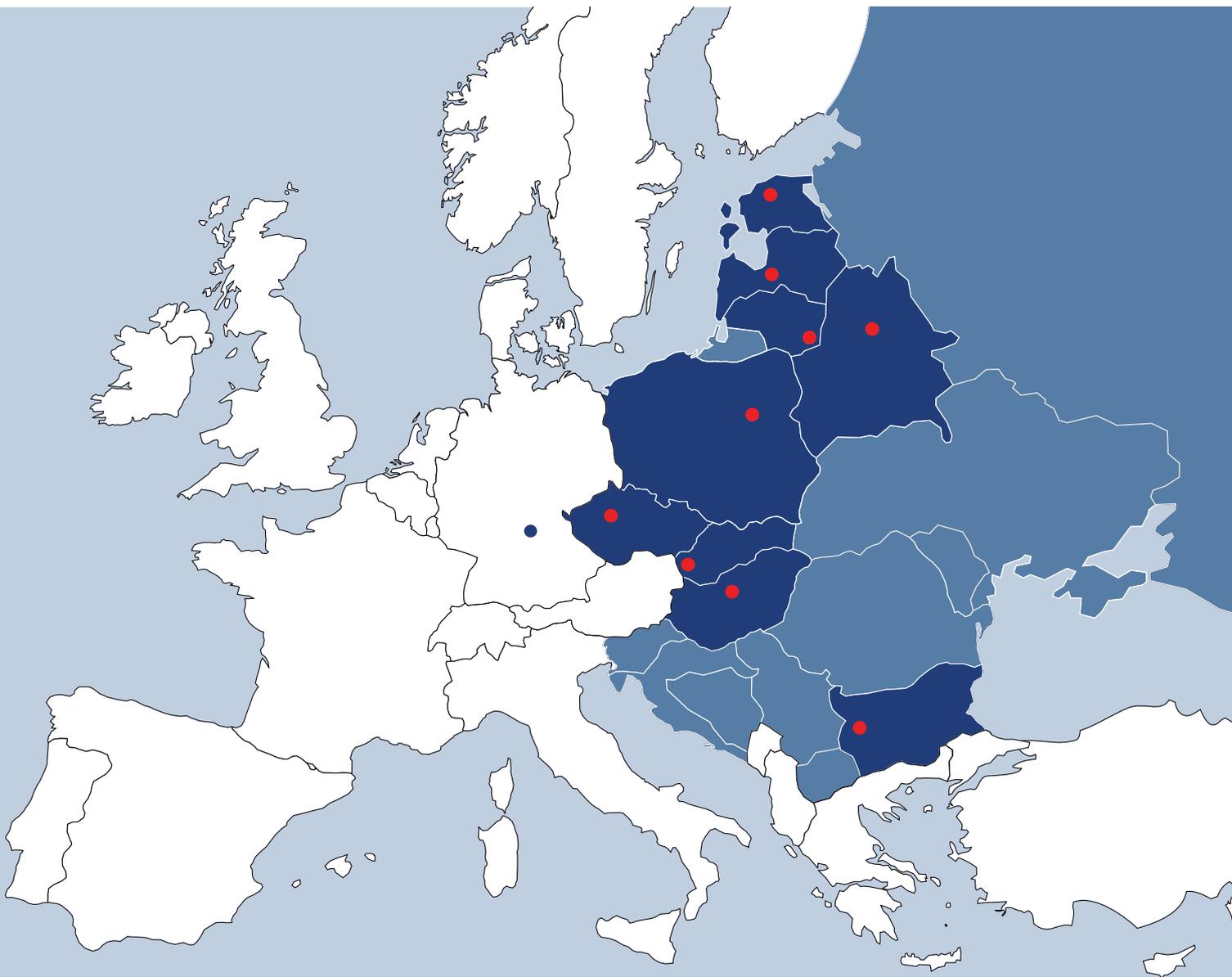


REAL ESTATE AND REAL ESTATE FINANCING

Central- and Eastern Europe 2015/2016



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Introduction

We are delighted to present this fourth 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 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.

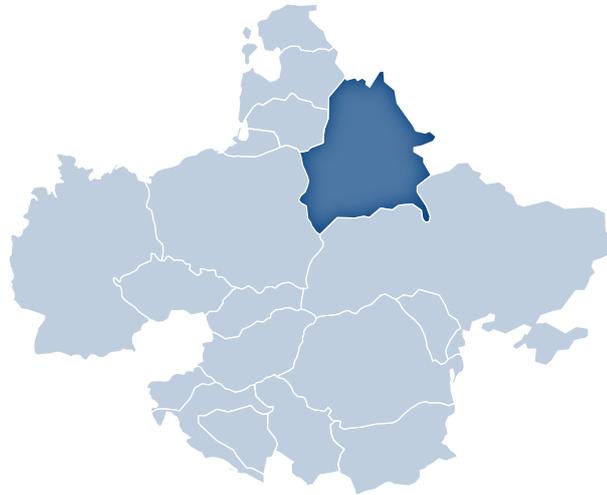
Specializing in CEE and with offices in ten countries in Central and Eastern Europe, bnt would be glad to support you while investing in the region.

Budapest, August 2015

Rainer Tom
Rechtsanwalt, Partner
Head of Real Estate Practice Group

This survey reflects legal regulations in the respective countries as of June 2015. Amendments that came into force after June 2015 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.

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→ 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 real property register is electronic. Some information about specific real property is also available on the internet. More detailed information (e.g. access to the whole register) is available only to those authorized by law.
- All legally relevant information related to real property is kept and recorded in the real property register (origin, change and loss of real property, origin, transfer, change and termination of rights and shares as well as restrictions and liabilities).
- The content of the real property register enjoys public faith unless a contrary court decision is issued.
- Related administrative costs are low.

→ 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. But there are some exceptions.
- A sales contract itself as well as transfer of ownership must be registered in the real property register in fulfillment/performance of the contract.
- Existing encumbrances remain unaffected by transfer of ownership.
- Private property can be disposed of only together with real estate/buildings standing on it. And vice versa, when real estate is sold, rights to real property on which real estate stands 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 obtain buildings and premises where real property on which they stand is leased out.
- Agricultural and forest land plus land in nature conservation areas can be used in principle only for their intended purpose. The intended purpose can be changed only in cases provided for and governed by law.

→ Taxes

- Buildings and premises are subject to real property tax. The annual real property tax amounts to 0.1% of the value of real property for a natural person and 1.0% for a legal entity.
- Real estate is subject to land tax. If a state lets/leases 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.

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- There is no land purchase tax. If a seller makes a profit when selling, the profit is taxable. If a seller is a legal entity, profit tax is 18%. A natural person has to pay only 13%. However, specific cases are excluded from taxation.

→ Special purpose company

- The most usual legal forms are a limited liability company (OOO) or a joint-stock company.
- Concerning OOO, there are no requirements related to the minimum contribution to share capital. The minimum equity of a closed joint-stock company is approx. 1,125 EUR and of an open joint-stock company is approx. 4,500 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 notarial certification of corporate documents is not needed.

→ Risks associated with purchase

- A purchase is validly concluded when the purchase contract is registered. The registrar checks the information in the register about the property which is to be disposed of. If the information in the contract does not coincide with the information in the register, the contract cannot be registered and cannot become legally effective. This means that risks associated with transfer of ownership are relatively low.
- A purchaser who obtains an object from an unauthorized person against payment becomes the owner if he did not know or could not have known at that time about the illegality. The former owner can claim return of the item only in cases when the item was lost, stolen or disappeared from him or some other person to whom the item was entrusted. If an item was obtained from an unauthorized person free of charge, the owner has a right at any time to claim its return.
- A person who possesses an immovable object continuously for 15 years obtains ownership of it (acquisitive prescription).
- Due diligence on acquisition of immovable property or special purpose companies is recommended.

→ 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) bringing into service including official building inspection and registration in the real property register.
- Investors can carry out construction works together/in parallel with preparation/state approval of project planning documents after concluding an investment agreement with the Republic of Belarus. In general, it is possible to use project planning documents prepared abroad but only after adjustment to local technical project planning standards. Adjustment is not obligatory if project planning was conducted in accordance with foreign rules and project planning standards which are also implemented in Belarus.

