



# Real Estate

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# Real Estate Guidebook

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# Contents

<b>Introduction</b>	<b>5</b>
<b>Public Property</b>	<b>6</b>
<b>Private Property</b>	<b>7</b>
<b>Construction</b>	<b>11</b>
<b>Due Diligence Investigation</b>	<b>15</b>

*This booklet is aimed at offering to the busy executives a quick overview of the real estate investment climate in Romania.*

*However, decision making process in respect of each real estate transaction is complex and requires in-depth knowledge of a country's commercial climate, bearing in mind that the climate can change overnight.*

*Companies investing in real estate in Romania, or planning to do so, are advised to obtain current and detailed information from experienced professionals.*

*The real estate guidebook speaks as of its date and does not reflect any changes in Romanian law or practice after such date.*

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## Introduction

Within the current economic turmoil that also affected the real estate market in Romania, many real estate investors were forced to analyze and deal with the complex and interconnected issues rapidly evolving from the turbulence in the financial markets, as well as anticipate and identify future developments and opportunities.

This booklet examines the main issues that an investor should consider before entering into a real estate transaction or deciding to implement a development strategy in Romania.

Țuca Zbârcea & Asociații's real estate practice group is one of the highly regarded on the local market and currently numbers 4 partners and more than 20 lawyers<sup>1</sup>. In our practice, we came across most aspects of real estate and construction, and we always take into account the factors that are likely to affect our clients' businesses. As such, our real estate lawyers can formulate complex and innovative approaches to workouts and troubled real estate transactions, and advise on the judicious sale and acquisition strategies and liquidation of distressed assets.

The group acts on a regular basis for investment funds, developers, end-users, banks and investors on a variety of real estate transactions. Our integrated approach towards real estate work has resulted in a multi-disciplinary team of lawyers being assigned for each project, with expertise in regulatory matters, building and planning, financial and environmental aspects. Our experience also taught us that each and every real estate project has its particularities. We therefore recommend that investors seek specific legal advice in relation to their current or prospective real estate investments, at a particular time when crisis may force important decisions in this respect.

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<sup>1</sup> For an overview of our skills and experience in real estate, please visit [www.tuca.ro/practices/Real Estate](http://www.tuca.ro/practices/Real Estate).

# Public Property

## **Public Domain. Private Domain. General Rules Applicable to Each Category**

In Romania, both the State and the administrative and territorial units (cities and counties) own properties consisting of real estate that, according to certain legal principles, belongs either to the public or the private domain.

Public property includes all real estate that under the law or by its nature is of public use or interest. As an example, the public property of the Romanian State includes estates such as roads, beaches and parks.

According to the principles of the Romanian Constitution, real estate in the public domain:

- may not be subject to transfers of ownership right;
- may not be subject to enforcement procedures;
- may not be encumbered by security interests.

Assets in the public domain may be exploited by third parties by means of concession or lease. Generally, such contracts are awarded after public tender procedures. For example, the initial duration of a concession agreement may be of maximum 49 years, but it may be extended for maximum half of its initial duration.

Real estates assets owned by the State or by the administrative and territorial units but not of public use represent the private property thereof, i.e. the State and the cities act as private owner of such property. The major difference between these and assets of public use is that the State's privately owned real estate can be alienated by sale.

## Private Property

Save for public property, any real estate can be subject to private property rights. Also, as a general rule, any legal or natural entity may be the holder of private property rights.

### **Rules for Foreigners Acquiring Real Estate**

Foreign individuals and companies from the EU may own land in Romania provided that they reside in Romania. Non-residents will be able to purchase land only from 1<sup>st</sup> of January 2012, five years after Romania's accession to the EU.

Agricultural land and forests can be purchased by EU residents who are registered as farmers or agribusiness professionals and reside in Romania. Other persons from the EU will be able to purchase agricultural land and forests only from 1<sup>st</sup> of January 2014.

Foreign individuals and companies outside the EU can own land according to the terms of the various international treaties to which Romania is party, on a mutual basis.

Foreign natural persons can also acquire ownership title on land by legal inheritance. Furthermore, any foreign individual or company may own buildings and/or acquire the right to use the land (based on lease agreements, concession agreements and so on).

