vouch for their liabilities not only with

the pledged property but also with other property, so that a debtor's other property can also be used to settle debts if need be.

- Claims not registered in time may be settled with the debtor's resources left after the timely registered claims were satisfied.

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› 1. Land register

- The land register is a public register of real property data. It is administered by the State Registry Agency and its local representations.
- The land register is accessible to the general public, though inspection usually requires a personal visit to the archives of the relevant local office of the State Registry Agency.
- The land register contains information on the acquisition, transfer and termination of ownership rights and limited rights in rem. It is possible to register certain lease agreements.
- The data in the register may be fragmentary and incomplete, as not all deals involving real property must be registered. Good faith and credit is only partially protected, though the short prescription period for adverse possession which under Bulgarian law is five years works in favor of the good-faith acquirer.
- The costs of registration are small.

› 2. Acquisition of real property

- Contracts for acquisition of property must be in the form of a notarial deed. They must state the parties, the property and the price.
- The contract must be registered with the land register. However, transfer of property takes place by means of the contract itself, i.e., registration of the contract with the land register has usually only declaratory effect. Only where the same property has been sold to more than one buyer, it is the buyer who was registered first who becomes the new proprietor.
- A buyer acquires real property together with all encumbrances in rem.
- The ownership title to a building is generally passed on together with the ownership title to the plot of land on which the building stands. However, a possibility exists to legally separate the two objects by burdening the plot with a special kind of leasehold (emphyteusis). In

Bulgaria, leaseholds are generally unlimited in time. The proprietor of the land plot and the leaseholder have a mutual right of first refusal under the law.

- Non-EU foreigners are barred from directly acquiring ownership of plots of land. If they lawfully inherit land, they must dispose of it within three years. No restrictions apply to the acquisition of buildings.
- Special restrictions apply with regard to the acquisition of agricultural and forest land. Buyers must have been settled in Bulgaria for at least five years. The same applies to special purpose vehicles.

› 3. Taxes

- Any planned acquisition of real property must be analyzed in advance in the light of property transfer tax, income tax and VAT. In addition, a yearly property tax is also levied.
- The acquisition of real property for consideration incurs a one-time property transfer tax between 0.1 and 3% of the purchase price (or of the appraisal value, whichever is higher). Tax is assessed and collected by the local municipality.
- Developed sites, construction land and buildings are subject to property tax at a rate between 0.1 and 4.5% of the book value (or the appraisal value of the property, if higher). This tax is also assessed and collected by the local municipality. Undeveloped farm and forest land is exempt from this type of taxation.
- In addition, income tax (10%) and VAT (20%) will in some cases be due.
- Acquisition, collateralization and lease of land which lies outside the administrative boundaries of urban areas are free of VAT. Also free of VAT are the acquisition and collateralization of buildings that are not newly constructed as well as the plots of land on which they stand. A lease of residential property to natural persons is free of VAT. Apart from this, VAT in Bulgaria is 20%.

- Notary fees are charged on a degressive scale and range from 1.5% to 0.1‰ of the purchase price or appraisal value (if higher). However, a general cap of 6,000 BGN (3,000 EUR) applies. Registration with the land register costs 0.1% of the purchase price/appraisal value, though never less than 10 BGN (5 EUR).

› 4. Special-purpose vehicles

- SPV are used to avoid existing land acquisition restrictions or to minimize taxation by means of share deals (as no VAT is levied in the latter). Generally, the form of a private limited liability company (OOD) or joint-stock company (AD) is chosen. Under Bulgarian law, the minimum share capital of an OOD is 1 (one) EUR and 25,000 EUR for an AD. A special type of joint-stock investment company is also available. This company needs a license, must have minimum share capital of 500,000 BGN (250,000 EUR), and enjoys corporate tax privileges.
- Registration of a company is completed within approx. three business days from application.
- The complete costs for registering an OOD will usually remain within 2,000 EUR.

› 5. Acquisition risks

- Real estate acquisitions in Bulgaria are connected with a relatively high level of risk: an advance due diligence (spanning the last ten years) is necessary.
- There is no absolute good-faith protection. A good-faith buyer will benefit from the short-term acquisitive prescription which in Bulgaria is five years (as opposed to the regular ten-year term) but will not become the proprietor immediately.
- It is possible for restitution claims to burden a piece of property. Their analysis can be difficult.
- A statutory right of first refusal to buy exists

between co-proprietors as well as between a land proprietor and a building proprietor in the context of a leasehold. These rights must be exercised within two months as from the date of their establishment, otherwise they will be lost.

- In particular, possible discrepancies between the contents/description of real property and the cadaster records must be identified and removed in advance as these may become serious obstacles to planned development. The cadaster records are a database of common and technical information in Bulgaria. Entries on ownership rights and rights in rem must follow the data in the land register. However, given that the cadaster records are still under construction, discrepancies may appear.

› 6. Public building law

- At a very early stage the investor must ensure that the planned development complies with the applicable urban planning specifications. There are procedures for changing these plans. Usually, the competence for such changes will lie with the local municipality.
- As a general rule, a construction permit issued by the chief architect of the local municipality is necessary for the construction work to start. This is issued within seven days from filing a correct and complete application. Construction work conducted without a permit must be removed at the expense of the investor. A permit cannot be obtained a posteriori.
- The lawful use of a completed building presupposes an occupancy/use permit.
- Some investments require that an environmental impact assessment be conducted in advance.

› 7. Renting

- Lease agreements need not necessarily be made in writing. They must specify the parties, the rental property and the amount of rent. Lease agreement made for more than three years must be made by the proprietor to be valid. Lease agreements may be concluded for a definite or

indefinite period. In the first case, the term of lease may not be more than ten years, except for leases representing commercial transactions.

- Lease agreements made for more than one year can be entered in the land register. This voluntary registration has binding effect upon any new proprietor of the rental property.
- Lease agreements certified by a notary also bind the new proprietor, although only for one year after acquisition.
- There are no special differences between lease agreements for residential and commercial property.
- There are no restrictions with regard to entering into lease agreements with foreigners.
- Termination notice periods usually follow rent payment periods. It is possible to deviate from this standard.
- Lease agreements for agricultural and forest land require notarized signatures. These agreements are subject to registration with the land register and with the competent Municipal Agriculture Office.
- Bulgaria does not provide tenants with any special statutory protection. Tenants in default of rent payments can very quickly be forced to vacate the property. This also applies in cases of leased residential space.
- Subleases are possible even without extra permission from the landlord, who has a direct claim for rent payments vis-a-vis the subtenant.

additional, non-transparent factors also play an important role. Bulgarian banks tend to retain the right to unilaterally raise both the interest rate and the numerous fees which they charge from borrowers.

- The parties may choose the governing law of the loan agreement at their discretion. However, the bank generally has the better bargaining position. Given that collaterals are subject to the laws of Bulgaria, credit and loan agreements largely are governed by Bulgarian law, too.
- Banks demand compensation for early repayments.

› 9. Securities - lien on real property

- A mortgage entitles the mortgage creditor to a procedural shortcut to foreclosure of the encumbered land in order to settle secured claims.
- The most common type is a contractual mortgage which is created by mutual agreement between the parties, expressed in the form of a notarial deed. The contract must explicitly state the parties, the secured debt, the maturity and the real property to serve as pledge.
- In certain cases a statutory mortgage right may come into existence.
- Mortgages are registered with the land register. The entry has constitutive effect and determines both the validity and rank (priority order) of the mortgage.
- In the case of a transfer of title to the mortgaged property, the mortgage right is transferred too.
- If more than one mortgage burdens a given piece of real property, the priority rank is determined by the order in which the entries were made in the land register.
- A mortgage right expires ten years from its creation but can be renewed. Deletion requires a declaration of consent by the creditor. The

› 8. Loans (credit)

- Bulgarian banks finance real estate purchases in the local currency (BGN) or in EUR.
- Interest rates are generally not fixed but floating. The amount derives from the basic rate of the Bulgarian National Bank or the European Central Bank (depending on the currency, the amount, the term, the quality of collateral, and the solvency of the borrower). However,

declaration can be the subject of civil proceedings.

- A mortgage title is of accessory nature, i.e., its existence depends on the existence of the secured claim. Parties cannot agree on other mechanisms for realization of the mortgage right other than foreclosure.
- A mortgage can only be established by the proprietor of real property.

› 10. Enforcement

- The contract establishing the mortgage must clearly specify the term of maturity. Therefore it is not necessary to serve the defaulting debtor with a reminder to pay.
- In order to realize a mortgage right the creditor needs a so-called enforcement title which can be obtained through a simplified procedure before the local court within several days from filing the application.
- The rights which a creditor derives from a mortgage are realized by foreclosure. Foreclosure may be conducted by a state bailiff or a private bailiff. The choice lies with the creditor.
- A mortgage gives a creditor the preferential right to satisfy itself from the proceeds of foreclosure.
- If several creditors hold a mortgage right to the same property, the order in which they are to be satisfied is determined by the chronology of land register entries. Should two or more mortgage creditors have the same rank, they will be satisfied proportionally.

› 11. Other securities

- Receivables can be transferred (assigned) for the purpose of security without asking the debtor for consent. In addition, it is possible to enter a security clause on receivables in the central register of special pledge rights kept by the Bulgarian Ministry of Justice.

- Shares in partnerships or limited liability companies can be pledged when the remaining shareholders agree to this or when the articles of association allow for such a pledge.
- Movable tangibles and securities can be subject to a pledge in rem (in which case they must be surrendered to the creditor) or serve as a special collateral (in which case the pledge right must be registered with the central register).
- There also exist personal securities such as comfort letters, bank guarantees, and group guarantees. These must all be established in written form in order to be valid. A creditor will lose their rights vis-a-vis any warrantor under a comfort letter if they fail to file action within six months from the day on which the main debtor defaulted on their obligation.

› 12. Debtor's insolvency

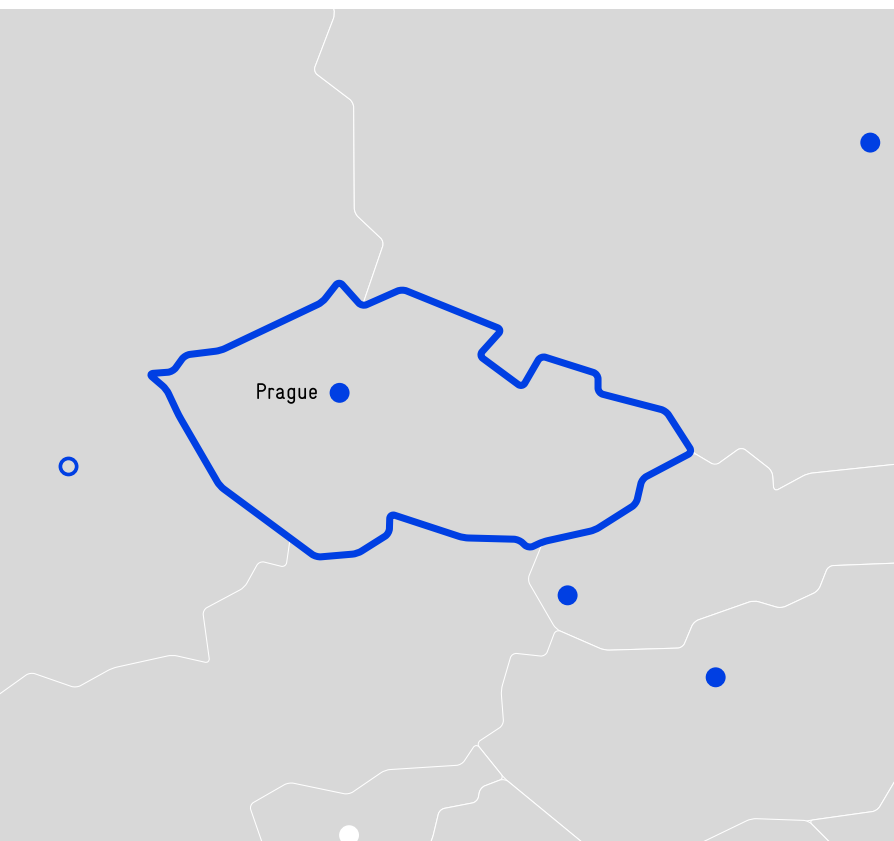
- The criteria for initiating insolvency proceedings are illiquidity and overindebtedness, or non-payment of wages and salaries for more than two months to at least one third of office and/or factory workers of the company. The insolvency procedure can result in restructuring after which the insolvency debtor continues its business activities. If that option promises no success or fails, the insolvency proceedings will evolve into business liquidation. The proceeds will be divided between all creditors.
- Under certain conditions, stabilization proceedings as a chance for companies to avoid insolvency proceedings are also an option.
- The court decision to open insolvency proceedings is published in the Commercial Register.
- After publication, creditors have only a one-month deadline to register their claims. If they fail to do so they may file subsequently within another two months, although they will lose a number of procedural rights such as the right to contest claims filed by other creditors. Receivables which were not registered by the date of expiry of the additional two-month deadline will not be considered.

- In case of business liquidation, creditors secured by mortgage or lien have a preferential right to satisfaction from the encumbered property. Creditors secured by transfer of title by way of security or assignment of receivables by way of security will be satisfied separately. Receivables which have not been previously reported are not taken into account in insolvency proceedings.