→ Renting

- A rental contract should be in written form and must explicitly state the amount of rent, otherwise the contract is not considered to be effectively concluded.
- A rental contract does not need to be registered in the real property register.
- Purchase of a rented building does not lead to termination of the contract (purchase does not break rent).
- A rental contract for buildings or premises is usually concluded for 3 years. Shortening

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the term of lease is not possible without the explicit consent/approval of the renter. A rental contract can also be concluded for an unlimited period.

- Foreigners can be renters without restriction.
- The legal period of notice for a rental contract 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 can mainly be rented to state forestry organizations or scientific institutions.
- Rent of state real property, the percentage of which is very high in Belarus, is subject to a particular regulation especially regarding the amount of rent and renting procedure which usually takes place in the form of auctions.

→ **Loan (Credit)**

- A credit agreement is a special type of loan agreement. Only a bank or other credit and financial institution can be a loan creditor as a party to a credit agreement. At the same time, a loan agreement can be concluded by any persons.
- Credits are issued both in Belarusian rubles and in foreign currencies; credits in foreign currencies are issued in the majority of cases by way of exception, though (e.g. 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 favour 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 transfer 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.

→ **Securities – lien on real property**

- Immovable objects can be hypothecated/mortgaged. Real property is always mortgaged together with buildings and facilities constructed on it.
- Assets which the mortgagor (borrower) will get only in future can with some limitations also be a subject of lien.
- Hypothecated real property is not handed over to the mortgagee (lender).
- A mortgage contract must be in written form. Notarization is required only when notarization of a claim secured by mortgage is also necessary.
- Rights resulting from a mortgage may be recorded in the mortgage certificate/letter of hypothecation.
- 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 when it takes written form.
- A mortgage contract states the object of the mortgage, its name, location and identification information, its value as well as the content and value of the claim to be secured.
- A mortgage contract itself and rights connected with real property (e.g. accrual, transfer, expiration of real property rights) are subject to state registration in the uniform state register of real property.
- The real property register is publicly accessible.

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- When property or other rights on mortgaged real property are transferred, the collateral remains in existence. The mortgagee's successor acquires the rights and obligations of the original mortgagee.
- Transfer of other liens on the same subject is allowed. The sequence (priority) of liens is determined in accordance with information from the real property register.
- A mortgage expires when the secured claim expires. Liquidation of the claim (mortgage) is registered in the real property register.
- A mortgagee's rights can be certified/guaranteed. A mortgage certificate is an inscribed security.
- When mortgaged property is sold, the lien stays in existence regardless of the buyer's good faith.

 → **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 liens can be established on one subject of pledge. In this case, claims by junior mortgagees are satisfied after those of senior mortgagees from the proceeds remaining after realization of the mortgaged property.
- Ranking (priority) of mortgagees is determined in accordance with the entries in the real property register.

 → **Other securities**

- Other securities are mainly lien on claims, lease right to a land plot, corporate shares and stock as well as a lien on a whole undertaking.
- 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 the whole undertaking requires registration in the real property register.
- The only claims that can be secured by a lien on the whole undertaking are those where the value of the claim amounts to at least half the value of the undertaking and the claim will be payable in at least one year after pledge of the undertaking.
- Only claims under a loan agreement with a bank can be secured by a lease right to a land plot.
- Cancellation of a lien occurs when a secured claim is cancelled or at the request of the mortgagor where the mortgagee's negligence related to the mortgaged property.

 → **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 be finished by voluntary settlement without going through final proceedings.
- The fact of opening insolvency proceedings must be published in the print media and uniform state insolvency register, which is accessible online.
- The term for declaration of claims is 2 months from the moment when opening insolvency proceedings was announced.
- Claims secured by lien rank fourth/next to last in priority and are settled after other creditors.
- The debtor is liable not only with the pledged object but also with other property, so that a debtor's other property can also be used when needed to settle debts.

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- Claims not declared in time can be settled with the debtor's resources left after settlement of claims declared in time.

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→ Land register

- The land registry is a public register with data on real estate. It is administered by the State Registry Agency and its local representations
- The land registry is accessible for the public; however, this is mostly possible only personally in the archives of the respective local representation of the State Registry Agency.
- The land registry contains information on acquisition, transfer and termination of property rights and limited rights in rem. It is possible to register some tenancy contracts.
- The data in the register can be fragmentary and incomplete, as not all deals with real estate must be registered. Good faith and credit is only partially protected: A credulous buyer is only entitled to invoke the short-term acquisitive prescription which under Bulgarian law is five years.
- The cost of registration is symbolic.

→ Acquisition of real property

- Contracts for acquisition of property must be notarized. They must state the parties, the property and the price.
- The contract must be registered at the land registry. However, transfer of property takes place by means of the contract itself, so that as a rule registration of the contract at the Real Estate Registry has only declaratory effect. Only where the same property has been sold to more than one buyer is it the buyer registered first who becomes the new proprietor.
- A buyer acquires real estate together with all encumbrances in rem.
- The property right on a building is generally passed on together with the property right on the plot of land on which the building stands. However, a possibility exists to legally separate the two objects by burdening the plot through establishing a so called emphyteusis right. In Bulgaria, emphyteusis rights are generally unlimited in time. The proprietor of the land plot and the bearer of the emphyteusis right each have a statutory first right to buy in relation to each other.
- Non-EU foreigners are barred from directly acquiring property rights on land and plots of land. They can do so only by means of a hereditary relation but must dispose within three years. No restrictions apply to acquisition of buildings.
- Special restrictions apply with regard to 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.

→ Taxes

- Planned acquisition of real estate must be analyzed in advance in the light of property

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transfer tax, income tax and VAT. In addition, yearly possession tax is levied on property.

- Non-gratuitous acquisitions of real estate attract a one-time property transfer tax between 0.1 and 3% of the purchase price or the tax valuation of the object if the latter is higher. Tax is set and collected by the local municipality.
- Developed sites, construction land and buildings attract possession tax of between 0.1 and 4.5‰ of the balance value or the tax valuation of the property if the latter is higher. This tax is also set and collected by the local municipality. Undeveloped farm and forest land does not attract this type of taxation.
- In addition, in some cases income tax (10%) and VAT (20%) will 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 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 digressive and range from 1.5% to 1‰ of the purchase price or tax valuation (if higher). However, a general cap of 6,000 BGN (3,000 EUR) exists. Registration at the Real Estate Registry costs 0.1% of the purchase price/tax value.

→ Special purpose company

- Special purpose companies are used to avoid existing land acquisition restrictions or to minimize taxation by means of share deals as the latter are not levied with VAT. Generally, the form of a private limited liability company (OOD) or joint stock corporation (AD) is chosen. Under Bulgarian law, the minimum share capital of an OOD is 1 (one) EUR and 25,000 EUR for an AD. But the form of a special investment joint stock company can also be chosen. This company needs a licence, must have minimum share capital of 500,000 BGN (250,000 EUR) and comes in favor of corporate taxation privileges.
- Registration of a company is completed within some five days of application.
- The complete costs for registering an OOD will usually remain within 2000 EUR.

→ Risks associated with purchase

- Real estate acquisitions in Bulgaria are connected with a relatively high level of risk: an advance real estate due diligence (spanning the last ten years) is necessary.
- There is no absolute good-faith protection. A credulous 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 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 an emphyteusis right. These rights must be exercised within two months from when they arise, otherwise they will be lost.
- In particular, possible discrepancies between the contents/description of real estate and the Cadastral Registry must be identified and removed in advance as these may prove effective midterm hindrances to planned development. The Cadastral Registry is a database of common and technical information in Bulgaria. Entries on property rights and rights in rem must actually follow the data in the land registry. However, as the Cadastral Registry is still a project under construction, discrepancies can appear.

→ Public building law

- At a very early stage the investor must ensure that planned development complies with 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 by the local municipality is necessary for construction work to start. This is issued within seven days from filing a correct and complete application. Construction work conducted without a permit may be removed

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- at the expense of the investor. A permit cannot be obtained a posteriori.
- For correct use of a completed building an exploitation permit is required.
- Some investments require an environmental impact survey in advance.