The most practical way for foreign investors to acquire land in Romania is to set-up a special purpose vehicle with headquarters in Romania. This will be a Romanian legal entity and will thus be entitled to acquire land without any legal barriers.

## Special Features of Land Acquisition

Generally, transferring the ownership of private real estate is free. However, there are special rules for certain categories of property, depending on its nature (e.g. for the transfer of immovable assets that are qualified as historical monuments etc).

The law imposes that transfer deeds be concluded as authentic deeds (ie signed in front of a Romanian public notary who must authenticate them). Failure to do so results in the transfer deed becoming null and void.

## Limitations to the Free Transferability of Real Estate

Privately owned assets may be freely transacted. However, exceptions from the rule of free circulation have been implemented, based on specific statutes.

When property rights are established over certain types of agricultural land under Land Law No. 18/1991 (law regulating restitution of agricultural lands), the land may not be transferred for a 10-year period from the beginning of the year following the one in which the property is registered. Another restriction concerning the free circulation of land is introduced in the case of forestry land, the transfer of which is subject to a pre-emption right in favour of the State.

As a general rule, pending litigation related to a real estate asset does not represent *per se* an obstacle to the transfer of that asset's ownership. However, should the legal claim regard the validity of the ownership title, the asset (land) cannot be sold before a court ruling.

## Claims for Properties Confiscated by the Communist Regime

Real estate investors should also consider the critical issue of claims filed by former owners of real estate abusively expropriated by the Communist regime. Beginning in 1991, the Romanian Parliament issued a series of acts regulating the restitution of such properties. These include:

- Land Law No. 18/1991, which initially affected only agricultural land and subsequently forest lands;

- Law No. 1/2000, on the reconstitution of ownership of agricultural and forest lands;
- Law No. 10/2001, which regulates the legal status of certain properties abusively taken over by the State between 6<sup>th</sup> of March 1945 and 22<sup>nd</sup> of December 1989; and
- Law No. 247/2005, which is designed to complete and harmonize the general legal framework of the restitution of property.

The principle set forth by these laws is the restitution in kind of the confiscated assets, specifically the reconstitution of the ownership rights on the former locations/sites. Should restitution in kind not be possible, the former owners shall be granted compensation.

## **Real Estate Publicity**

Romania has a public record system in which both rights and encumbrances over real estate must be registered in order to be enforceable against third parties.

To this end, Romania has implemented a cadastre, a unitary and mandatory system providing a technical, economic and legal record of real estate in Romania. The cadastral record is based on information regarding the plot, construction and ownership of all real estate.

The general cadastre record system is designed to provide a public record of all transactions and relevant legal issues related to real estate located in the same territorial units.

These details are listed in the Land Book, which provides:

- a description of the property, including the cadastral number, the size, categories of use, and the location of the estate;
- the history of the ownership title, including the name of the owner, the legal act or fact that gave rise to the ownership right, property transfers, rights of way, and so on.

If a certain real estate right is recorded in the Land Book, it is presumed to exist if it was acquired or set up in good faith and if nothing is proven to the contrary. Still, registrations in the Land Book do not represent an absolute evidence of the ownership right on the property.

An investor acquiring real estate rights for a project (e.g. the concession and the lease) must register those rights with the Land Book to ensure their effectiveness against third parties.

Furthermore, when contemplating land for use in a project, reviewing records in the Land Book may reveal issues that significantly influence the project's development (e.g. the fact that the estate is subject to an interdiction to alienate and to set mortgages, the fact that the estate is conceded to a third party, etc).

## Construction

Construction works can only be performed on the basis of a building permit that is issued by the local public authorities with a view to ensure compliance of future construction with the legal provisions regarding location, design, and scope thereof.

Depending on the type of the land - *intra-muros* (i.e. within the city limits) or *extra-muros* (i.e. outside the city limits) as well as the usage of the parcels of land (i.e. agricultural or industrial), certain steps might be required before applying for the issuance of building permits and related authorizations. Should the relevant plot be classified as farming (agricultural land), one of the prerequisites for the issuance of the building permit is the change of the land designation. The process requires the filing of certain documents (including cadastral documentation and endorsements issued by various Governmental agencies) and the payment of certain fees.