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› 1. Land register

- The land register, or "cadastral register", is a public register with data on real property, which is maintained by the local administrative authorities (i.e., not by a court).
- The land register is publicly accessible (also electronically), and there are no restrictions on the right to inspect its records. The land register keeps records of real property, including a separate description and a map showing its location and shape. The land register keeps all relevant information related to real property, including rights in rem (i.e., chiefly, ownership rights, pledge rights, pre-emption rights, and what is known as 'leasehold rights' - "právo stavby", in Czech), as well as information on pending litigation, foreclosure proceedings, or auctions. The land register thus serves as an important source on encumbrances on real property. Leases may also be entered into the land register, subject to the property owner's consent. As of 1 January 2015, good faith in the accuracy of the land register is protected. The cadastral offices charge (moderate) fees for the registration of title and for answering enquiries about cadastral records.

› 2. Acquisition of real property

- A purchase agreement must contain a description of the to-be-transferred real property that is sufficiently specific, and must state the purchase price.
- Both parties must execute the purchase agreement in the same deed of contract. The cadastral office verifies authenticity of signatures of the parties on the purchase agreement. The most common way to prove the authenticity of signatures is by means of certified signatures.
- Transfer of real property is consummated only upon registration of title in the land register (as opposed to the moment when the contract is made). Along with the real property, the buyer acquires all existing encumbrances in rem registered in the land register (e.g. pledges, easements) and also leases related to the real

property.

- Since 1 January 2014 – the day on which the "new" Civil Code came into force – the principle superficies solo cedit applies according to which buildings form part of the plot on which they stand. Buildings whose owner was, as at 1 January 2014, different from the owner of the land underneath, did not "merge" with the plot but have remained separate things. They will only become a part of the plot if and when (in the course of future transfers) both have come to be owned by the same person. Until then, each of the two owners has a pre-emptive right to the other's property by operation of law.
- The purchase of real property by foreign subjects is in no way restricted.

› 3. Taxes

- Relevant taxes in connection with the acquisition of real property include conveyance tax (property transfer tax), income tax, and possibly also value-added tax. Owners of real property also make annual property tax payments.
- The property transfer tax is 4% of the value of the transferred property.
- The property transfer tax calculation is based upon the stated purchase price or the property's market value as determined by expert appraisal, whichever is higher.
- Property transfer tax is payable by the purchaser.
- The property tax calculation is based on the location and type of real property. In addition, income tax and value-added tax may apply, as set out in the relevant provisions of statutory law.

› 4. Special-purpose vehicles

- Special purpose companies are not subject to any particular restrictions.

- Special purpose companies are usually established in the form of limited liability companies governed by Czech law ("společnost s ručením omezeným", in Czech).
- Unless the memorandum of association prescribes a higher amount of shareholders' contributions, the minimum deposit by shareholders in the company's capital is a single Czech crown (where 1 euro = approx. 25 Czech crowns).
- A special-purpose company may be established within four weeks from the day on which all requisite documents have become available.
- The costs associated with establishing a limited liability company for special purposes amount to approx. EUR 1,500.
- Special purpose companies are generally established to acquire real property or to develop construction projects.
- Special purpose companies may also be established in the form of a joint-stock company governed by Czech law ("akciová společnost" in Czech), in which case the minimum capital stock is approx. EUR 80,000.

5. Acquisition risks

- Since 1 January 2015, the public record as contained in the land register affords the protection of good faith and thus a bona fide purchaser may acquire ownership of the property even from a non-owner if such person is registered as owner in the land register.
- Also an uninterrupted stretch of bona fide possession over a stipulated period of time may result in the acquisition of title by way of prescription. The prescription period in case of real property amounts to 20 years of bona fide possession (extraordinary prescription) or 10 years of bona fide possession in case the possession is also based on a legal cause which would suffice for the creation of the ownership if it were originally vested in the transferor (ordinary prescription).
- There may exist historical restitution claims

which represent an obstacle to the transfer of affected real property.

- Various statutory pre-emption rights must also be observed.
- On top of this, the purchase of real property is associated with general risks such as whether the land in question has been zoned for development purposes, or suffers from inherited contamination requiring an environmental cleanup, or is encumbered with existing leases.
- Transfer of ownership takes effect upon its entry in the land register; for this reason, payment of the purchase price is often handled using an escrow account with a notary public or other escrow agent.
- Performing legal due diligence prior to purchase is strongly advisable.

6. Public building law

- Before building any structures, one must review what land use of the given land plots is permitted under the zoning plan.
- Principally, construction and use of buildings require three different permits: a zoning decision, a building permit, and an occupancy (use) permit. Zoning decision and building permit may be acquired in one joint proceeding.
- Issuance of these permits may in turn be conditional on other approvals, representations, and other deeds.
- Certain types of building projects require no permit (or, as it were, merely have to be notified to the authorities).
- In certain cases, an environmental impact assessment may also be necessary.

7. Renting

- Lease agreements need not necessarily be in writing.

- Leases may be entered in the land register, subject to the property owner's consent.
- Selling a rental property (or part thereof) does not automatically cancel lease relationships. However, the buyer only enters into those obligations of the landlord which directly follow from the Civil Code. As to the landlord's obligations under the lease agreement which go beyond the scope of the statutory arrangement, the buyer assumes these only if it was aware of them beforehand.
- The Civil Code contains special rules for commercial lease agreements and residential lease agreements.
- Lease agreements may be for a limited or unlimited period. The former is more common.
- In the case of limited commercial leases, early termination is only possible on grounds specifically addressed by the statutory rules on lease relationships or specially agreed in the lease agreement. The statutory notice period is three months, subject to a different arrangement between the parties.
- In the case of unlimited commercial leases, the statutory notice period is six months (or, in some cases, three months), though the parties may agree on a different arrangement.

› 8. Loans (credit)

- Real estate acquisitions may be financed from equity or using borrowed capital. Loans and credit are offered by private entities and banks.
- The currency of loans or credit is purely a matter of choice of the contractual parties.
- The parties may agree on the amount of interest at their discretion. It is common for interest rates to be determined based upon the PRIBOR (the "Prague InterBank Offered Rate").
- The statutory provisions on loan and credit agreements are optional. Business entities are not subject to any government or public-law restrictions. The conditions under which a loan or credit is made available solely depend on the

parties' understanding.

- There are no restrictions as to the choice of law for loan or credit agreements. In practice, it is rare for parties to agree on foreign law as the governing law (especially in the case of bank loans).

› 9. Securities – lien on real property

- Most loans are secured by way of pledge. Where a debt is secured by a pledge title, the creditor may seek satisfaction of their claim by realizing the pledge if the debtor fails to duly and timely discharge their debt.
- Any tradable (negotiable) item is fit to serve as the subject matter of a pledge title.
- Pledge titles are created by way of a pledge agreement. In the case of a mortgage, the "pledge agreement" (mortgage agreement) must be in writing and due to registration of the mortgage in the land register it is recommended that the signatures on the agreement be certified.
- A pledge title to real property comes into existence upon entry in the land register.
- Transfer of ownership of real property encumbered by a pledge title has no impact on the continued existence of the pledge title, i.e., the buyer acquires the real property along with any encumbrances registered in the land register.
- As long as the pledge title to a given piece of real property was entered in the land register, the buyer cannot claim ignorance. Encumbrances which are a part of the public record are accepted by the buyer since they buy the real property "as is".
- Any individual real property may be encumbered by more than one pledge at the same time, to secure several obligations. The ranking of these pledges is determined by the chronological order in which they were registered.
- A pledge title generally expires upon discharge

of the secured debt. However, it is also possible that a pledge title ceases to exist even without the secured debt having been fulfilled (for instance, because the pledged item has been destroyed, the creditor waives the pledge title or the term of a limited pledge has expired).

- Pledge titles may be established without any public-law restrictions.

10. Enforcement

- The pledgee may settle its outstanding receivable using the proceeds from a public auction or court-ordered sale (foreclosure) of the pledged assets. Alternatively, the pledgee and the pledgor may agree on a different form of realization (but must do so in writing).
- Realization of a pledge within the context of a public auction or foreclosure presupposes a court order or another public-law title of enforcement (such as a directly enforceable notarial deed).
- The way in which a given pledge may be realized depends both on the nature of the pledged item and the procedure by which it is turned into cash.
- If more than one pledge title has been created to the same item, then the ranking of pledgees determines how secured receivables are satisfied. Collection of pledgees' claims is subject to the rules set out in procedural law.

11. Other securities

- A pledge may also be created over receivables (claims pertaining to bank account balances, claims for rent), ownership interest, stock in a company, or an enterprise.
- Buyback rights may also be agreed as security, and so may rights of first refusal.
- Further, the discharge of a debt can also be secured by way of suretyship, bank guarantee or bills of exchange (drafts).

- The creditor's position is strengthened by what is known as a negative pledge (i.e., a ban on the divestment or encumbrance of the item thus "pledged").

It is advisable to create securities in the form of rights in rem (i.e., rights that are made a part of the public record), as such securities enjoy preference over other forms of security.

12. Debtor's insolvency

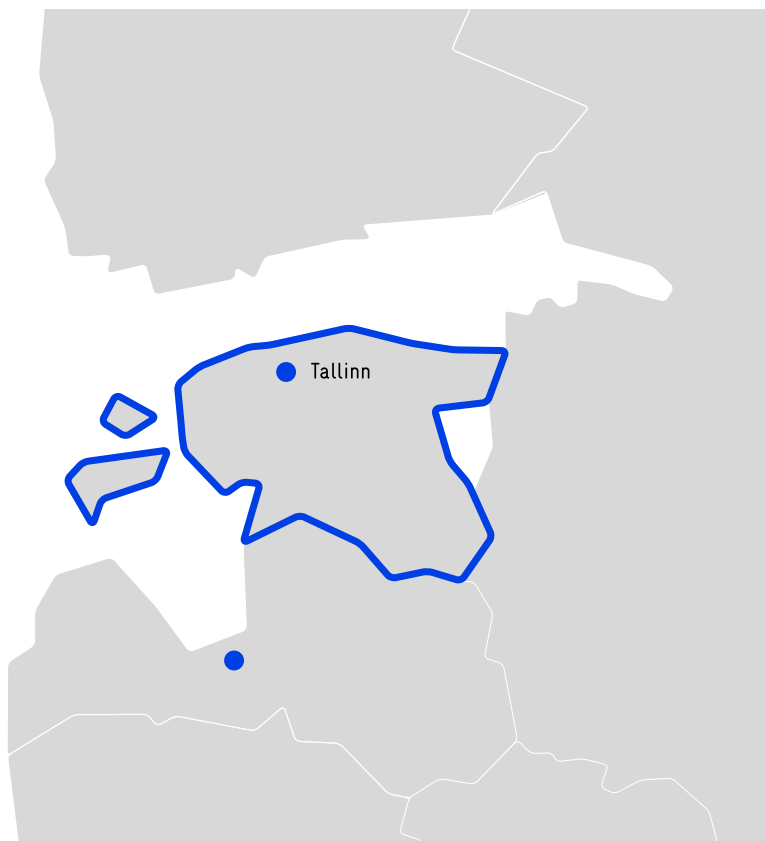
- The insolvency of a debtor may primarily be resolved by way of bankruptcy or by way of restructuring. In the former case, the registered claims of creditors must be satisfied pro rata from the proceeds generated by realizing the debtor's estate, whereas in the latter case the goal is recovery of the debtor's enterprise (while ensuring at the same time that creditors receive satisfaction in at least the same amount as would be the case within bankruptcy proceedings).
- Commencement of insolvency proceedings is published in the publicly accessible insolvency register.
- Creditors must raise their claims / receivables by way of registration within a time limit set in a decision on bankruptcy of the debtor. Receivables that are not registered, or are registered only after the deadline, will be disregarded in insolvency proceedings.
- Secured creditors (e.g. on grounds of a pledge title) enjoy a privileged position within insolvency proceedings: their claims will be satisfied preferentially from the proceeds obtained by selling the pledged assets, rights, or receivables.

- The claims of these preferential creditors will be satisfied in the order in which their pledge titles (or other security) came into existence.
- Secured creditors are entitled to 100% of the proceeds from selling the collateral, minus administrative costs and enforcement-related costs (which must not amount to more than 9% of the total proceeds).

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› 1. Land register

- All properties and related limited property rights are recorded in the land register (kinnistusraamat). The land register contains all details on the real estate itself, its ownership and limited real rights.
- The land register is maintained by the district courts (maakohus). It is also maintained electronically and accessible to everyone. Information on records may be obtained via e-services provided by the Ministry of Justice.
- The good faith in the correctness of entries in the land register is extensively protected in Estonia.
- Land registration takes about one week and is subject to a fee.
- by foreign natural or legal persons must be approved by local authorities.
- This does not apply to nationals of another Member State of the EU, the OECD or the EEA who have been continuously active in farming or forestry in one of these states for at least three years.
- An entry in the land register takes about one week if the property is already registered; in the case of unregistered properties it takes about 6 months, sometimes even longer.
- The costs always depend on the value of the property.