→ Renting

- It is not a must to close a rental contract in writing. A rental contract must name the parties, the object and the rental price. Rental contracts longer than three years must be closed by the proprietor to be valid. A rental contract can be closed for a definite or indefinite period. In the first case, the duration may not be longer than ten years.
- Rental contracts for more than one year can be registered at the Real Estate Registry. This voluntary registration has the effect of binding any new proprietor of leased real estate to a registered rental contract.
- Rental contracts with a notary certification of closure day also bind a new proprietor, although only for one year after acquisition.
- There are no special differences between rental contracts for residential and commercial property.
- There are no restrictions with regard to closing rental contracts with foreigners.
- Termination notice periods usually follow rental payment periods. It is possible to close a deviating agreement on this point.
- Rental contracts for agricultural and forest land require notarization of signatures.
- Bulgaria offers no special statutory protection for tenants. Tenants in default of rental payments can very quickly be forced to vacate the property. This also applies in cases of leased residential space.
- Subleases are possible without extra permission from the landlord, who has a direct claim for rental payment against the subtenant.

→ Loan (Credit)

- Bulgarian banks finance real estate purchases in 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, additional, non-transparent factors also play an important role. Bulgarian banks tend to keep the right to unilaterally raise both the interest rate and the numerous fees which they charge borrowers.
- The parties may choose the governing law of the loan agreement at their discretion. However, the bank generally has the better bargaining position. As collaterals follow the law of Bulgaria, credit contracts largely do so too.
- Banks demand compensation for preterm payments.

→ 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.
- Most common is the contractual mortgage which is created by mutual agreement between the parties expressed in the form of a notarized contract. The contract must explicitly state the parties, the secured debt, the maturity and the real estate to serve as surety.
- In certain cases prescribed by law a statutory mortgage right comes into existence.
- Mortgages are registered at the land registry. The entry has a constitutive effect and determines both the validity and rank (priority order) of the mortgage.
- In the case of title transfer of real estate which serves as security the mortgage right is transferred too.
- If more than one mortgage burdens real estate the priority rank is determined by the order of entries at the land registry.
- A mortgage right expires ten years after creation but can be renewed. Deletion requires a declaration of consent by the creditor. The declaration can be the subject of civil proceedings.

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- A mortgage title is of accessory nature, i.e., its existence depends on the existence of the secured claim. The parties cannot agree on any other mechanism for realizing the mortgage right than foreclosure.
- A mortgage can only be established by the proprietor of real estate.

→ Enforcement

- In the contract establishing a mortgage the maturity term must be clearly stated. Therefore it is not necessary to serve on the debtor a reminder to pay if the latter is in default.
- In order to realize a mortgage right the creditor needs a so called letter of execution which he/she will receive in the course of a simplified procedure before the local court within several days from filing the application.
- The rights a creditor derives from a mortgage are realized by foreclosure. This can be conducted by a state or a private execution bailiff. The choice lies with the creditor.
- A mortgage gives a creditor the preferential right to exhaust the proceeds of foreclosure.
- If a number of creditors have mortgage rights on the same object the order of privileges is determined by the chronology of land registry entries. Should two or more mortgage creditors have the same rank they will be satisfied proportionally.

→ Other securities

- Receivables can be transferred for the purposes of security without asking the debtor for consent. In addition, it is possible to enter a security remark on receivables in the Central Register of Irregular Collateral at the Bulgarian Ministry of Justice.
- Shares in personal 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 to irregular collateral (in which case the pledge right must be registered at the Central Register).
- There are also personal securities such as statements of comfort, bank and concern guarantees. These must all be established in written form to be valid. A creditor will lose their rights against any warrantor under a statement of comfort with regard to whom they fail to file action within six months from the day of payment default on the part of the main debtor.

→ Debtor's insolvency

- Alternative prerequisites for insolvency proceedings are illiquidity and overindebtedness. The insolvency procedure can result in enterprise restructuring after which the insolvency debtor continues activity. If that option promises no success or fails, the insolvency proceedings will evolve into business liquidation. The proceeds will be divided between all creditors.
- The court decision to open insolvency proceedings is published in the register of companies.
- After publication, creditors have only a one-month deadline to file their receivables. If they fail to do so they can 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 unfiled upon expiration of the subsequent two-month deadline will not be considered.
- In the 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.

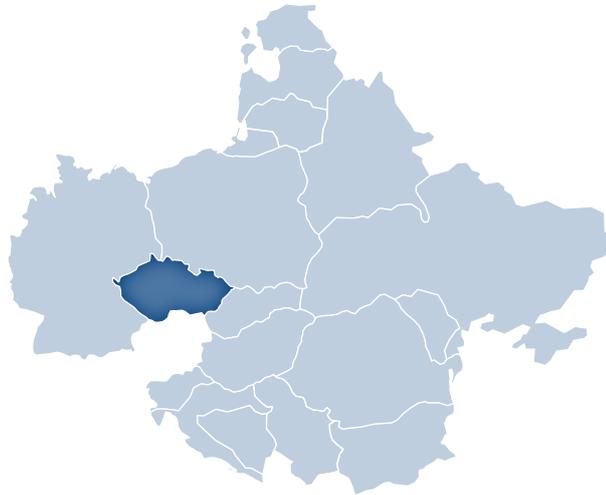
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→ Land register

- The cadastral register is a public register with data on real property kept by local administrative authorities (as opposed to a court).
- The cadastral register is publicly accessible (also electronically), and there are no restrictions on the right to inspect its records.
- The cadastral register keeps records for each and every piece of real property, including a separate description and a map showing its location and shape.
- The cadastral register keeps all relevant information related to real property, including rights in rem (i.e., chiefly, ownership rights, pledge rights, preemption rights, and what is known as 'leasehold rights' - "právo stavby", in Czech), as well as information on pending litigation, foreclosure proceedings, or auctions. The cadastral register thus serves as an important source on encumbrances on real property. Leases may also newly be entered into the cadastral register, subject to the property owner's consent.
- As of 1 January 2015, good faith in the accuracy of the cadastral register is protected.
- The cadastral offices charge (moderate) fees for registration of title, and for answering enquiries about cadastral records.

→ 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, and their signatures must be certified.
- Transfer of real property is consummated only upon registration of title in the cadastral register (as opposed to the moment when the contract is made).
- Along with the real property, the buyer acquires all existing encumbrances in rem (e.g. pledges, easements, leases).
- 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 land 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 land plot but have remained separate things. They will only become a part of the land 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 an option (right of first refusal) to the other's property by operation of law.
- The purchase of real property by foreign subjects is in no way restricted.

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- **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 seller, though the parties may agree in their contract that the buyer will pay.
 - 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.

- **Special purpose company**
 - 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 one euro = CZK 27.38).
 - 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 which case the minimum capital stock is approx. EUR 80,000.

- **Risks associated with purchase**
 - Since 01 January 2015, the public record as contained in the cadastral register affords the protection of good faith.
 - An uninterrupted stretch of bona fide possession over a ten-year period results in the acquisition of title by way of "adverse possession".
 - There may exist historical restitution claims which represent an obstacle to the transfer of affected real property.
 - Various statutory preemption rights must also be observed.
 - On top of this, general risks are associated with the purchase of real property such as whether the land in question has been zoned for development purposes, or suffers from inherited contamination requiring an environmental clean-up, or is encumbered with existing leases.
 - Transfer of ownership takes effect upon entry in the cadastral 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.

- **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.
 - Issuance of these permits may in turn be conditional on other approvals, representations, and other deeds.
 - Certain types of building project require no permit (or, as it were, merely have to be notified to the authorities).

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- In certain cases, an environmental impact assessment may also be necessary.

→ Renting

- Lease agreements need not necessarily be in writing.
- Leases may be entered in the cadastral 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 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 (or, in some cases, three months), though the parties may agree on a different arrangement.

→ Loan (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).

→ 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 the signatures on the agreement must be certified.
- A pledge title to real property comes into existence upon entry in the cadastral 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 in rem.
- As long as the pledge title to a given piece of real property was entered in the cadastral 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 came into existence.
- 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

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been fulfilled (for instance, because the pledged item has been destroyed, because the creditor waives the pledge title, because the term of a limited pledge has expired).

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

→ 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 on 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.

→ 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 drafts (promissory notes).
- 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.

→ 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 two months from the date on which the decision on the debtor's insolvency was made. Receivables that were not registered, or were 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 nine per cent of the total proceeds).

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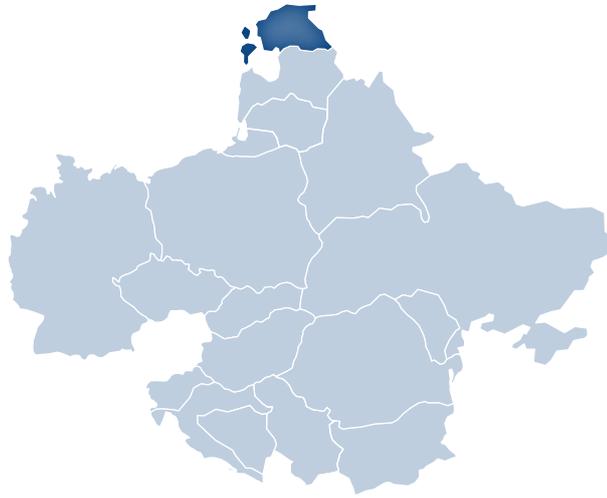
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→ Land register

- All properties and related 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 District Courts (maakohus). It is also maintained electronically and accessible to everyone. Information on records may be obtained via e-services of the Ministry of Justice.
- Good faith in the title shown on the folio or any record given is comprehensively protected by Estonian law.
- Land registration takes about one week and involves a fee.

→ Acquisition of real property

- A legal act by which one party agrees to acquire or transfer ownership of a property or limited real 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 title is completed only once 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 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.

→ Taxes

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

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- **Special purpose company**

 - A private limited company (osaühing - OÜ) is commonly used as a corporate structure for a special purpose company. 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 on company establishment, an OÜ will be registered but a claim will arise against the shareholder in the amount of the share capital.
 - A special purpose company may be employed in order to acquire a property or a real estate development project. Using a special purpose company allows transfer of real estate projects by share deal superseding any amendments in the Land Register.

- **Risks associated with purchase**

 - 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 acquisition of agricultural and forest land.

- **Public building law**

 - The first phase is drafting a detailed building plan, which will then be submitted to the building authority (local municipality) in order to obtain a building permit.
 - Construction must begin within two years of issue of permit (i.e. valid only two years).

- **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 a lease contract (sale does not break the lease).
 - Differences exist in legal regulation of commercial and residential leases.
 - Duration (term) of lease contracts is freely negotiable.
 - Lease agreements may be terminated by minimum three months' notice. 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 subject to no restrictions.

- **Loan (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.
 - Applicable law can be chosen by the parties, other than legal norms applicable by Estonian law.
 - There are no special restrictions concerning payback.

- **Securities – lien on real property**

 - A land plot and building lease can be encumbered with a mortgage.
 - A mortgage entitles the holder to satisfy himself from the proceeds of sale, which can be achieved through foreclosure and sequestration 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 forced sale (auction) or forced administration.
 - Origination:
 - through a notarized agreement and, based on that, land registration
 - securities cannot originate from the law
 - Collateral must be registered with the Land Registry, which is accessible to everyone.

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- The owner can sell property encumbered with a lien: the lien does not affect the sale.
- Mortgages are not dependent on a 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.
- According to the law, the following forms of mortgage exist: owner mortgage, partial mortgage, combined mortgage and judicial mortgage.
- If a mortgage is registered with the Land Register, there are no public-law restrictions.
- Protection of good faith also exists for collateral: rights registered with the Land Register apply towards third persons.

→ 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 unsuccessful reminders in compliance with agreed deadlines. A legal action can be time consuming, so that a court settlement is often a better alternative.
- The court bailiff can sell goods by auction. In the case of insolvency, the insolvency administrator can do so.
- 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 liens on an item, the pledges are also satisfied by rank order.

→ Other securities

- Shares and ownership interest ("securities") can 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.
- Claims for rent can be pledged.

→ 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 end legal relationships or 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 the event 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.

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- 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.

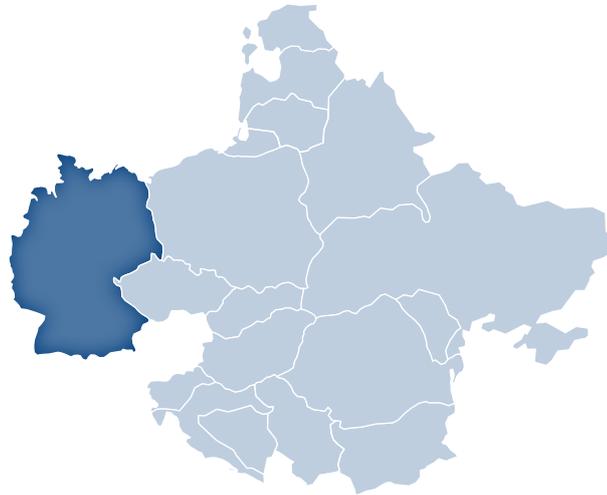
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→ Land register

- Land registers are public registers which are mainly kept by the district courts.
- Land registers are kept as (paper) files. Up to now there have only been experiments with electronic filing. In order to inspect land registers, a legitimate interest must be proved.
- All the relevant information regarding a 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 rental and leasehold, are not entered in the land register.
- Transfer of real estate 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 low.

→ Acquisition of real property

- A contract for purchase of immovable property and an agreement on 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 (not upon conclusion of the purchase contract and transfer of title); the entry in the land register is constitutive of the acquisition of ownership.
- Disposal of landed property has no influence on charges in rem encumbering it.
- Foreign natural and legal persons are not subject to any special restrictions and authorization requirements for the purchase of real estate in Germany.
- There exist general approval restrictions 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).

→ Taxes

- Real estate transfer tax, which is payable as a sales tax on the purchase of landed property, amounts to 3.5% of the assessment basis (usually the purchase price).
- The rate of real estate transfer tax has been increased to 5.5% of the assessment basis in many of Germany's federal states.
- The land registry will only enter the new owner in the land register on payment of the real estate transfer tax.
- Real estate tax is levied on landed property by communities and municipalities; this

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amounts to an average of 0.20 to 0.30 euros per month/sqm.

- 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 being between 3 and 7% of the purchase price, plus VAT).

→ **Special purpose company**

- 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 1 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 (money-laundering law).
- Establishing a company can be completed 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.

→ **Risks associated with purchase**

- 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 legacy issues.
- The land register protects an acquirer in good faith.
- Acquisition by prescription contrary to an entry in the land register is not possible.
- Due diligence should be conducted, especially with regard to non-registered contractual obligations and with regard to the building regulatory situation, as 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.

→ **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 an outline building application in order to clarify the permissibility of certain uses prior to beginning construction or to submitting a building application.

→ **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 rent. Here, it is sufficient to include provisions by means of which the rental property and the rent can be ascertained.
- Entry of a tenancy 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.

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right of residence) may be entered.

- The sale of a let building does not lead to termination of the tenancy (sale does not override rental).
- There are differences in the legal regulation of commercial leases and residential rental agreements.
- Commercial leases may be concluded for definite (as a rule) or indefinite periods.
- In particular with regard to security of tenure there are significantly stricter requirements for residential rental agreements than for commercial leases. Commercial leases may be terminated as a rule without objective grounds. 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 with notice is usually ruled out.

→ **Loan (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 credit-worthiness of the borrower. The effective interest rate of some lenders is at present below 4%.
- There are no general restrictions under public law on conclusion of loan agreements.
- The contracting parties are free to choose the law applicable to their loan agreement, although as a rule credit institutions are in the better negotiating position.
- There are no special conditions for repayment.