› 2. Acquisition of real property

- A legal act by which one party agrees to acquire or transfer ownership of a property or limited property rights must be notarized.
- For transfer of property to become legally effective, the transferor and acquirer must, in addition to a contract under the law of obligations, also conclude an agreement in rem, which must also be notarized (declaration of conveyance).
- An entry in the land register is obligatory and constitutive. Transfer of ownership of the property is completed only once it has been recorded in the land register.
- Acquisition has no influence on existing encumbrances (e.g. lien, leases).
- The principle superficies solo cedit is a general principle in Estonian law, although it can be derogated from by law and contract.
- Both foreign natural and legal persons may acquire real estate property in Estonia if the land and buildings on it are registered.
- Acquisition of agricultural and forest land

› 3. Taxes

- Property transfer tax does not exist. A state fee is payable on entry in the land register; the amount is determined by the property value involved. The notary fee is also determined by transaction value.

› 4. Special-purpose vehicles

- A private limited company (osaühing - OÜ) is commonly used as a corporate structure for a SPV. The minimum share capital of an OÜ amounts to 2,500 EUR and is payable in cash or in kind. If the share capital is not paid upon establishment of the company, the OÜ will still be registered but a claim will arise against the shareholder for payment of the share capital.
- A special-purpose vehicle (SPV) may be employed in order to acquire a property or a real estate development project. Using a SPV allows the transfer of real estate projects by way of a share deal without requiring any changes in the land register.

› 5. Acquisition risks

- The general level of risk occurring in property

acquisition (building development potential/restrictions, brownfield) can safely be compared to other EU states.

- Thanks to the good-faith principle of the land register, risks regarding the true state of ownership are relatively low, including restitution claims, pre-emptive rights, and acquisitive prescription.
- Prior to acquiring property it is advisable to carry out a legal due diligence.
- No specific risks are associated with the acquisition of agricultural and forest land.

› 6. Public building law

- The first phase involves the drafting of a detailed building plan, which will then be submitted to the building authority (local municipality) in order to obtain a building permit.
- Construction must start within five years after the building permit has been issued, otherwise the permit expires.

› 7. Renting

- Registration of lease contracts in the land register is not required, but possible upon application.
- Sale of a leased property does not lead to termination of the lease contract.
- Differences exist in the way in which commercial and residential leases are regulated, respectively.
- The duration (term) of lease contracts is freely negotiable.
- Lease agreements may be terminated with a three-month minimum notice period. In the case of commercial lease contracts, this period may be shortened or extended.
- Leasing of agricultural and forest land is

possible and common and is not subject to any restrictions.

› 8. Loans (credit)

- Acquisition of real estate in Estonia is commonly financed by banks, which primarily secure their loans through mortgages on purchased property. Other typical forms of collateral include bank and other guarantees.
- Loans are granted in euro, the official currency in Estonia.
- Loans are generally interest-bearing. The interest rate can be stipulated by contract.
- Instructions / restrictions / public-law restrictions do not exist.
- The applicable law can be chosen by the parties, except for those legal norms that are mandatory according to Estonian law.
- There are no special restrictions concerning repayment.

› 9. Securities - lien on real property

- A land plot and building lease can be encumbered with a mortgage.
- A mortgage entitles the holder to satisfy themselves from the proceeds of sale, which can be achieved through foreclosure of the land affected by the mortgaged property to the extent that the holder has a legitimate claim against the debtor that is secured by the mortgage.
- If the borrower fails to fulfill its obligations, then the mortgagee (lender) may file a court claim to realize the mortgage – by a foreclosure sale.
- Origination:
 - through a notarized agreement and, based on that, land registration

- securities cannot originate from the law
- Collateral must be registered with the land register, which is accessible by everyone.
- The owner can sell property encumbered with a mortgage: the mortgage does not affect the sale.
- Mortgages are not dependent on the to-be-secured claim and may thus be created irrespective of whether the given receivable exists. Likewise, a mortgage may be transferred separately from the underlying secured claim.
- A land plot can be encumbered with multiple mortgages. Satisfaction of a secured claim is determined by the sequence of records.
- Deletion of a mortgage from the land register occurs upon application if the legal requirements are fulfilled.
- The one form of mortgage recognized by Estonian law actually most closely resembles the *Sicherungsgrundschuld* in Germany
- If a mortgage is registered with the land register, there are no public-law restrictions.
- The land register records enjoy public faith.

10. Enforcement

- In certain cases, the possibility of immediate enforcement for breach of contract can be agreed in a notarized contract. If such an agreement exists, the creditor can turn directly and without trial to a court bailiff. If the possibility of immediate enforcement is not agreed, the creditor must file a court action, after their reminders, to be served in compliance with agreed deadlines, have been unsuccessful. Litigation can be protracted, so that out-of-court settlements are often the better alternative.
- The sale is carried out by a bailiff. The court bailiff may sell goods by auction. In the case of insolvency, the insolvency administrator is entitled to do this.
- A lien on property is only possible through

a mortgage. However, there are also personal securities such as bail, promissory note and guarantee.

- Pledges are satisfied in rank order.
- In the case of multiple pledge titles to an item, the pledgees are also satisfied in the order of priority.

11. Other securities

- Shares and ownership interest (hereinafter also securities) may be pledged.
- Shares must be, and ownership interest may be, registered with the Estonian Central Register of Securities (ECRS). Pledging shares and ownership interest registered with the ECRS is also recorded by the ECRS.
- Where ownership interest is pledged but has not been registered with the ECRS, the pledge agreement must be certified by a notary public and the Commercial Register must be notified.
- Even after securities have been pledged, the rights vested in them (such as voting rights to a payout of dividends) remain with the owner of the securities.
- Claims for rent may be assigned to the lender on a contractual basis.
- With respect to claims for rent, the landlord has a "landlord lien".

12. Debtor's insolvency

- Bankruptcy of a debtor results in termination of all legal relationships, with the final result being dissolution of the company.
- Restructuring does not result in the termination of legal relationships or the dissolution of a company, but serves to bridge economic difficulties in order to prevent bankruptcy.
- Differences: restructuring is used to find solutions for all parties without shutting down

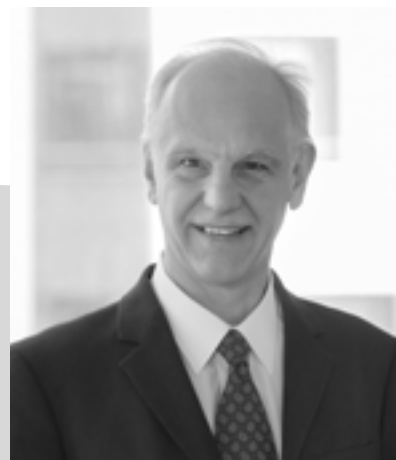
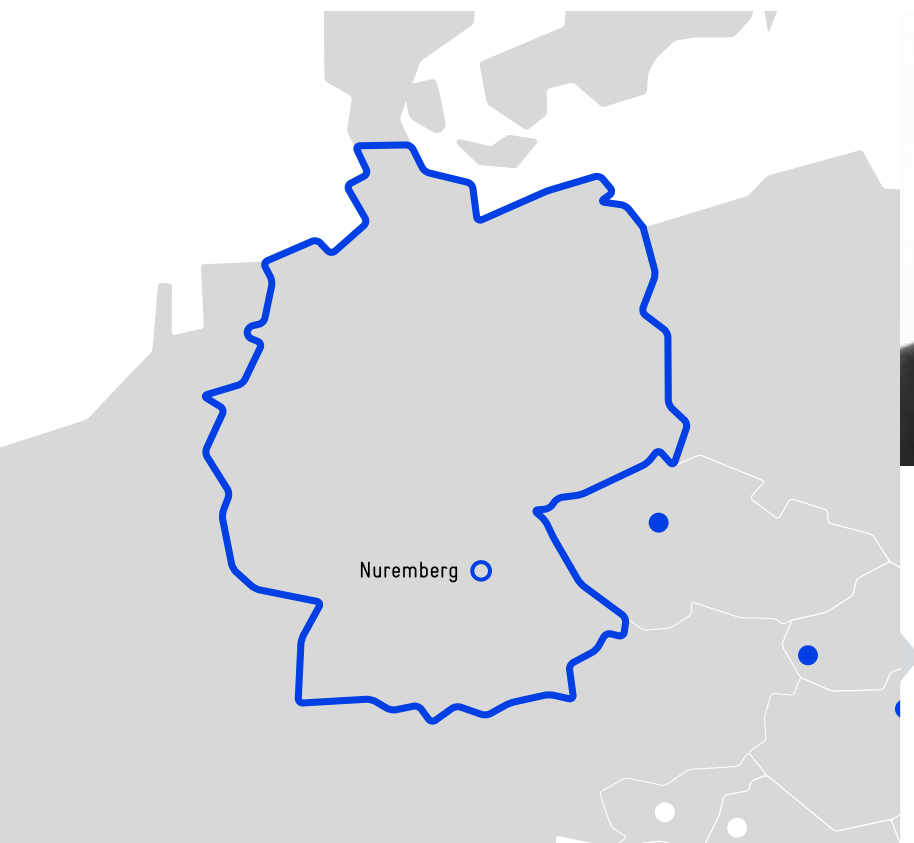
the activities of the debtor, while bankruptcy results in dissolution of the company and partial satisfaction of creditors.

- A public notice of insolvency is posted electronically on www.ametlikudteadaanded.ee
- The deadline to register claims is two months after publishing notice of insolvency.
- Securities in rem, such as mortgages or pledges, are also the best collateral in case of insolvency. Lenders also obtain acceptable protection under a bank guarantee or corporate guarantee granted by a solvent parent company. If real estate is sold off at auction in insolvency, this ends all rights and encumbrances below the first rank based upon which realization of the real estate may be claimed.
- Failure to meet the deadline does not terminate a creditor's claim if failure is not the creditor's fault. In particular, claims secured by pledge must be admitted. In addition, claims can be approved by resolution, in which case they are subordinated. However, this is no longer possible once the insolvency plan is filed with the court.

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› 1. Land register

- The land register is a public register which is primarily kept by the district courts.
- Land register records are kept in the form paper files. Electronic records have so far remained in the stage of pilot projects. In order to inspect land register records, a legitimate interest must be proved.
- All relevant information regarding a given property is entered in the land register (area, cadastral district and land parcel, size, owner, all real encumbrances and restrictions, liens on the property).
- Contractual relationships, such as leases and leaseholds, are not entered in the land register.
- Transfer of real property and encumbrances must be entered in the land register.
- Good faith in the entries in the land register is extensively protected; therefore an extract from the land register is sufficient when investigating the ownership of a property.
- The right to inspect the land register exists for any person who can declare a specific interest (intention to purchase is sufficient).
- Land register fees are small.
- Foreign natural and legal persons are not subject to any special restrictions and authorization requirements for the purchase of real property in Germany.
- Transfers are subject to approval in the case of agricultural and forest land and in many cases regarding landed property in the area formerly known as the GDR.
- As a rule, ownership is uniform for landed property and the buildings erected on it (exceptions: residential property, leaseholds).

› 3. Taxes

- Property transfer tax, which is payable as a sales tax on the purchase of real property, amounts to 3.5% of the assessment basis (usually the purchase price).
- The rate of property transfer tax has been increased to 5.5% of the assessment basis in many of Germany's federal states.
- The land register will only enter the new owner in the land register upon payment of the property transfer tax.
- Property tax is levied on landed property by communities and municipalities; this amounts to an average of 0.20 to 0.30 euros per month/sq.m.
- The notary's charges and those for entry of the property purchase in the land register amount to approx. 2% of the purchase price; in addition there are possible financing costs and estate agent's fees (the latter amounting to between 3 and 7% of the purchase price, plus VAT).

› 2. Acquisition of real property

- A contract for purchase of real property and an agreement on the transfer of title to a parcel of land (the two being different) require notarization.
- Transfer of ownership is not complete until an entry has been made in the land register (i.e., conclusion of the purchase contract and transfer of title is not by itself sufficient); the entry in the land register is constitutive of the acquisition of ownership.
- Disposal of real property has no impact on the charges in rem encumbering it.

› 4. Special-purpose vehicles

- In Germany, special-purpose companies may be used for the acquisition of landed property and for project development.
- Special-purpose companies enable real estate

projects to be transferred by means of a share deal, without requiring changes in the land register.

- A common type of company for a special-purpose company is the limited liability company (GmbH).
- The minimum capital requirement of a limited liability company is 25,000 euros, half of which, not including contributions-in-kind, must be paid into the company's business account at the time of establishment.
- As an alternative, a limited liability company known as a "UG" may be established, with a capital requirement of one single euro. This form of limited company must not make any profit until it has built up minimum capital of 25,000 euros.
- The only restriction existing for foreigners is that stricter requirements apply with regard to scrutiny of the origin of funds (under anti-money-laundering laws).
- A company can be established within one week. The company has legal capacity as soon as it is established. Entry in the commercial register takes between two and six weeks.
- The costs of founding a company amount to approx. 1,000 euros.

› 5. Acquisition risks

- Legal certainty concerning acquisitions is very high due to good faith in the land register and the high quality of land registers with regard to property and other registered rights.
- Any risks result primarily from possible non-registered contractual obligations or, for example, due to inherited environmental burden.
- The land register protects good-faith acquirers.
- Acquisition by prescription contrary to the land register records is not possible.
- Due diligence should be conducted, especially

with regard to non-registered contractual obligations and with regard to the regulatory situation, because rights or restrictions concerning development cannot be ascertained from the land register.

- No special risks are involved in the purchase of agricultural and forest land. However, there are restrictions with regard to the use of such property, particularly under conservation laws. These restrictions should be examined within the framework of due diligence.

› 6. Public building law

- Germany has public planning and building law (applied at national level) and building regulations law (applied at state level).
- Erection or extension of a building always requires an application for planning permission. However, many projects are exempt from planning permission or only require registration.
- It is possible to submit a draft application in order to clarify the permissibility of certain uses prior to beginning construction or to submitting a proper application for a permit.

› 7. Renting

- In terms of minimum content, a commercial lease only requires an agreement with regard to the rental property (area and/or building) and the amount of rent, whereas it is sufficient to include provisions by means of which the rental property and the rent can be ascertained.
- Entry of a lease in the land register is not possible with regard to a contractual agreement under the law of obligations, but a corresponding real encumbrance (e.g. right of residence) may be entered.
- The sale of a building with tenants does not lead to termination of the lease.
- There are differences in the legal regulation of commercial leases and residential leases.

- Commercial leases may be concluded for definite or indefinite periods (the former being vastly more common).
- In particular with regard to the security of tenure, there are significantly stricter requirements for residential rental agreements than for commercial leases. Commercial leases may as a rule be terminated even without objective cause. In the case of commercial leases, notice periods may be agreed freely. In the case of a commercial lease concluded for a definite period, termination for convenience is usually ruled out.
- Registration / publicly accessible information on liens on real property can only be obtained by persons who can prove a legitimate interest.
- Transfer of property or of other real rights to property have no influence on liens conferred (accessoriness). Assignment of a secured debt, however, is quite different: In the case of a mortgage, assignment of the debt includes assignment of the ownership of the mortgage; in the case of a land charge, the owners of the debt and the land charge may be different (no accessoriness).

› 8. Loans (credit)

- German banks usually grant loans for real estate financing in euros.
- Foreign currency loans, e.g. in Swiss francs, can also be obtained from German financial institutions.
- Interest rates on loans for real estate financing depend, for example, on the base rate of the European Central Bank, the amount and term of the loan and the asset backing and creditworthiness of the borrower. The effective interest rate of some lenders is at present below 4%.
- There are no general restrictions under public law on the conclusion of loan agreements.
- The contracting parties are free to choose the law applicable to their loan agreement, although credit institutions are as a rule in the better negotiating position.
- There are no special conditions for repayment.
- Land charges and mortgages do not expire automatically when the secured debt no longer exists, but become a mortgage or land charge for the benefit of the owner. They may only be cancelled if the owner applies for this to be done.
- German law knows several special forms of mortgage and land charge, such as certified and registered mortgage, blanket mortgage (several properties liable for one debt) or also rent charge which secures a regularly recurring payment.
- There are no restrictions under public law.
- As liens on real property may only be conferred through registration in the land register, a purchase of unencumbered property in good faith is not possible.

› 9. Securities – lien on real property

- In Germany, land charges are usually used for financing real estate loans, as they are more flexible and do not depend on the existence and amount of the secured debt.

› 10. Enforcement

- A prerequisite for enforcing the right of lien to real property is the due date of the debt.
- If the due date arrives and the debtor has not paid, the loan may be enforced without further notice, either on the basis of a final court decision or on the basis of the instrument of registration itself (if the owner of the real property has submitted to immediate enforcement). The proceedings last between three and six months, but may in difficult cases take a year or even more.

- A public auction is the only form of realization possible.
- The essential difference between a lien on property and other rights of lien is that in the case of a lien on property, a purchase of unencumbered property in good faith is not possible.
- The beneficiaries of a lien are satisfied in the order in which they have been entered in the land register. A contractual agreement regarding a change in this order is possible with the consent of all owners of similar rights.
- If several rights of lien exist on one property, once the property has been realized by one of the right holders the first-rank creditor will be satisfied first and subsequent creditors will only be satisfied if the proceeds of realization are sufficient.
- The opening of insolvency proceedings is announced on the Internet and in the respective official gazette.
- The period for registration of claims is specified by the insolvency administrator. In clear-cut cases, this may only be a matter of one week; as a rule this takes about two months.
- Rights of lien to real property are insolvency-proof. Creditors with such a security therefore have an advantage over all other creditors.
- Non-observance of the time limit in insolvency proceedings is harmless with regard to securities established over real property, as the insolvency administrator knows of these securities through the entry in the land register. Other (non-registered) securities only have an effect if the insolvency administrator is informed in good time.

› 11. Other securities

- Pledge titles or other securities can be established over any thing or right. Establishing pledge titles to movable assets or to bank accounts is customary in Germany.
- The pledge title comes into existence through a written contract from which the amount of the debt must be ascertainable (even if the amount may change); the secured item must also be ascertainable (although here, too, the item or items may change, e.g. in the case of a storage assignment of inventories). In general, lien are only registered for real property.

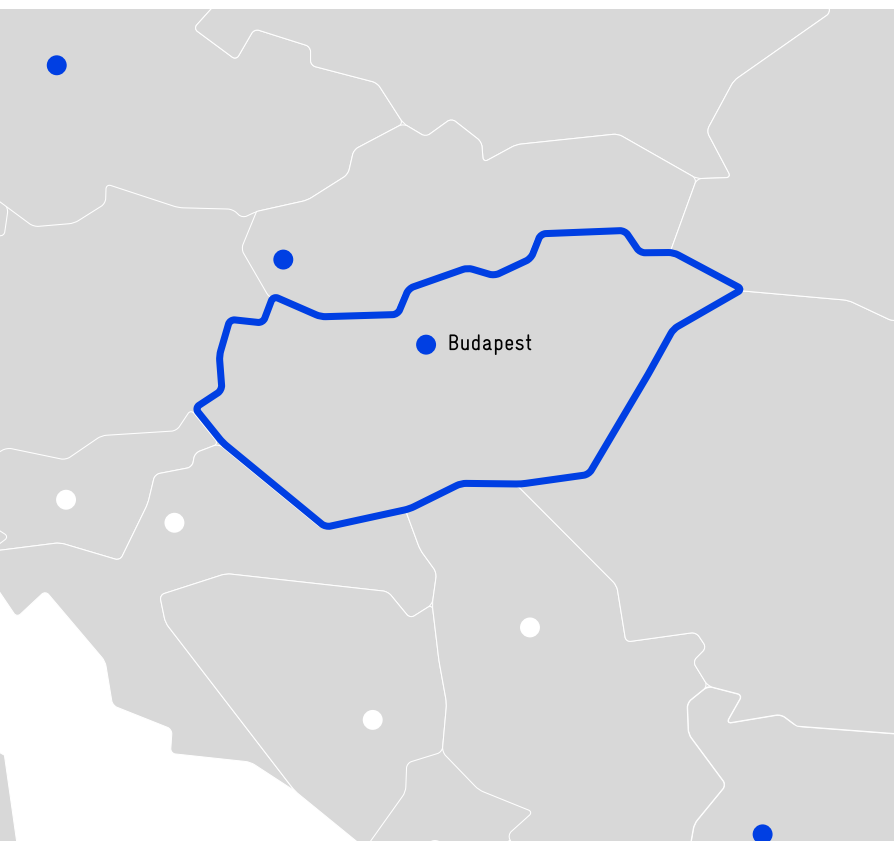
Author: Martin Neupert

› 12. Debtor's insolvency

- In the event of the debtor becoming bankrupt, there is no change to the quality and content of the lien over real property. Should a third party acquire the property in the bankrupt's assets, they may only do so along with the lien. Restructuring applies to an agreement with creditors/banks with regard to the rank and allocation of individual securities over real property to certain loans or other debts. Such restructuring is customary in Germany in the case of refinancing.

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› 1. Land register

- All real property is registered with a public registry: the land register. The land register is administered by public authorities, not by the courts.
- Registered data are available electronically for fee.
- Content of the land register: e.g. location, characteristics of the real property, historical list of owners, property rights/encumbrances such as call option, put option, pre-emption right, right of repurchase, mortgage, right of usufruct, easements, foreclosure, proceedings in connection with the real property. Contractual obligations such as lease or leasehold are not registered.
- Good faith in the records entered in the land register is protected.
- Access to the land register is essentially free; access may be limited to the private and public deeds or decisions by public authorities based upon which records have been entered or deleted, as well as to the list of owners (proprietorship register).
- Procedural costs are low.

› 2. Acquisition of real property

- The sale and purchase of real property can only be registered based on a notarized deed or an agreement countersigned by an attorney-at-law.
- Transfer of title is complete only on registration. Registration at the land register has constitutive effect.
- Acquisition has no influence on encumbrances.
- The owner of the land may differ from the owner of the building.
- EU citizens may acquire real property without restriction.

- As to agricultural land, special regulations apply to nationals and foreigners. Citizens of third countries (beyond the EU) may not acquire agricultural land.

› 3. Taxes

- The sale and purchase of real property is subject to transfer tax, which is paid by the buyer. Transfer tax is market value-based. An indication of the market value is the purchase price. The authorities may determine a market value which is different from the purchase price. The rate is 4% up to a purchase price of 1 billion HUF; an additional 2% applies to the amount above that. Market value exceeding 8 billion HUF is not taxed, so that transfer tax is capped at 200 million HUF for each real property.
- For professional real property traders, the transfer tax is 3% of the market value. A lower tax rate of 2% is applicable if less than two years have passed between undertaking the obligation and effecting the transfer – which is to say, between the conclusion of the sale and purchase agreement and the registration of ownership with the land register.
- A uniform tax rate of 2 % applies to real estate funds having Hungarian National Bank permission.
- Under certain conditions, transfer tax is also payable in the case of sale of shares of a company holding real property (share deal).
- Building tax may be imposed on completed real property. Local governments decide whether such a tax is imposed on real property, and in what amount.
- In the case of sale and purchase of commercial properties, the buyer and/or seller may opt for value added tax to apply.

› 4. Special-purpose vehicles

- Project companies can be established for acquiring title to real property and for project development in Hungary.
- The transfer of projects by way of a share deal does away with the need to effect a change in the land register. However, the tax advantage compared to asset deals has been all but eliminated.
- The most popular form of company for this purpose is an LLC under Hungarian law (Kft.). The minimum registered capital amounts to 3 million HUF. Partnerships are not often used for this purpose. In limited cases, a Hungarian Limited Partnership (Bt.) may enjoy tax advantages, depending on the shareholder structure.
- No restrictions apply to foreign entities with respect to the establishment of a company.
- An SPV can be established within a short time. Thus, acquisition of a shelf company usually offers no material advantages. The deadline for registration by the register court is 15 business days. The registration deadline may be shortened to 1-2 business days if the company uses the standard-form memorandum of association. However, the standard form gives shareholders no freedom to determine the content of the MoA.
- Establishing a company is principally burdened with a court fee. However, partnerships and limited liability companies are exempt from this fee.

› 5. Acquisition risks

- Risks in connection with the acquisition of real property are marginal, given the good faith in the records of the land register.
- General risks arise relating to acquisition (development potential, environmental pollution, existing leases).
- Statutory pre-emption rights must be considered.

- For acquisitions of real property, conducting a legal due diligence exercise is advisable.
- No special risks are associated with the acquisition of agricultural land; however the acquisition is burdened with numerous statutory pre-emption rights of direct and indirect neighbors, which needs to be taken into consideration in the sale and purchase agreement.

› 6. Public building law

- Before construction and use, the following mandatory requirements must be met:
- Planning law: sets out basic requirements for building and use.
- With few exceptions (e.g. construction of flats with less than 300 sq.m.), a building permit is required.
- After construction, an occupancy permit is usually required.
- In special cases, an environmental impact assessment is required and is then carried out within the framework of the building permission procedure.

› 7. Renting

- Lease agreements have no special formal requirements. The parties are essentially free to determine the contents of their relationship.
- Leases cannot be registered in the land register.
- Sale of a leased building does not trigger termination of a lease.
- No restrictions are applicable to the parties to a lease agreement.
- Commercial lease agreements are usually for a definite period. In this case, if there is no reason for extraordinary termination, a lease agreement cannot be terminated before it has run its term.

- Lease of agricultural land is allowed to a limited degree.
- In Hungary, the lessor has a lien on objects (owned by the lessee) placed in real property.

8. Loans (credit)

- The definitions of the credit agreement and the loan agreement are set out in the law.
- Under a credit agreement the lender undertakes to ensure the availability of a specific credit line. Under a credit agreement, the borrower is entitled to demand the conclusion of a loan agreement, contract of suretyship, guarantee contract or other contract in order to execute the given credit transaction. In this sense, the credit agreement is best understood as a framework financing agreement.
- Under a loan agreement the lender undertakes to make available a specific sum of money at a specific future date, and the borrower undertakes to repay that sum to the lender at the agreed future date(s) with interest.
- Contractual freedom applies to both types of contracts unless where prescribed otherwise by law.
- The choice of currency for loans is principally at the discretion of the parties.
- Restrictions of public law are applicable to loan agreements concluded with customers in foreign currencies. There has been a noticeable tendency to gradually restrict the freedom of financial institutes towards consumers by legislation.
- Loans usually carry interest. The interest rate may be agreed by the parties in the loan agreement. The rate must not violate moral principles. No limit on interest is set by law, but the agreed rate is subject to review by the courts, which may mitigate excessive interest rates.
- The choice of governing law is at the discretion of the parties. However, credit institutions regularly enjoy a better negotiating position.