→ **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.
- Registration / publicly accessible information on liens on real estate 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).
- Several liens may be conferred on one property. Their ranking order is determined by their date of entry.
- 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 estate may only be conferred through registration in the land register, a purchase of unencumbered property in good faith is not possible.

→ **Enforcement**

- A prerequisite for enforcing the right of lien to real estate 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 estate has submitted to immediate enforcement. The proceedings last between three and six months - in difficult cases even a year or 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 under

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a lien on property a purchase of unencumbered property in good faith is not possible.

- Lienors 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 the 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.

→ Other securities

- Rights of lien or other securities can be secured on anything, i.e. on any object or on any right. Securing rights of lien on movable objects or on bank accounts is customary in Germany.
- The right of lien 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 object must also be ascertainable (although here, too, the object or objects may change, e.g. in the case of a right of storage goods transfer). In general, rights of lien are only registered for real estate.

→ Debtor's insolvency

- In the event of the debtor becoming bankrupt, there is no change to the quality and content of the lien on property. Should a third party acquire the properties in the bankrupt's assets, he may do so only with a lien on property. Restructuring applies to an agreement with creditors/banks with regard to the rank order and allocation of individual real estate securities to certain loans or other debts. Such restructuring is customary in Germany in the case of rearrangement of financing.
- 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 it is two months.
- Rights of lien to real estate 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 real estate securities, as the insolvency administrator knows the real estate security through the entry in the land register. Other (non-registered) securities only have an effect if the insolvency administrator is informed in good time.

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→ Land register

- All real property is registered with a public registry: the Land Registry. The Land Registry is administered by the authorities, not by the courts.
- Registered data are available electronically for fee.
- Content of the Land Registry: 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 is protected in registries at the Land Registry.
- Access to the Land Registry is basically free; limited access to private and public deeds, authority resolutions, upon which entries and deletions are carried out and limited access to the list of owners (proprietorship register).
- Procedural costs are low.

→ Acquisition of real property

- 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 Registry 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 for nationals and foreigners. Citizens of third countries (beyond the EU) may not acquire agricultural land.

→ Taxes

- 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 authority can determine a market value differing from the purchase price. The rate is 4% up to a purchase price of 1 billion HUF; above that, an additional 2% on the excess. Market value exceeding 8 billion HUF is not taxed, so transfer tax is capped at 200 million HUF for each real property.
- For professional real property traders, transfer tax is 2% of the market value if they sell or lease real property within 2 years from purchase.
- Under certain conditions, transfer tax is also payable in the case of sale of shares of a company holding real property (share deal).

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- Building tax may be imposed on completed real properties. Local governments decide whether the tax is imposed on real property and if so, they fix the amount as well.
- In the case of sale and purchase of commercial properties, the buyer and/or seller can opt for value added tax.

→ Special purpose company

- Project companies can be established for acquiring title to real property and for project development in Hungary.
- Transfer of projects by share deal does not need changes in the Land Registry. However, the tax advantage compared to asset deals has been practically eliminated.
- The popular company form is LLC under Hungarian law (Kft.). 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 are applicable for foreign entities upon establishment of a company.
- A special purpose company can be established within a short time. Thus, acquisition of a shelf company usually offers no material advantages. The deadline for registration by the registry court is 15 business days. The registration deadline may be shortened to 1 business day if the company applies standard AoA form. However, the standard form allows no freedom for shareholders to determine the content.

→ Risks associated with purchase

- Risks in connection with acquisition are marginal on the basis of good faith regarding data at the Land Registry.
- General risks arise relating to acquisition (development potential, environmental pollution, existing rental agreements).
- Statutory pre-emption rights must be considered.
- For acquisitions, legal due diligence is advised.
- No special risks in the case of acquisition of agricultural land.

→ 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, a building permit is required.
- After construction, an occupancy permit is usually required.
- In special cases, environmental inspection is required and is carried out within the frame of the building permit procedure.

→ Renting

- Lease agreements do not require special formal requirements. The parties are basically free to determine the content of their lease relationship.
- A lease may not be registered at the Land Registry.
- 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 expiry.
- 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.

→ Loan (Credit)

- The currency for loans may be freely chosen. Before 2008, loans denominated in CHF or EUR were widely used in Hungary as they had significantly lower interest rates than HUF credits.
- Interest is usually payable on loans. The interest rate may be agreed by the parties in the loan agreement. The rate cannot violate moral principles. No limit on interest

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is statutorily regulated but the court may investigate the interest rate. The courts may mitigate excessive interest rates.

- Restrictions of public law are basically applicable to loan agreements concluded with customers in foreign currencies.
- The choice of governing law is at the discretion of the parties. However, credit institutions regularly enjoy a better negotiating position.
- Prepayment before expiry is usually possible for extra fees. Delay in payment of instalments results in maturity of the entire loan and can open the right of the creditor for extraordinary termination.

→ **Securities – lien on real property**

- 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 a secured claim (accessoriness).
- Mortgages on real estate come into existence upon entry in the land register. A mortgage is registered based on an agreement to establish a mortgage or on the consent of the mortgagor.
- No notarial need is required for effectiveness. However, credit institutions require this in practice to achieve direct foreclosure.
- Credit institutions require other securities as well as mortgage. In addition, credit institutions stipulate prohibitions on the transfer of ownership of real properties and prohibitions on encumbering real properties. These may be registered with the Land Registry which excludes good faith acquisition of encumbrance-free ownership.
- Two or more mortgages may simultaneously be established and registered on one real property. Rank is determined according to the time of establishment. The rank may be amended with the consent of all participants unless the amendment infringes third party rights that were not involved in the agreement on rank amendment.
- A mortgagee must grant consent to deletion of the mortgage upon expiry. Based on this consent, the mortgage is deleted from the Land Registry.
- Good faith in registries in the Land Registry is protected.

→ **Enforcement**

- Notarization of a mortgage agreement enables direct foreclosure. If no direct foreclosure is possible, the mortgagee must arrange a final and binding judgement.
- Foreclosure may be court-ordered or out of court.
- 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 pledges are established for one pledge/secured real property, claims of mortgagees will be satisfied in the rank of the establishment date of the pledge/mortgage. Joint realization of collateral in lieu of one foreclosure proceeding is possible.

→ **Other securities**

Lien on other objects

- 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 be acquired later by the lienor can also be pledged. The pledge must be registered in the collateral register.

Real estate purchase option

- Purchase options for real estate and assignments of claims as securities for loan claims are not used in practice because of current legal uncertainty.

Encumbrance of shares

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- Ownership interest in limited liability companies and shares may be pledged without restriction. A pledge title to ownership interest must be registered in the Commercial Register. Shareholder rights remain with the shareholder even after putting shares under pledge. Transferrable 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.

→ Debtor's insolvency

- Insolvency proceedings are based on the insolvency of a company and not necessarily on a debt-overload situation. Before the application of insolvency, companies have the possibility to aim at a settlement with creditors in lieu of bankruptcy proceedings. Within a period of a maximum 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 proceeding will be ordered against the company. Initiation of insolvency proceedings is a prospect of achieving success in debt collection, so it is 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 as 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).

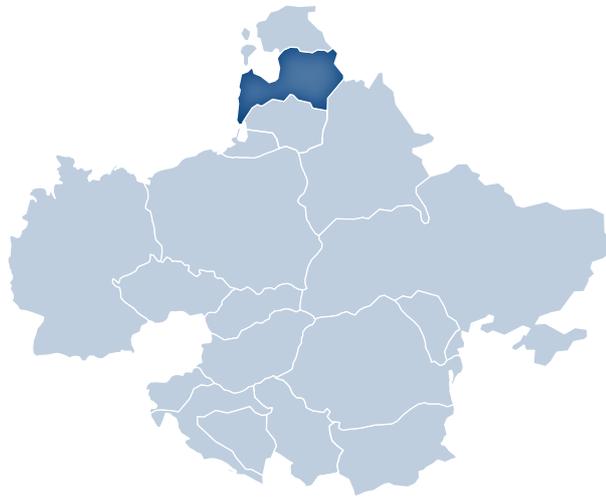
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→ Land register

- The land register is a public register administered by courts of appeal.
- Administration can also be done electronically in which case the electronic land register should be open to the public.
- In general, all properties and real estate as well as property rights, liabilities, legally relevant facts, company gifts, sales and rental agreements must be registered in the land register.
- All data entered in the land register are official and are deemed correct and complete unless they have been legally challenged.
- Generally all data registered in the land register are open to the public. Excerpts from the land register are available for a fee. Legislation allows exceptions to this rule for consultations.
- Land registry costs depend on the land register value (determined by the state authorities) and the purchase price of the property. Purchase of real estate involves a fee of 2% (3% in the case of a gift) of the land register value or of the purchase price (whichever is the greater). When registering the mortgage 0.1% of the loan amount is payable.
- A purchaser who acquires an object in good faith is protected. In individual cases such as when a person acquires real estate by falsifying the signature of the legitimate owner, a bona fide transferee is not protected if the real property is sold further.