- Repayment before maturity is usually possible, at an extra fee. Late payment of installments results in maturity of the entire loan and may pave the way for extraordinary termination by the lender.

9. Securities – lien on real property

- A mortgage is the most important type of real collateral for the financing of real estate acquisitions.
- A mortgage grants the right to creditors to initiate foreclosure proceedings on encumbered real property in order to collect their secured claims. A mortgage depends on the existence of the claim which it secures (accessoriness).
- Mortgages over real property come into existence upon entry in the land register. A mortgage is registered based on an agreement to establish a mortgage, or based upon the consent of the mortgagor.
- No notarial need is required for effectiveness. However, credit institutions will in practice require notarization in order to achieve direct foreclosure.
- Credit institutions may require other securities alongside the mortgage. In addition, credit institutions stipulate prohibitions on the transfer of ownership of real property and prohibitions on encumbering real property. These may be registered with the land register, which rules out the good-faith acquisition of encumbrance-free ownership.
- Two or more mortgages may simultaneously be established and registered over the same real property. Rank is determined according to the time of establishment. Their rank may be modified with the consent of all participants unless the amendment infringes the rights of third parties who were not involved in the modification of rank.
- Satisfaction from the mortgage becomes possible after the debtor has defaulted on repayment of the loan and the financial institute termi-

nates the loan agreement and calls due the entire loan plus interest and fees.

- Deletion of the mortgage upon its expiry from the land register requires the consent of the mortgagee. Based on this consent, the mortgage is deleted from the land register.
- Good faith in the records of the land register is protected.

10. Enforcement

- Notarization of a mortgage agreement enables direct foreclosure. If no direct foreclosure is possible, the mortgagee must first procure a final and binding judgment.
- Foreclosure may be court-ordered or enforced out of court. Restrictions are applicable to consumer loans, or may be agreed by the parties in their agreement.
- A creditor can sell a pledge/secured real property without judicial foreclosure or can offer the debtor to acquire the pledge/secured real property.
- The parties may exclude out-of-court foreclosure in the mortgage agreement.
- Unless mortgagees file for foreclosure themselves, they must accede to foreclosure proceedings upon notifying the court-appointed debt enforcement officer.
- Mortgages and pledges provide the creditor with a preferential rank in enforcement proceedings.
- If more than one pledge has been established over one and the same real property, claims of mortgagees will be satisfied in the order in which their pledge titles/mortgages were established. Joint realization of collateral in lieu of one foreclosure proceeding is possible.

11. Other securities

11.1. Independent lien

- The independent lien is a non-accessory encumbrance, which is transferable.
- In Hungary, between 2014 and 2016, the independent lien was not recognized as a security. In 2016, the independent lien was reintroduced, with the limitation that it can only be established in favor of financial institutions.
- The land register entry will specify an agreed maximum for the independent lien. This amount is considered the limit of satisfaction.

11.2. Pledge over other items

- All movable and immovable assets, rights and receivables (e.g. rental fee claims, bank account balances) can be pledged under Hungarian law. Assets which will only later be acquired by the pledgor can also be pledged. The pledge must be registered in the pledge register.

11.3. Real estate purchase option

- Between 2014 and 2016, fiduciary collateral arrangements were prohibited. Since 2016, this prohibition is only maintained for transactions with consumers; companies may effectively conclude fiduciary collateral arrangements again.
- A real estate purchase option provides the creditor with the possibility to acquire the encumbered real property without a long and expensive foreclosure proceeding by setting off the loan amount, whereupon they may freely dispose of the property.
- The purchase option may be established in a written agreement which must at least specify the purchase price and the to-be-purchased property. It becomes binding towards third parties upon its registration with the land register.

11.4. Encumbrance of shares

- Ownership interest in limited liability companies and shares may be pledged without restriction. A pledge title to ownership interest

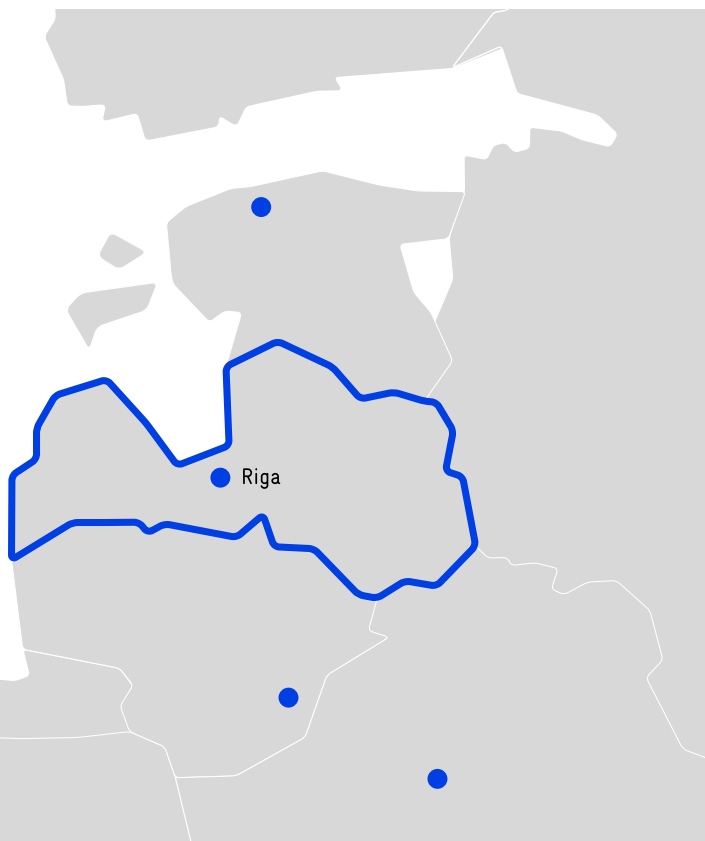
in limited liability companies must be registered in the Commercial Register. Shareholders' rights remain with the shareholder even after putting the shares under pledge. Transferable ownership interest may be encumbered by a preemption right. This purchase option cannot be entered in the Commercial Register, and has no effect vis-à-vis third parties acting in good faith. A pledge may be deleted with the consent of the pledgee.

› 12. Debtor's insolvency

- Insolvency proceedings are based on the insolvency of a company and not necessarily on overindebtedness. Before the application of insolvency, companies have the option to aim at a settlement with creditors in lieu of bankruptcy proceedings. During a period of no more than 120 days, the payment obligations of the company are suspended. Should the parties fail to reach a settlement or the company fail to fulfill the conditions agreed with creditors, insolvency proceedings will be ordered against the company. The initiation of insolvency proceedings is a prospect of achieving success in debt collection, and it is thus also a popular debt collection method.
- Commencement of insolvency proceedings is published in the Commercial Gazette.
- Creditors have 40 days from the date of public notice of the insolvency in the Commercial Gazette to submit their claims in insolvency proceedings. Claims submitted after the expiry of 40 days but within 180 days will only be satisfied in the last rank. Claims not submitted within 180 days cease to exist.
- Mortgages and pledges have intrinsic value: the rights pertaining to them are privileged. Claims are satisfied from the revenue generated by realizing the collateral (after deduction of various costs of proceedings).

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› 1. Land register

- The land register is a public register administered by the appellate courts.
 - The land register may be administered electronically, in which case the records must be open to the public.
 - In general, all real property as well as property rights, liabilities, legally relevant facts, company gifts, sales and lease agreements must be registered in the land register.
 - All data entered in the land register is official and is deemed correct and complete unless it has been legally challenged.
 - Generally, all data registered in the land register is open to the public. Excerpts from the land register are available for a fee. Legislation allows exceptions to this rule for consultations.
 - Land register fees depend on the cadastral value (determined by the state authorities) and the purchase price of the property. Purchase of real property involves a fee of 2 % (3 % in the case of a gift) of the cadastral value or of the purchase price (whichever is greater). When registering a mortgage, a fee of 0.1 % of the loan amount is payable.
 - A purchaser who acquires a property in good faith is protected. In individual cases, such as when a person acquires real property by falsifying the signature of the legitimate owner, a bona fide transferee is not protected if the real property is later sold.
- two parties are concerned, they can only invoke the terms of the contract against third parties if the contract was registered in the land register. Transfer of the ownership of real property takes place through registration in the land register. The parties may apply for transfer in the land register once the contract has been concluded.
- Encumbrances registered in the land register remain unaffected by the transfer of ownership of real property.
 - The principle “superficies solo cedit” is embedded in Latvian law, although the principle can be derogated from by law or contract.
 - Acquisition of property by non-EU citizens requires consent of the municipality.
 - Acquisition of agricultural and forestry land is possible for EU citizens and legal entities within certain limits; for instance, purchasers must prove sufficient command of the Latvian language.

› 2. Acquisition of real property

- A purchase agreement does not require notarization. However, the application to the land register for the transfer of ownership rights does require a certificate from a notary. The purchase agreement must merely specify the purchased property and the purchase price.
- Although a purchase agreement is valid without registration at the land register as far as the

› 3. Taxes

- Annual property tax amounts to 0.2 - 3 % per annum of the land register value of the property. The municipality determines the exact amount. The usual tax rate is 1.5 % and 0.2 - 0.6 % for flats.
- Corporate tax and value added tax: the tax rate to be paid on the profit of a corporation is 15 %. Profit reinvested in the corporation remains untaxed. Value added tax is 21 %. Value added tax is not applied to the sale of real property unless it concerns a new real estate object or building land in which case the difference between the purchase price/renovation costs and the selling price is taxable.
- Sale of property by individuals is subject to individual income tax (capital gains tax).

› 4. Special-purpose vehicles

- Special purpose vehicles are usually established as corporations with limited liability ("sabiedrība ar ierobežotu atbildību" or "SIA"). The minimum share capital is 2,800 €.
- No restriction exists for foreigners as far as founding a corporation is concerned.
- Foundation and registration takes about 1-3 days.
- Fees are low (the state fee for registration in the Commercial Register is 150 € for a three-day registration and 27 € for the official journal for publishing information about foundation).

› 5. Acquisition risks

- Risks associated with the acquisition of real property are generally low.
- The purchaser is protected in the case of restitution lawsuits.
- Existing legal rights of first refusal only apply to joint owners.
- Due diligence is advisable before purchasing real property.
- Particular risks exist in connection with the acquisition of agricultural and forestry land.

› 6. Public building law

- The most important stages in real estate development under Latvian construction law are: project planning, permitting, construction, and acceptance of work.
- The most important administrative decrees are the building permit and the act of acceptance of work.
- Construction in areas with special status and special structures are subject to specific terms

and may require an environmental impact assessment.

› 7. Renting

- The registration of lease agreements in the land register is not mandatory, but lease agreements are only valid vis-a-vis third parties if they have been registered.
- The principle "purchase breaks lease" applies when a lease agreement is not registered in the land register.
- Legislation on commercial leases differs from that on residential lease agreements.
- The duration of a lease agreement can be freely agreed.
- The grounds for terminating a contract are set by law.
- The contracting parties may cancel an unlimited lease agreement, unless agreed otherwise, by (i) 6 months' prior notice; or (ii) 1 month's prior notice, if monthly rent is payable, or (iii) 1 week's prior notice, if weekly rent is payable. These terms do not relate to rent of residential premises by individuals.

› 8. Loans (credit)

- Creditors (banks, credit unions, branches or representations of foreign banks) may provide any person with credit. Special compliance procedures apply to banking clients, especially non-residents.
- Credit can be issued in any currency.
- The parties may agree freely on the interest to be paid. If the parties do not agree on an interest rate, the statutory rate applies (though this is not common market practice). The statutory per-annum interest rate for non-consumers amounts to 8 percentage points above the rate of the main refinancing facility of the European Central Bank before the first day of the respective semester. The statutory interest rate for

consumers is 6 % per annum.

- The parties may choose the applicable law except for specific legal standards in B2C relationships which are governed by Latvian law by default.
- Credit agreements commonly allow for the early repayment of credit.

9. Securities - lien on real property

- Pledging real property may be done by mortgage (pledge of ownership of real property) or a pledge of holding rights (the second option is not commonly practiced). A mortgage is a lawful right to immovable property and is held by a person other than the owner of the property itself. A mortgage serves to secure the fulfillment of present or future obligations. Usually, the mortgage borrower is entitled to continue to use "their" real property in accordance with the designated purpose.
- Any piece of real property or ideal part thereof may be mortgaged. This includes movable objects with the status of accessories to the real property and other rights pledged alongside the real property.
- Normally a mortgage is based on a contract, though it can also be based on a will or court decision. Notarial attestation of the contract is not necessary. However, the application to the land register for registration of a mortgage does require notarial certification.
- A pledge can also be ordered by law if the statutory requirements are fulfilled; it may be established by a court, a civil servant or an authority.
- Mortgages must be registered in the land register to be valid vis-a-vis third parties.
- The transfer of ownership of real property has no bearing on a mortgage.
- Real property can be pledged several times over. In the case of multiple pledges, the rank-

ing is determined on the basis of the date of registration with the land register.

- A mortgage expires upon expiry of the secured claim (i.e., after it is fulfilled) or can be ended otherwise (e. g. by court decision). Upon expiry, the mortgage will be deleted from the land register by a judge.

10. Enforcement

- Under Latvian law a pledgee can seek fulfillment of a pledge on real property if the debt is not settled by the agreed deadline. In that case, the pledgee may take all necessary steps to sell the real property. The sale may be by public auction, court mediation or by foreclosure proceedings.
- A court-mediated public auction on a voluntary basis may only take place if the pledgee and the pledgor have previously reached an agreement on the sale of the pledged items for a freely determined price.
- A claim secured by a mortgage or a commercial pledge should be settled as a matter of priority out of the proceeds of selling the pledged/mortgaged assets. If these resources are insufficient, then the remaining claims should be settled by resources that are generally available and without priority over other creditors.
- Where multiple pledges were established over the same item in spite of a prohibition in the relevant agreement, any creditor may initiate enforcement proceedings. The bailiff must inform the other pledgees about these enforcement proceedings. The assets may be sold without the approval of creditors whose pledges were registered earlier. The priority and rights of the other creditors are not affected by the enforcement proceedings. However, the proceeds must be remitted to the creditor who enjoys first priority.

11. Other securities

- A pledge title to moveable assets need not be registered. However, to bind third parties by

a pledge of movables, it must be registered as a commercial pledge in the pledge register kept by the Latvian Register of Enterprises. The application for registration in the pledge register must be certified by a notary.

- All existing and future claims can be pledged. Bank accounts may be pledged in order to secure credits. Rent receivables can be pledged in favor of a credit grantor. Company shares may be pledged in order to secure real estate financing. In Latvia, a commercial pledge on movables as described above is frequently used. The law on commercial pledges allows any assets to be pledged, such as entire possessions, business shares or individual items (e.g. funds in bank accounts) of a company. Pledged items remain the property of the pledger, who can continue to use them unless restricted by the agreement of the parties. Funds in bank accounts can also be subject to a financial pledge in favor of the same bank or a third party, though banks do not register pledges in favor of third parties. Financial pledges are registered by the bank that holds the debtor's or guarantor's account.
- Other securities result from a legal agreement.
- A pledge expires: 1) upon expiry of the secured claim; 2) through loss of the pledged asset; 3) through acquisition of the right of ownership of the pledged asset by the pledgee or transfer to the pledgee of the rights attached to the pledge; 4) upon lapse of the period of validity of the rights attached to the pledge; 5) if settlement of the creditor's claims is impossible because the limitation period has expired; 6) upon fulfillment of a condition subsequent.
- An expired commercial pledge must be deleted from the pledge register: this requires an application certified by a notary.

- Creditors must present their claims to the insolvency administrator within one month after registration of insolvency in the register. A creditor who misses this deadline may still file claims within six months after registration of insolvency in the register. However, in this case the creditor will have no voting rights at creditors' meetings.
- A claim secured by a mortgage or pledge must be settled as a matter of priority from the proceeds of sale of the items allocated to the mortgage/pledge.

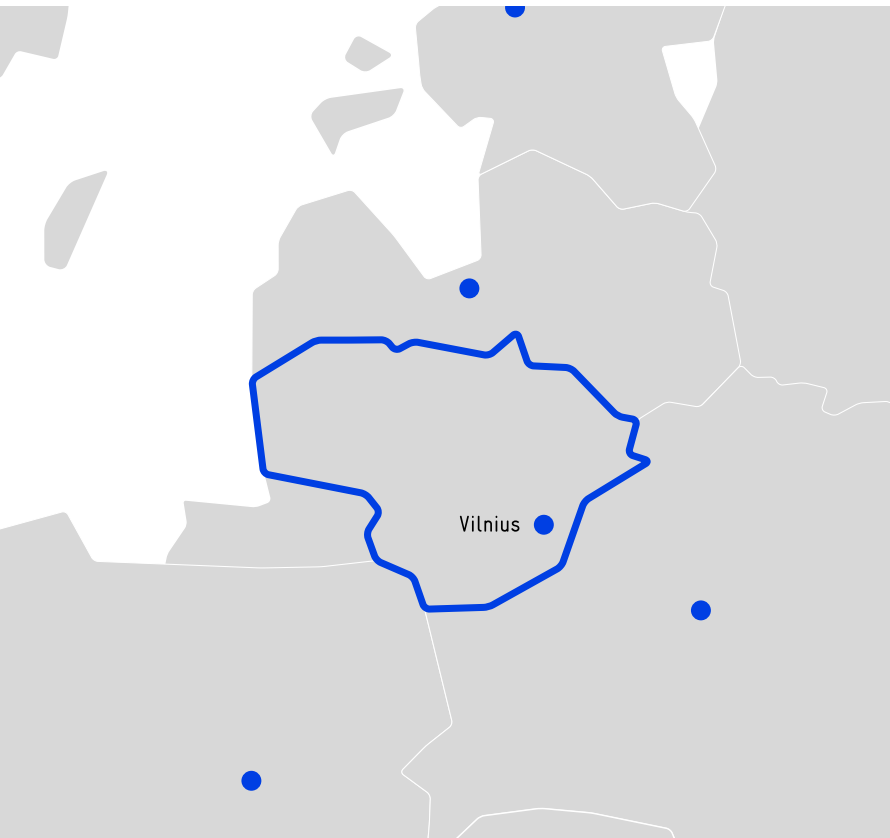
Author: Henning Jensen

› 12. Debtor's insolvency

- In Latvia, three ways are available to deal with insolvency: bankruptcy, restructuring and settlement. A debtor may also resolve their solvency issues by other judicial or extra-judicial procedures.

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› 1. Land register

- The public register is administered by a public undertaking: "VĮ Registrų centras" under the supervision of the Ministry of Transport and Communications.
- The register is also administered electronically and is publicly accessible.
- The register shows all real estate objects and their legal relations (land plots, buildings, rights in rem, encumbrances, other legally relevant data, purchase and lease agreements, gift agreements affecting companies).
- Although there is no obligation to register, persons can only rely upon legal facts against third parties to the extent that they are registered.
- All data in the register is official and is deemed correct and complete (unless it has been challenged in a manner anticipated by the law).
- Data recorded in the register is generally public and will be disclosed to third parties under a data transfer agreement. Excerpts can be obtained for a fee. Some limitations are foreseen in the law.
- Fees related to registration depend e.g. on the type of real estate, its value, as well as upon the speed of registration and whether the request is being submitted by a natural person or legal entity.
- Good faith as to the information contained in the register is protected. Thus, property acquired and purchased as well as registered in good faith is protected from a claim for surrender, except for cases of criminal acts.
- Lithuanian law differentiates between ownership of a land plot and ownership of the buildings situated thereon.
- The purchase agreement must specify the real property, its address and the purchase price. Where only a building is to be purchased, all legal relations concerning the land on which the building is situated must be addressed by the agreement.
- The ownership title to real property does not pass upon signing the purchase agreement but only upon handover of the real estate based on a handover deed or a similar document.
- Obligations in the purchase agreement are valid between the parties without registration in the land register. Vis-a-vis third parties, they are only valid after they have been registered.
- The principle "superficies solo cedit" is a general principle in Lithuanian law; however, parties are free to deviate from it.
- In general all natural and legal persons may acquire ownership of real property. Foreigners from an EU member state or a state that has signed an Association Agreement with the European Union, from a member state of the OECD, NATO or the EEA or foreigners who have their permanent residence in Lithuania or are owners of a company registered in Lithuania possess equal acquisition rights.
- As of 1 May 2014, restrictions were abolished which prevented nationals from an EU member state or a state that has signed an Association Agreement with the European Union, from a member state of the OECD, NATO or the EEA, and nationals who have their permanent residence in Lithuania or are owners of a company registered in Lithuania, from acquiring land for agricultural or forestry use, though general restrictions were introduced at the same time. Under these, one and the same (natural or legal) person and their associates are now allowed to acquire up to 300 ha of agricultural or forestry land. In total, the amount of land for agricultural or forestry use owned by a group of affiliated persons cannot exceed 500 ha. The National Land Service under the Ministry of Agriculture authorizes such acquisitions. In addition, persons acquiring such land must

› 2. Acquisition of real property

- A purchase agreement for real property must be notarized, except if concluded within the context of insolvency proceedings, or else is invalid.

hold qualifications / be engaged in professional activities in this sector.

- The sale of real property or change of ownership does not influence the validity of encumbrances on real estate.

3. Taxes

- Property tax on immovable property used commercially for a period longer than one month amounts to 0.3 – 3% of the value of the immovable. The exact tax rate is determined annually by every municipality and depends on the concrete object. Tax is usually assessed by the "mass assessment" method. Taxpayers can revalue real estate individually once a year if the difference is greater than 20%. Revaluation takes place at least every five years.
- Landowners (natural and legal entities) must pay yearly land tax. The tax rate ranges between 0.01% and 4% and is determined by every municipality. The taxable value is the average market value assessed using the mass valuation method.
- Legal entities selling real estate or land must pay corporate income tax at a rate of 15%, which is charged on the profit obtained.
- Except for the sale of real property within 24 months from construction, and the sale of building plots, sales of real property are VAT exempt. The standard VAT rate is 21%.

4. Special-purpose vehicles

- A private limited liability company ("uždaroji akcinė bendrovė" or "UAB" for short) is the legal form of choice for SPVs. Statutory capital of at least EUR 2,500 is required.
- Establishing a company involves no restrictions for foreigners.
- Registration of a company and making it fully functional takes approximately 2 weeks.

- The costs connected with the formation and registration of a company are small.

5. Acquisition risks

- With regard to acquisition of real property in Lithuania, the risks are generally small.
- In the case of a restitution claim, Lithuanian law protects a buyer who acted in good faith when acquiring real property.
- Statutory rights of pre-emption are reserved only for co-owners of a property.
- Adverse possession is limited to derelict property.
- Engaging in a due diligence exercise before acquiring real property is recommended.
- There are some specific risks involved when acquiring agricultural or forestry land.

6. Public building law

- The most important legal stages of construction procedure in Lithuania are planning, state authorization, execution and state attestation.
- The main administrative decrees are the zoning plan, the detailed plan, the building permit and the certificate of completion.
- Construction in areas of special status or construction of special structures are subject to specific conditions and may require an environmental impact assessment.

7. Renting

- In general, lease agreements require the written form if they are concluded for a period of more than one year. Note, though, that lease agreements for residential premises in which the landlord is the state, a municipality or a legal entity shall always be concluded in writing. Lease agreements between natural persons may

be concluded orally. A fixed-term lease agreement for residential premises must be concluded in writing regardless of the parties.

- Registering an agreement with the register is not mandatory. However, only a registered lease possesses legal validity vis-a-vis third parties.
- The principle "purchase breaks lease" applies when a lease agreement is not registered in the land register.
- Lithuanian law distinguishes a lease of commercial premises from a lease of residential premises.
- Lease agreements for private property may be concluded for a fixed term or for an indefinite period, but the period of lease may never exceed one hundred years. Leasing agreements of public land have a maximum duration of 99 years.
- Parties are free to terminate indefinite lease agreements at any time. The statutory notice period amounts to three months and can be prolonged by agreement.
- Fixed-term lease agreements can be terminated for serious cause, though only after calling upon the party in default to remedy infringements. Fixed-term lease agreements on land can be terminated by the tenant for convenience, while the landlord may terminate only based on serious grounds (the land is used not according to the contract or the main purpose of the land use; no payment for the land lease has been made for more than three months; other grounds specified by law). The notice periods for the termination of fixed-term lease agreements on land are three months for agricultural land and two months for any other type of land usage.
- Lease agreements of public agricultural land are usually made for a maximum duration of 25 years. Public forestry land is usually not leased at all.

8. Loans (credit)

- Lenders (commercial banks, credit unions, or the branch or representation of a foreign bank) may grant credit to any person. If the circumstances clearly indicate that the granted credit will not be repaid in time, commercial banks, credit unions, or the branch or representation office of a foreign bank are entitled to partially or entirely refuse to grant a loan to the borrower,
- Credit may be granted in any currency.
- The borrower pays interest. If the parties have set no rate of interest, then the applicable rate is the average interest rate charged by commercial banks at the time of contracting at the lender's place of business.
- Credit agreements must be concluded in writing in order to be valid.
- The applicable law can be chosen by the parties, except for mandatory provisions under Lithuanian law.
- The borrower requires consent from the lender for early repayment of all or part of the credit. Unless the agreement states otherwise, the credit (loan) must be repaid within 30 days from the creditor's request.

9. Securities - lien on real property

- A mortgage is a title to real estate which secures the performance of existing or future obligations. Any real estate or part of it may be mortgaged. The mortgage grants the holder a priority right over other debtors of the borrower to satisfy the mortgage-backed claim from the value of the mortgaged object. The borrower is usually entitled to continue to use the real estate in accordance with its designated purpose.
- Mortgages are usually created by contract (or unilateral representation by the owner). The contract must contain the following: the parties, the mortgaged property, the type of

mortgage, the obligation secured (i.e., either its specific amount or a maximum amount), and the maturity date. Mortgage agreements must be notarized.