→ Acquisition of real property

- A purchase agreement does not require notarial form. However, an application to the land registry for transfer of ownership rights must be notarially certified. The purchase agreement need only include information on the item purchased and the purchase price.
- Although a purchase agreement is valid without registration at the land registry as far as the two parties are concerned, these can only invoke the terms of the contract towards third parties if the contract was registered at the land register. Transfer of ownership of real estate takes place through registration in the land register. The parties can apply for transfer in the land register once a contract has been concluded.
- All encumbrances registered in the land register will remain after transfer of ownership of real estate.
- The principle "superficies solo cedit" is embedded in Latvian law, although the principle can be derogated from if different contractual or statutory rights apply.
- Acquisition of property by non-EU citizens requires consent of the municipality.
- Unlimited acquisition of agricultural and forestry land is possible for EU citizens since 1st May 2014.

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- **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%. Value-added tax is 21%. Value-added tax is not applied to the sale of real estate, unless it concerns a new real estate object or building land, when the difference between the purchase price/renovation costs and the selling price is taxable.

- **Special purpose company**

 - Special purpose companies are usually founded as corporations with limited liability ("sabiedrība ar ierobežotu atbildību" or "SIA"). The minimum share capital is EUR 2 800.
 - There is no restriction 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 the trade register is EUR 142 and EUR 27 for the official magazine for publishing information about foundation).

- **Risks associated with purchase**

 - Risks at acquisition are usually low.
 - The purchaser is protected in the case of restitution actions.
 - Existing legal rights of first refusal are only applied to joint owners.
 - Acquisition prescription is only possible regarding ownerless items.
 - Due diligence is advisable before purchasing real estate.
 - Particular risks exist in connection with acquisition of agricultural and forestry land.

- **Public building law**

 - The most important phases in construction law consist of project planning, building permits, 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 as well as building special constructions require special conditions and might require an environmental impact assessment.

- **Renting**

 - Mandatory registration of rental contracts in the land register is not envisaged, although rental contracts are only valid towards third parties if they have been registered.
 - The principle "purchase breaks lease" applies when a rental agreement is not registered in the land register.
 - Legislation on commercial tenancy agreements differs from that on residential tenancy agreements.
 - The duration of a rental agreement can be freely agreed.
 - The grounds of termination of a contract are determined by law.
 - The contracting parties can cancel an unlimited rental contract at any time. The period of notice is 6 months, although it is not legally imposed.

- **Loan (Credit)**

 - Creditors (banks, credit unions, branches or delegations of foreign banks) can provide any person with credit.
 - Credit can be granted in any currency.
 - The parties can agree freely on the interest to be paid. If the parties do not agree on an interest rate, the statutory rate applies. The statutory interest rate amounts to 8% points above the rate of the main refinancing facility of the European Central Bank before the first day of the respective semester.
 - Credit agreements must be in writing in order to be valid.
 - The parties can choose the applicable law except for legal standards which must be applied according to Latvian law.
 - Credit agreements commonly allow for premature repayment of the credit.

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- **Securities – lien on real property**
- Pledging real estate is only possible if the legal structure of a mortgage is employed. A mortgage is a lawful right on immovable property which is owned by another person. A mortgage corresponds to safeguarding fulfilment of present or future obligations. Usually the mortgage borrower is entitled to use their real estate according to its purpose.
 - Any real estate or a conceptual part of it can be mortgaged. This includes all movable objects and other rights which were pledged together with the real estate.
 - Normally a mortgage is based on a contract, though also possible by will or court decision. Notarial attestation of the contract is not necessary. However, the application to the land registry for registration of the mortgage does require notarial form.
 - A pledge can also be ordered by law if it is based on legal provisions and is carried out by a court, a civil servant or an authority.
 - Mortgages must be registered in the land registry to be valid against third parties.
 - Transfer of ownership of real estate has no bearing on the mortgage.
 - Real estate can be pledged several times. In the case of multiple pledges the ranking is determined on the basis of the date of registration at the land registry.
 - The mortgage expires with the extinction of the secured claim (after this was fulfilled) or can be ended differently (e.g. court decision). On expiry of a mortgage this will be deleted by a judge.
 - Parties who acted in good faith (who were unaware of the mortgage and could not reasonably have been aware) can register their details in the land register. This refers to the existence of a mortgage as well as to modified information in the land register.
- **Enforcement**
- Under Latvian law a pledgee can seek fulfilment of pledged real estate if the debt was not settled at the previously agreed time in which case he may take all necessary steps to sell it. 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 agreement on a sale of the pledged items for free price.
 - There is no requirement to register a right of lien with regard to moveable assets.
 - If a claim is secured by a mortgage or pledge, it should be settled as a matter of priority by the resources originating from the sale of the items allocated to the mortgage/pledge. If these resources are not sufficient, the remaining claims should be settled by the resources that are generally available and without priority over other creditors.
 - In the case of multiple pledging of the same item any creditor is entitled to initiate enforcement proceedings. The bailiff should inform the other pledgees about the enforcement proceedings. The assets may be sold without the approval of those creditors who carried out earlier registration. The priority and the rights of the other creditors are not affected by the enforcement proceedings. However, the proceeds must be remitted to the creditor of the first priority.
- **Other securities**
- All existing and future claims are pledgeable. In order to secure credits, bank accounts may be pledged. Rent receivables can be pledged in favour of a credit grantor. In order to secure real estate financing, company shares may be pledged. In Latvia the so-called commercial lien is applied very frequently. According to the law on commercial liens, the entire possessions, business shares or individual items of a company may be pledged. Pledged items remain the property of the pledger, who can continue to use them.
 - Other securities result from a legal agreement. A commercial lien must be registered in the trade register. An application for registration in the trade register must be certified by a notary.
 - A pledge expires: 1) through extinguishment 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 lien holder or transfer to the pledgee of the rights attached to the pledge; 4)

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on expiry 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) if a rescinding condition occurs. A commercial lien must be deleted from the trade register. This requires a notarially certified application.

→ Debtor's insolvency

- In Latvia there are three ways to resolve insolvency: bankruptcy, restructuring and settlement. A debtor may also resolve solvency problems through judicial or extra-judicial procedures.
- Creditors must present their claims before the insolvency administrator within one month after registration of insolvency in the register. A creditor that 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 by the resources originating from the sale of the items allocated to the mortgage/ pledge.

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→ Land register

- The public register is administered by the public undertaking VĮ „Registru centras“ under the supervision of the Ministry of Justice.
- 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 rely upon legal facts against third parties only if registered.
- All data in the register are official and are deemed correct and complete as far as they are not challenged in an foreseen legal manner.
- Usually any data in the registry are public and are disclosed to third parties under a data transfer agreement. Excerpts can be obtained for a fee. Some limitations are foreseen in the laws.
- Fees related to registration depend e.g. on the type of real estate, its value, as well as upon the speed of registration and the persons (natural/legal) submitting the request.
- 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 vindication claim, except for cases of criminal acts.

→ Acquisition of real property

- A purchase agreement on real estate must be notarized, except if concluded in the frame of insolvency proceedings, otherwise the contract has no validity.
- Lithuanian law differentiates between property on a land plot and buildings situated on a land plot.
- The purchase agreement must include data on the real estate object, its address and the purchase price. If only the building is to be purchased, all legal relations concerning the land on which the building is situated must be regulated in the agreement.
- Property in (title to) real estate passes not upon signing the purchase agreement but 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 register. Against third parties they are valid only when registered.
- The principle “superficies solo cedit” is a general principle in Lithuanian law; however, parties are free to deviate.
- In general all natural and legal persons may acquire property to real estate. 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 that have their permanent residence there or being owners of a company registered in Lithuania

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possess equal rights for acquisition.

- From 1 May 2014 restrictions are abolished on 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 or that have their permanent residence there or being owners of a company registered in Lithuania to acquire land for agricultural or forestry use, although at the same time general limitations have been introduced. One person (natural or legal) together with connected persons is 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 connected persons cannot exceed 500 ha. The National Land Service under the Ministry of Agriculture authorizes those acquisitions. In addition, persons acquiring land must hold qualifications / be engaged in professional activities in this sector.
- Sale of real estate or change of owner does not influence the validity of encumbrances on real estate.

→ Taxes

- Real estate tax on immovable property used commercially for a period longer than a 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 each 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. Until 2016 special transitional provisions are applied that reduce the taxable amount by 40% in 2015 and 20% in 2016 if the taxable amount increased compared to 2012.
- 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 estate newer than 24 months and construction land, sale of real estate and land are VAT-exempt. The standard VAT rate is 21%.

→ Special purpose company

- A private limited liability company (“uždaroji akcinė bendrovė” or “UAB” for short) is usually the legal form of choice for special purpose company. Statutory capital of at least EUR 2 500 is required.
- Establishing a company involves no restrictions for foreigners.
- Startup and registration of a company takes approximately 2 weeks.
- Costs connected with formation and registration of a company are small.

→ Risks associated with purchase

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

→ 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 zoning plan, detailed plan, building permit and certificate of completion of construction.
- Construction in areas of special status or construction of special buildings have specific preconditions and may require assessment of environmental impact.

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- **Renting**
- Lease agreements require written form.
 - Registering an agreement with the register is not mandatory. However, only a registered lease possesses legal validity against third parties.
 - The principle “purchase ends letting” is valid where a lease has not been registered.
 - Lithuanian law distinguishes a lease of commercial premises from a lease of residential premises.
 - Leasing agreements of private property are not limited in time. 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 notification period amounts to three months and can be prolonged by agreement.
 - Fixed-term lease agreements can be terminated based on fundamental grounds, though only after a request to remedy infringements. Fixed-term lease agreements on land can be terminated by the tenant in the ordinary way but a landlord may terminate only based on fundamental grounds. Notification periods for termination of fixed-term lease agreements on land are 3 months for agricultural and 2 months for land of any other usage.
 - Lease agreements of public agricultural land usually have a maximum duration of 25 years. Public forestry land is usually not leased at all.
- **Loan (Credit)**
- A creditor (commercial bank, credit union, branch or representation office of a foreign bank) may grant credit to any person.
 - Credit may be granted in any currency.
 - The credit receiver (borrower) pays interest. If the parties have not set the rate of interest, then the rate will be the average interest rate charged by commercial banks at the time of contracting at the creditor’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 credit receiver (borrower) requires consent from the creditor (lender) to repay all or part of the credit before the term. If the agreement does not state otherwise, the credit (loan) must be repaid within 30 days from the creditor’s request.
- **Securities – lien on real property**
- A mortgage is a title to real estate that secures performance of existing or future obligations. Any real estate or part of it may be mortgaged. The borrower is usually entitled to use the real estate according to its purpose.
 - Mortgages are usually created by contract (or unilateral representation by the owner). A contract must contain the following: the parties, the object of the mortgage, type of mortgage, the obligation secured (its concrete or maximum amount), the performance deadline. Contracts for a mortgage 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 is allowed, if the contract does not provide otherwise. The security ranking of mortgages is determined according to the date of registration in the public register.
 - A mortgage ends when the obligation ends or by other means. 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 (when it comes into effect or ends upon a special condition), iii) joint mortgage (several

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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 alien property (borrower and owner of the property are different persons).

- All parties in good faith (which were not and could not be aware of the fact of mortgage) may rely on the public data in the mortgage register. This applies to the fact of the existence of a mortgage, as well as various data changes in the public register.

→ Enforcement

- Enforcing a mortgage requires an application to a notary for an executive record. The notary sends a notice to the debtor with notice to pay the debt in 20 days as of the day notice is sent or provide data proving that the creditor's claim is unfounded. The executive record is executed via a bailiff based on the general legal procedure.
- The creditor decides whether to sell the mortgaged property via public auction or take the property for administration himself. Besides, until the moment of the auction the real estate may be sold to the creditor or a third person by agreement between the creditor and the borrower certified by a notary.
- If a property is mortgaged/pledged several times, any of the creditors is entitled to start the enforcement procedure. The notary notifies other creditors about this circumstance. However, the property cannot be realized without the consent of creditors in whose favour a higher ranking mortgage/pledge is registered.

→ Other securities

- To secure claims may involve using a lien on present or future claims, claims from a lease, a lien on bank accounts or on shares. An assignment by way of security might also be agreed.
- A pledge/lien must be notarized and registered in the central mortgage 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/lien ends when: i) the secured claim expires; ii) the item pledged/liened ceases to exist; iii) a creditor acquires property rights over the item pledged/liened or those rights are transferred to him; iv) the period of a limited pledge/lien ends; v) the period of limitation of the claim expires; vi) parties agree amicably or vii) the creditor waives its pledge/lien.

→ Debtor's insolvency

- Insolvency proceedings are opened if a company is recognized as insolvent. The main aim is to liquidate the company, at the same time satisfying claims by creditors. In 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 applying to the court to open insolvency proceedings, a creditor must notify the debtor of his intention. Within 30 days from the date of delivery of the notification letter the debtor has a chance to perform his overdue obligations.
- Creditors must file their claims before the deadline (which cannot exceed 45 days from the day the court decision to open insolvency proceedings comes into force) set by the insolvency administrator.
- A claim secured by a way of mortgage or pledge is satisfied preferentially from funds received after sale of mortgaged or pledged property.
- If a creditor fails to meet the deadline for filing his creditor claims, the claim will remain unsatisfied. The court can make an exception for failure occurring for an important reason. In any case, applications must be accepted before the court's decision to terminate insolvency proceedings or the decision to liquidate the company is adopted.

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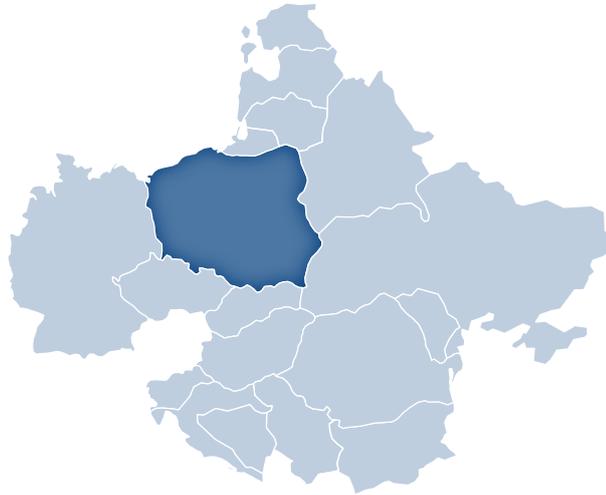
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→ Land register

- 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 land and mortgage divisions of district courts.
- The register contains all data relevant for real estate (e.g. area, numbers of land plots or buildings, the owner or perpetual usufructuary and all encumbrances and restrictions on the real estate, mortgages).
- Contractual relationships such as lease or tenancy may also be entered in the register.
- Ownership of real estate 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 inspecting ownership status for a particular piece of real estate.
- Anyone can access the land and mortgage register (against 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 real estate number. 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 internet. The extract has the validity of an original excerpt from the land and mortgage register.

→ Acquisition of real property

- An agreement to purchase property or perpetual usufruct on real estate requires the form of a notarised 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: separate ownership of flats, perpetual usufruct).
- Existing encumbrances (mortgage, rental) are not affected by sale of real estate.
- Natural and legal persons from EU Member States are only subject to special limitations and a duty to obtain a permit if purchasing agricultural and forest land.
- Natural and legal persons from non-EU states in general need to obtain a permit to purchase real estate of all kinds.