- A mortgage may also be compulsory based upon the decision of a court, notary, or other institution authorized by law.
- Mortgages must be registered in the public mortgage register in order to be valid against third parties.
- Transfer of property ownership on real estate does not influence the mortgage.
- Mortgaging real estate several times over is allowed, unless the contract provides otherwise. The security ranking of mortgages is determined according to the date of registration in the public register.
- A mortgage expires when the obligation expires. It also expires on grounds such as a decision of the court, or if ten years after the payment term of the debt either the creditor or the place of residence of the creditor is unknown, if the mortgaged property has ceased to exist, or on other grounds stated in the law. In addition, a creditor may waive the right to the mortgage at any time. When the mortgage ends, it is deregistered from the public register by a notary at the request of the creditor, owner of the real estate or the borrower.
- Different types of mortgage exist: i) company mortgage, ii) conditional mortgage (which comes into effect or expires upon the fulfillment of a special condition), iii) joint mortgage (several immovable properties owned by one person are mortgaged to ensure performance of one obligation), iv) common mortgage (several immovable properties owned by different persons are mortgaged in order to secure performance of one obligation), v) mortgage of third-party property (the borrower and the owner of the property are different persons), vii) maximum mortgage.
- All parties in good faith (who were not aware and could not be aware of the mortgage) may rely on the public register data. This applies to the fact of the existence of a mortgage, as well as various changes to the data in the public register.

10. Enforcement

- Enforcing a mortgage requires an application to a notary for an enforcement title. The notary then sends notice to the debtor with notice to pay the debt within 20 days as of the day on which notice is sent or else provide data proving that the creditor's claim is unfounded. The enforcement title is executed by a bailiff based on the general legal procedure.
- The creditor decides whether to sell the mortgaged property through a public auction or to seize the property and manage it themselves. At any time before the auction, the real property may also be sold to the creditor or to a third person based on a mutual understanding between the creditor and the borrower (which must be certified by a notary).
- If a property is mortgaged/pledged several times over, any of the creditors is entitled to start the enforcement procedure. The notary notifies the other creditors of this circumstance. However, the property cannot be realized without the consent of creditors in whose favor a higher ranking mortgage/pledge is registered.

11. Other securities

- Claims may be secured using a pledge over present or future claims, claims for rent payments, bank accounts, or shares. A possible alternative is the security assignment of claims.
- As a general rule, the pledge must be created in written form; if the pledged object is transferred to a third party or left to the pledgee, the pledge must be notarized and registered in the central pledge register. If shares are encumbered, a notice must be included either in the respective securities account (immaterial shares) or in the register of shareholders (material shares).
A pledge expires when: i) the secured claim expires; ii) the pledged item ceases to exist; iii) a creditor acquires property rights over the item pledged or those rights are transferred to them; iv) the stipulated period of existence of a limited pledge has ended; v) the period of limitation of the claim expires; vi) the parties

agree on the termination of the pledge, or vii) the creditor waives the pledge.

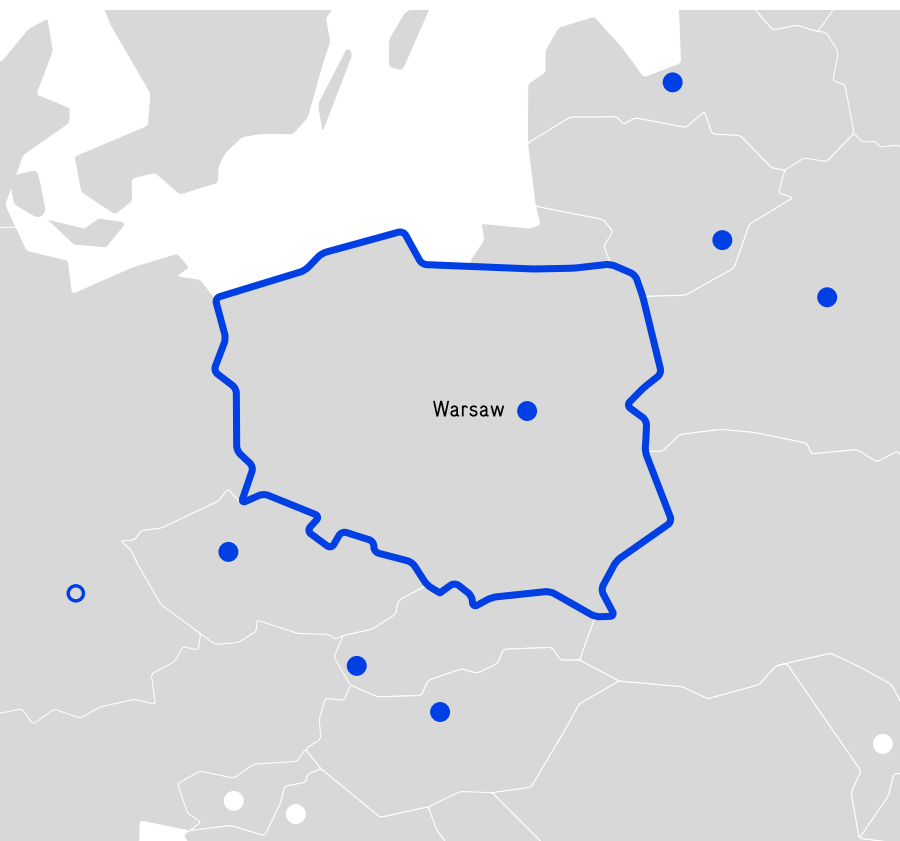
› 12. Debtor's insolvency

- Insolvency proceedings are opened if a company is recognized as insolvent. The main aim is to liquidate the company while satisfying the claims of creditors to the greatest possible extent. By contrast, restructuring proceedings aim at preserving the company, further developing the company's activities, settling debts and avoiding insolvency proceedings with the support of all creditors.
- Before asking the court to open insolvency proceedings, a creditor must notify the debtor of their intention. For a period of 30 days from the date of delivery of the notification letter the debtor has the opportunity to discharge his overdue obligations.
- Creditors must file their claims with the insolvency administrator within the deadline set by the court (which cannot exceed 45 days from the day on which the court decision to open insolvency proceedings comes into force).
- A claim secured by a way of mortgage or pledge is satisfied preferentially from funds received after the sale of the mortgaged or pledged property.
- If a creditor fails to meet the deadline for filing their claims, the claim will remain unsatisfied. The court may make an exception if the failure to timely register the claims was due to an important reason. In any case, applications must be accepted before the court's decision to terminate the insolvency proceedings or the decision to liquidate the company has been adopted.

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› 1. Land register

- Poland keeps a public register – called a land and mortgage register – for each land plot.
- Land and mortgage registers are kept in electronic form by the land and mortgage divisions of the district courts.
- The register contains all relevant real property data (e.g. area, numbers of land plots or buildings, the owner or perpetual usufructuary and all encumbrances and restrictions on the real property, mortgages).
- Contractual relationships such as lease or tenancy may also be entered in the register.
- Ownership of real property is generally transferred by means of contract, while entry in the land and mortgage register follows independently.
- Good faith with respect to the content of land and mortgage register entries is substantially protected, so that in general an actual extract from the land and mortgage register is sufficient for reviewing the ownership status for a particular piece of real property.
- Anyone can access the land and mortgage register (for payment of a nominal fee), without the need to show any particular interest.
- Free internet access to the land register is available – a query is possible simply by quoting the reference number for a given piece of real property. Access to the files of the land and mortgage register requires evidence of legal concern.
- It is possible to obtain an electronic extract from the land and mortgage register on the internet. The extract has the validity of an original excerpt from the land and mortgage register.

› 2. Acquisition of real property

- An agreement to purchase property or perpetual usufruct on real property requires the form of a notarized deed and entry in the land and mortgage register. Registration of the property in the land register is obligatory but only has declaratory character, while registration of a perpetual usufruct has constitutional effect.
- Transfer of ownership follows execution of the purchase agreement (not applicable to perpetual usufruct).
- Ownership usually exists uniformly with regard to the piece of land and buildings on it (except for the separate ownership of flats, and for perpetual usufruct).
- Existing encumbrances (mortgage, rental) are not affected by a sale of real property.
- Natural and legal persons from EU Member States are only subject to special limitations and a duty to obtain a permit if the purchase agricultural or forest land.
- Natural and legal persons from non-EU states in general need to obtain a permit to purchase real estate of all kinds.

› 3. Taxes

- The so-called "tax on civil-law transactions" for real estate purchases amounts to 2% of the assessment base (this corresponds to the purchase price) and is paid by the purchaser. In some cases the purchase is instead subject to VAT – then VAT at 23% is due.
- Property tax is imposed by municipalities and townships on the ownership of real property. The amount of this tax depends on the total area size of the real estate, its use, and the rate fixed by the given municipality.
- Annual fees calculated against the value of real property are payable in the case of perpetual usufruct.

› 4. Special-purpose vehicles

- May be used in Poland to purchase real property and for project development.
- They allow for the transfer of real estate projects by way of a share deal, without the need to amend the data in the land register.
- A popular legal form for a project company is the limited liability company (Sp. z o.o.).
- The minimum share capital of a Sp. z o.o. is 5,000 PLN.
- Registration takes approximately one month, with the company being able to start being active as a „company-in-organization“ even before the registration is finished.
- Incorporation costs amount to about 500 EUR.

› 5. Acquisition risks

- Due to the principle of good faith in the land register, the risks connected with real estate ownership relations are relatively low.
- General risks do apply to the purchase of real estate (e.g. development potential, bad debts, existing lease agreements).
- Legal due diligence is recommended prior to any acquisition of real estate.

› 6. Public building law

- Building development law is uniformly regulated throughout Poland; determining building development plans is the duty of municipalities.
- If a given municipality fails to produce a building development plan, it is necessary to obtain a ruling on local development conditions.
- Constructing or extending a building usually requires a building permit. However, in many

situations no permit is required or a simple notification may be sufficient.

› 7. Renting

- Lease agreements can be for a definite or indefinite period.
- Leases for a definite period may only be terminated under specific circumstances set by the agreement.
- A lease agreement made for a land plot or for premises for a period of more than one year should be executed in writing. If this form is not observed, the contract is deemed executed for a non-fixed term.
- Registration of a lease in the land register is possible (but not required).
- Leases are not affected by disposal of the leased object, although the new owner is possibly entitled to terminate the lease agreement, observing the statutory notice periods. This can be avoided by a fixed-term contract with a notari-ally certified date.
- Natural and legal persons from EU Member States may lease agricultural and forest land.
- There are differences between the respective legal regulation of commercial leases and residential leases.

› 8. Loans (credit)

- Any natural person and any legal entity can be a borrower.
- Polish banks usually grant loans in Polish currency (PLN). Loans in foreign currencies, especially EUR or Swiss Franc, used to be common, but became rare after the worldwide economic crisis. Due to risks associated with exchange rates etc. it is always advisable to check the currency of the claims secured by a mortgage when considering the purchase of mortgaged real property.

- Loan interest varies. The average interest rate "Wibor" currently amounts to about 1.7%, with an additional margin for the bank (the current market standard being about 3.5% for mortgage loans) and a so-called „bank tax“. This last one has been introduced by the Polish parliament in 2016, and the banks eventually passed on the increased tax burden to their customers.
- There are no public-law restrictions on granting loans.
- Legal entities may choose the governing law of their contract at their discretion. However, leeway is small in negotiations with banks, and loan agreements are thus regularly governed by Polish law.

9. Securities – lien on real property

- A mortgage covers the receivable up to the agreed maximum amount, plus interest and fees, and may also extend to future monetary claims.
- For a mortgage to come into existence, a notarial deed is usually required (exception: mortgages in favor of banks). A mortgage may be created on a contractual basis or by way of a unilateral representation.
- A mortgage takes effect upon entry in the land register.
- Transfer of ownership has no effect on a mortgage.
- One mortgage may secure several receivables with a large number of creditors, as long as it serves as collateral for a single business venture (e.g. in the case of a syndicated loan).
- The rank of an expired mortgage in the land register becomes freely available. Once it has been settled, the borrower may replace the receivable for which the mortgage served as collateral with a new claim, or may create a new mortgage. A secured claim may be replaced with a different claim by the same creditor; this does not require consent from other parties

with a title in the same rank or a lower rank.

- Deletion of a mortgage can take effect only upon written application.

10. Enforcement

- In order to satisfy its claim, a creditor must first initiate legal proceedings and then conduct an enforcement procedure.
- Claims secured by way of mortgage are satisfied preferentially in foreclosure proceedings. However, foreclosure of real property can be a protracted affair (which may take as much as several years).
- Real property is turned into cash by way of an auction.
- Settlement of a secured claim can be facilitated by having the owner of mortgaged property submit to a notarial deed on direct enforcement. In this respect, it is important to specify the amount, the prerequisites, and the decisive date on which the enforcement title may be obtained.

11. Other securities

11.1. Encumbrance of ownership interest in businesses:

- Pledging company shares in order to secure real estate loans is customary.
- A registered pledge title to company shares must be entered in the pledge register.
- Purchase options for company shares are rather uncommon.

11.2. Assignment of rent:

- Claims for rent may be assigned to secure a loan, often in the form of a silent assignment.
- Pledging is an alternative to assignment.
- Anticipated assignments are possible but not

commonly practiced. However, the anticipated consent of a tenant with later assignments of future claims for rent is a typical requirement in retail leases.