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- **Taxes**

 - Tax on civil law transactions for real estate purchase 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.
 - Land tax is imposed by municipalities and townships on the ownership of real estate. The amount of land tax depends on the total area of the real estate, its use, and the rate fixed by the given municipality.
 - Annual fees calculated against the value of real estate are payable in the case of perpetual usufruct.

- **Special purpose company**

 - May be used in Poland to purchase real estate and for project development.
 - Allow for transfer of real estate projects by share deal, without the need to amend the data in the land and mortgage 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 1 month.
 - Registration costs amount to 600 PLN.

- **Risks associated with purchase**

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

- **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 introduce a ruling on area development conditions.
 - Constructing or extending a building usually requires a building permit. However, in many situations no permit is required or simple notification may be sufficient.

- **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 real estate or premises tenancy contract for longer 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 (not required).
 - Leases are not affected by disposal of the leased object, although the new owner is entitled to terminate a lease agreement.
 - Natural and legal persons from EU Member States can lease agricultural and forest land.
 - There are differences in the legal regulation of commercial leases and residential leases.

- **Loan (Credit)**

 - A borrower can be both any natural person and any legal entity.
 - Polish banks usually grant loans in Polish currency (PLN), but loans in foreign currencies are also possible. Loans in EUR are particularly common.
 - Loan interest varies, with rates currently from 5% to 7%, with an additional margin for the bank.
 - 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 made under Polish law.

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- **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 required (exception: mortgages for 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.

- **Enforcement**

 - In order to satisfy its claim, a creditor must take legal proceedings and then enforcement procedure.
 - Claims secured by way of mortgage are satisfied preferentially in foreclosure proceedings. However, foreclosure of real estate can be a protracted affair (even some years),
 - Real estate is realized by 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 when an executory title may be obtained.

- **Other securities**

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.

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 not 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 attachment of account deposits – financing banks often require a power of attorney which authorizes them to dispose of the account for rent payments.

- **Debtor’s insolvency**

 - Rights in rem, i.e., mortgages and pledge titles to company shares, are the best 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.

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- 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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**→ Land register**

- Real estate is registered in a public register – the cadaster.
- The cadaster is kept by local administrative authorities (not courts).
- An informative (unofficial) extract from the cadaster is available on the internet for free. The data from the electronic extract are reliable. An official extract can be obtained by anyone from the respective cadaster office.
- Only owners of the respective real estate and persons who can prove a legal interest can inspect the cadastral collection of deeds of title.
- Fees for cadastral proceedings are relatively small and do not depend on the value of the real estate or of the transaction.
- Real estate which can be registered in the cadaster includes lots, buildings, apartments, business premises, and upon special application also buildings, apartments and business premises under construction.
- The cadaster comprises any and all relevant information regarding real estate – 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 cadaster.
- An official extract from the cadaster is used to verify ownership and is sufficient for legal transactions.
- In rare cases a registered right of ownership or right in rem can be subsequently deleted from the cadaster on the basis of a court decision due to a void or illegal transaction in the past.

→ 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 be one document.
- Purchase agreements can (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 estate is acquired on registration in the cadaster (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 estate is acquired with all existing rights in rem (e.g. liens, easements). Except for statutory easements (such as relocation of public mains supply), rights in rem are visible

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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.
- Buildings, apartments and business premises under construction can be transferred or subject of legal transactions (e.g. agreements on establishing a lien for the benefit of financing institutions).

→ **Taxes**

- A property tax is existing. No real estate 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 estate.
- Value added tax (20 %) applies in statutory cases.

→ **Special purpose company**

- Special purpose companies 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 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.
- A 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 companies in the form of an LLC are up to about EUR 1,500. In the case of a limited partnership the amount is EUR 3,000.
- Special purpose companies can also be joint-stock companies (a.s.), with a minimum registered capital of EUR 25,000.

→ **Risks associated with purchase**

- 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 also recommended.
- Restitution claims can no longer be asserted. In some cases, legal disputes regarding these claims are still pending. Thus, a review of these aspects is also recommended.
- Other possible risks include contractual burdens (lease rights), development potential, access rights, public mains supply, residual pollution and environmental damage, and can be assessed in the course of a due diligence.
- Bona fide proprietary possession of 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.

→ **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 (not permission).
- Assessment of environmental effects has 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.

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- **Renting**
- Lease of business premises and lease of residential premises are regulated differently.
 - Lease agreements can be entered into for a definite or indefinite period. Generally, lease agreements are 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 automatically not lead to termination of the lease (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 can agree differently.
 - Lease or sublease of agricultural land is regulated by special provisions. However, both local and foreign tenants have the same position.
- **Loan (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 agreement between the parties and is usually determined according to EURIBOR + margin. The interest rate also depends on the type of loan.
 - Generally, the choice of a foreign law for a loan agreement between Slovak entities is possible, but requires 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.
- **Securities – lien on real property**
- Real estate liens secure the claims of a creditor who can satisfy its claims by means of lien enforcement in case of default.
 - A lien can be created on any kind of real estate, including apartments or business premises or buildings under construction.
 - Buildings whose construction is only planned in the future cannot be subject to a lien.
 - A lien is established by written agreement with the minimum content stipulated by law. Signatures do not have to be notarized.
 - A lien is created upon registration. Thus, all liens are visible in the extract from the cadaster.
 - Transfer of the ownership right to real estate encumbered with a lien does not have any influence on the lien's existence. The lien is transferred to the new owner together with the real estate.
 - Several liens can be created on real estate at the same time and serve to secure the claims of one or several creditors. The ranking of liens depends on the date of their registration in the cadaster.
 - In the case of lien enforcement, the lien registered first has prior-ranking position over other liens registered later.
 - A lien ceases to exist upon cessation of the secured claim at the latest. Deletion of a lien from the cadaster requires a written declaration from the lienor (notice of cessation of the lien). A lien can also cease to exist without repayment of the secured claim (e.g. in the case of destruction of the subject of the lien, waiver of the lien by the lienor, expiration of a lien established for a definite period).
 - Enforcement proceedings regarding the subject of a lien can only be initiated by other creditors with the prior lienor's consent.
- **Enforcement**
- A lienor can satisfy its outstanding claims by means of lien enforcement. Lien enforcement can take the form of enforcement proceedings, public auction, or direct sale through the lienor if the possibility was agreed upon in the agreement establishing the lien. The lienor and lienee can also agree on another form of lien enforcement.
 - Lien enforcement by means of public auction or direct sale does not require a previous court decision. The lienor can proceed with lien enforcement immediately after a lapse of 30 days following a notice to the debtor.

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- If several liens were established on one object, the ranking of liens is essential for the order of satisfaction of secured claims.
- If claims are secured by lien, a third-party debtor has to pay the secured claim to the lienor. So-called silent liens, when notification of the lien is only delivered to third-party debtors in case of default, are quite frequent.

→ Other securities

- A lien can be established on all kinds of movables, claims (bank account, rent or future claims), shares, stocks as well as a whole business.
- A lien is established by written agreement and must be registered in the respective register of liens (such as the notarial register of liens in the case of claims and other assets, the commercial register in the case of shares).
- Other usual securities include sureties, bills of exchange as well as acknowledgement of debt in the form of a notarial deed, which is very convenient for the creditor because it enables him to initiate enforcement proceedings against the debtor without the need to obtain a court decision in case of default.

→ Debtor's insolvency

- In the case of debtor's insolvency, insolvency or restructuring proceedings are initiated. In insolvency proceedings, registered claims are satisfied proportionally from the proceeds of sale of the debtor's property. The aim of restructuring proceeding is to keep the debtor's business alive while also partially satisfying the registered claims of creditors.
- Commencement of insolvency proceedings is published in the trade journal which is public and available on the internet.
- In insolvency proceedings a lienor has 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 the day of publishing the declaration of bankruptcy or 30 days in case of the approval of restructuring by the court in the trade journal.

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