- Aside from the assignment – and in order to avoid the attachment of account deposits – financing banks often require a power of attorney which authorizes them to dispose of the account for rent payments.

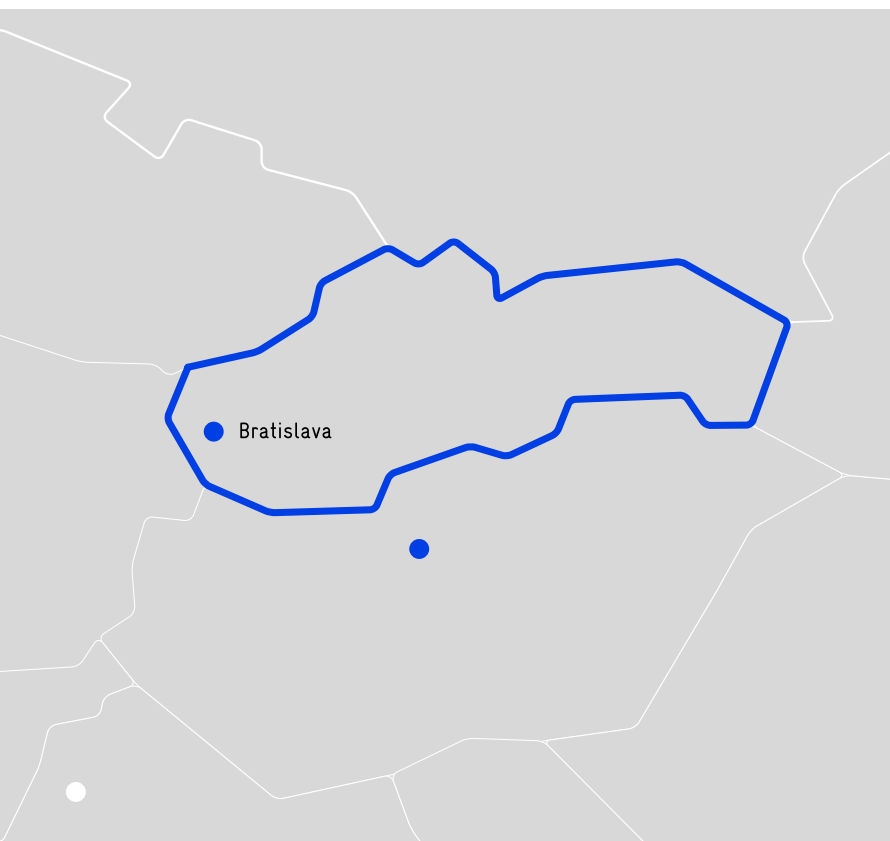
› 12. Debtor's insolvency

- Rights in rem, i.e., mortgages and pledge titles to company shares, are the safest form of collateral in the event of insolvency.
- Mortgage beneficiaries enjoy a privileged position in insolvency proceedings and are satisfied preferentially from the proceeds generated by realization of the property. These revenues are primarily paid out to the mortgage owner up to the amount of the secured claim; only thereafter is the remaining balance (if any) distributed among other creditors.
- The announcement of the opening of insolvency proceedings is published in the "Court and Economic Monitor".
- In any case, claims must be registered with the insolvency trustee, who enters them in the list of creditors, in order to preserve all rights.
- The time limit to lodge a claim is 1-3 months.
- Failure to meet the deadline for lodging does not cause loss of the claim, but has the consequence of higher legal costs for the creditor.

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› 1. Land register

- Real property is registered in a public register – the land register.
- The land register is kept by local administrative authorities (not courts).
- An informative (unofficial) extract from the land register is available on the internet for free. The data from the electronic extract is reliable. An official extract can be obtained by anyone from the competent cadaster office or from the post office.
- Only owners of the relevant real property and persons who can prove a legal interest may inspect the collection of deeds of title at the land register office.
- Fees for register proceedings are relatively small and do not depend on the value of the real property or of the transaction.
- Real property which can be registered in the cadaster includes lots, buildings, apartments, business premises, and, upon application, also buildings, apartments and business premises that are still under construction.
- The land register records comprise any and all relevant information regarding real property – rights in rem (e.g. liens, easements, pre-emptive rights), long-term leases (optional), court or enforcement proceedings, auctions.
- Transfer of ownership is governed by the "registration principle", i.e., ownership is transferred and rights in rem are acquired upon registration in the land register.
- An official extract from the land register is used to confirm ownership and is sufficient for legal transactions.
- In rare cases a registered right of ownership or right in rem may be subsequently deleted from the land register records on the basis of a court decision due to a void or unlawful transaction in the past.

› 2. Acquisition of real property

- Purchase agreements have to comply with rather strict requirements as to their form and content. Establishing rights in rem requires the signature of the transferor or of the obligated party to be notarized. All parties to the agreement have to attach their signatures to the purchase agreement, which has to form one single deed.
- Purchase agreements can be (but do not have to be) in the form of a notarial deed or be authenticated by an attorney-at-law. In such cases cadastral proceedings are simpler and quicker and the notary public or attorney-at-law is liable for the lawfulness of the ownership transfer.
- Ownership of real property is acquired upon registration in the land register (constitutive effect).
- A building and the plot beneath it can have different owners. A building is not part of the plot and the right to dispose of one does not automatically constitute the right to dispose of the other.
- Real property is acquired along with all existing rights in rem (e.g. liens, easements). Except for statutory easements (such as relocation of public mains supply) and statutory pre-emptive rights, rights in rem are visible in the extract from the cadaster.
- Acquisition of agricultural land (but not forests) is restricted. Restrictions apply to both foreign and local persons and companies.
- Special purpose vehicles registered in Slovakia are frequently used to acquire real property.
- Buildings, apartments and business premises under construction can be transferred or become the subject of other legal transactions (e.g. agreements on establishing a lien for the benefit of financing institutions).

3. Taxes

- A property tax exists. No property transfer tax is applicable.
- The amount of property tax varies and is determined by municipalities. The maximum amount of property tax applies to building plots and commercial buildings and depends on the location of the real property.
- Value added tax (20 %) applies in statutory cases.

4. Special-purpose vehicles

- Special purpose vehicles are often established for the purpose of acquisition of real estate and project development (building projects).
- The recommended form of company is a LLC (s.r.o.) or a limited partnership (k.s.).
- There are no special restrictions with regard to the establishment of a LLC or a limited partnership for the purpose of acquisition of real estate.
- The minimum registered capital of a LLC is EUR 5,000.
- A simple LLC can be established and registered with the Commercial Register within about three weeks. Forming a limited partnership takes approximately 6 weeks.
- An LLC can have one or several shareholders; the minimum contribution of one shareholder is EUR 750. The minimum contribution of a limited partner in a limited partnership is EUR 250.
- Costs for establishing a special purpose vehicle in the form of an LLC are about EUR 1,500. In the case of a limited partnership the amount is EUR 3,000.
- Special-purpose vehicles can also take the form of joint-stock companies (a.s.) with a minimum registered capital of EUR 25,000 or "simple

joint-stock companies" with a minimum registered capital of 1 Euro.

5. Acquisition risks

- Since protection of bone fide acquisition is limited and a subsequent cancellation of ownership on the basis of a court decision (due to past void or illegal transactions) is possible, even though rare, legal due diligence is advisable and in the case of high-value projects very much recommended.
- Restitution claims can at this time no longer be brought. In some cases, legal disputes regarding these claims are still pending, though. Thus, a review of these aspects is also recommended.
- Other possible risks include contractual burdens (lease rights), statutory burdens (statutory encumbrances and pre-emptive rights), development potential, access rights, public mains supply, inherited pollution and environmental damage, and can be assessed in the course of a due diligence.
- Bona fide possession over ten years leads to adverse possession.
- There are few statutory preemptive rights (e.g. regarding co-ownership shares or cultural monuments) or easements (relocation of public mains supply), which are not visible in the extract from the cadaster.

6. Public building law

- Before construction, the current land development plan and the permissibility of the investment project in a specific location should be reviewed.
- For construction and use of buildings in general, three permissions must be acquired: zoning, construction and occupancy permission.
- Before these individual permissions are issued, several other approvals, reports and consents of various authorities must be obtained.

- Small construction projects are only subject to notification (as opposed to permission).
- Environmental impact assessments are subject to strict rules. Assessment needed for a specific project will be conducted at every stage of the construction plan.
- An extensive right of appeal is granted to the public in the course of assessment.

7. Renting

- Leases of business premises and leases of residential premises are each regulated differently.
- Lease agreements can be entered into for a definite or indefinite period. Generally, lease agreements are made for a definite period.
- In the case of a lease for a definite period the lease agreement can usually be prematurely terminated only for statutory reasons.
- The sale of a leased building or a part thereof does not automatically lead to termination of the lease (i.e., a purchase agreement does not break a lease agreement). However, in this case tenants are granted a statutory right of termination.
- The statutory notice period is three months, although the parties may agree on a different agreement.
- The lease or sublease of agricultural land is regulated by special provisions. However, both local and foreign tenants enjoy the same legal position in this regard.

8. Loans (credit)

- A loan is usually granted in euro, but can also be granted in USD, GBP, CZK, CHF.
- Current strong competition ensures favorable interest rates for borrowers.
- The interest rate depends on the agreement between the parties and is usually determined

based on the EURIBOR + margin. The interest rate also depends on the type of loan.

- Generally, the choice of foreign law for a loan agreement between Slovak entities is possible, but requires a written agreement between the parties and is quite rare.
- There are no restrictions for entrepreneurs under public law with regard to a loan agreement as such.

9. Securities - lien on real property

- Pledge titles ("mortgages") secure the claims of a creditor who may satisfy its claims by means of enforcing the mortgage in case of default.
- A mortgage (strictly speaking a pledge title) can be created over any kind of real property, including apartments or business premises or buildings under construction.
- Buildings whose construction is only planned in the future cannot be subject to a mortgage.
- A mortgage is established by way of a written agreement, with the minimum content stipulated by law. Signatures do not have to be notarized.
- A mortgage is created upon registration. Thus, all mortgages are visible in the extract from the land register.
- Transfer of the ownership title to real property encumbered with a mortgage does not have any influence on the mortgage's existence. The mortgage is transferred to the new owner together with the real property.
- Several mortgages can be created on one piece of real property at the same time and serve to secure the claims of one or several creditors. The ranking of mortgages depends on the date of their registration in the land register.
- In the case of mortgage enforcement, the mortgage registered first ranks before other mortgages that were registered later.

- A mortgage ceases to exist upon expiry of the secured claim at the latest. Deletion of a mortgage from the cadaster requires a written declaration from the beneficiary of the mortgage (notice of expiry of the mortgage). A mortgage may also cease to exist without repayment of the secured claim (e.g. in the case of destruction of the subject of the mortgage, waiver of the mortgage by the creditor, or expiration of a mortgage that was established for a definite period).
- Enforcement proceedings regarding the subject of a mortgage can only be initiated by other creditors with the prior creditor's consent.

10. Enforcement

- A creditor may satisfy their outstanding claims by means of mortgage enforcement. Mortgage enforcement can take the form of enforcement proceedings, public auction, or direct sale by the creditor if this possibility was agreed in the agreement establishing the mortgage. The creditor and debtor may also agree on another form of enforcement of the mortgage.
- Mortgage enforcement by means of public auction or direct sale does not require a previous court decision. The creditor may proceed with the mortgage enforcement immediately after a lapse of 30 days following a notice to the debtor.
- If several mortgages were established over one and the same property, the ranking of mortgages is essential for the order of satisfaction of secured claims.
- If claims are secured by a mortgage, a third-party debtor has to pay the secured claim directly to the beneficiary of the mortgage. So-called silent mortgages, where notification of the mortgage is only delivered to the third-party debtors in case of default, are quite frequent.

11. Other securities

- A pledge title can be established to all kinds of

movables, claims (bank account, rent or future claims), shares, stocks as well as an enterprise as a whole.

- Pledge titles are established by way of a written agreement and must be registered in the relevant pledge register (such as the notarial register of pledges in the case of claims and other assets, or the Commercial Register in the case of shares).
- Other typical securities include sureties, bills of exchange as well as acknowledgements of debt in the form of a notarial deed, which is very convenient for the creditor because it enables them to initiate enforcement proceedings against the debtor without the need to obtain a court decision in case of default.

12. Debtor's insolvency

- In the case of debtor insolvency, bankruptcy or restructuring proceedings are initiated. In bankruptcy proceedings, registered claims are satisfied proportionally from the proceeds of sale of the debtor's property. The aim of restructuring proceedings is to keep the debtor's business alive while also partially satisfying the registered claims of creditors.
- The commencement of insolvency proceedings is published in the commercial gazette which is public and available on the internet.
- In insolvency proceedings, holders of a mortgage have priority over creditors whose claims are not secured. Secured claims are primarily satisfied from the proceeds of the sale of secured assets, rights or claims.
- Creditors must register their claims within a statutory period of 45 days from publishing the declaration of bankruptcy in the commercial gazette.
- Creditors must register their claims within a statutory period of 30 days from publishing the approval of restructuring in the commercial gazette. Unlike in the case of bankruptcy proceedings, this is a preclusive period.

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