As a general rule, buildings can be constructed only within the *intra-muros* areas. However, some constructions which, by their nature, may be harmful for the environment, can be located *extra-muros*. In this case, the locations will be established on the basis of prior impact environmental studies.

### Urbanism Certificate

The urbanism certificate is an administrative deed, issued by the local public authorities on the basis of existing and approved land planning documentation, mainly with a view to:

- inform with respect to the legal, economical and technical regime of lands and existing buildings as of the application date;
- establish the urban planning requirements to be fulfilled; and
- provide a list of the legal issues and permits necessary for the issuance of the building permit.

The issuance of the urban certificate is a pre-requisite for performing construction works and for the issuance of building permits.

The urbanism certificate is issued by the same relevant authorities entitled to issue the building permit, respectively the mayor of the relevant locality where the land is located or the president of the County Council if the land (i) exceeds the boundaries of one locality; or (ii) is located in the extra-muros area of a rural locality. The deadline for the issuance of the urbanism certificate is of 30 days from the date the application has been filed, while the validity period of the urbanism certificate is established by the issuing authority. Generally, the validity term of such document is of one year.

The urbanism certificate contains information about the technical regime of the building to be erected on the land, as well as information regarding the minimum or the maximum area of the land that can be used for construction and other relevant information regarding the status of the land (i.e. traffic requirements, supply of utilities, alignments towards the related buildings and lands, encumbrances that should be created for the land).

The urban certificate does not confer to its holder the right to perform construction works; the sole document allowing construction works to be carried on is the building permit.

## **General Urbanism Plan (PUG)**

The PUG has a general applicability to a certain locality, and establishes, *inter alia*, the limits of the *intra muros* territory, the destination of the *intra muros* land plots, protected areas, the development of the technical infrastructure, requirements pertaining to the location and characteristics of the constructions. The PUG represents the guideline for development of a certain locality and it may be updated every 10 years.

## **Local Urbanism Plan (PUZ)**

The PUZ mainly ensures coordination between urban development plans and the PUG of a specific locality. The PUZ is prepared for a specific area and refers to:

- the street network organization;

- the urban-architectural organization depending on the urban structure;
- the land usage;
- the development of the infrastructure;
- the technical regime applicable to the respective area; and
- the protection of the historical monuments located in the relevant area.

The PUZ is approved by the Local Council of the City Hall where the land is located. Once approved, it becomes compulsory for the respective area in relation to the technical parameters contained, and it may not be amended in order to accommodate requirements of individual development projects.

## Detailed Urbanism Plan (PUD)

The PUD is a specific regulation that sets forth detailed requirements in respect of location, size of a construction on a specific plot of land, and of the compliance thereof with surrounding area

The PUD includes, *inter alia*, regulations regarding:

- accessibility and connection to the urban networks;
- general constraints regarding the built volumes and the fittings;
- functional and esthetical relations with the neighborhood.

## Building Permit

Construction works (irrespective of whether civil or industrial) may be carried out only based upon a building permit which should be issued in accordance with the urban and territorial planning documentation and based upon a project designed in accordance with the requirements of the urbanism certificate.

Generally, the building permit is issued by the mayor of the relevant locality where the land is located or the president of the County Council if the land (i) exceeds the boundaries of one locality; or (ii) is located in the *extra-muros* area of a rural locality, within 30 days since the filing of the application and conditional upon the submission of all the required documentation (the urbanism certificate, ownership title and so on). The building permit is valid for a period of 12 months and the beneficiary is liable to begin the construction works within this term. Should construction works be initiated within

the validity period provided by the building permit, such validity period will be automatically extended for the whole duration of the construction works. Should construction works be not initiated or not completed within the validity period provided by the building permit, the extension thereof can be requested within 15 days prior to the expiry of its initial term, but such extension will be granted only once and for a maximum period of 12 months.

The issuance of the building permit is subject to the payment of a tax of 1% of the estimated value of the construction works (such tax is further adjusted at the end of the project based on the final construction price). Should the extension of the building permit be required, an additional tax amounting to 30% of the initial authorization tax has to be paid.

## **Reception Minutes**

The completion of construction works, and the compliance thereof with the provisions of the building permit are ascertained by the reception minutes - a deed prepared by the representatives of local authorities, of the constructor and of the beneficiary of the respective construction works.

Further to inspecting and assessing the result of the construction works, the reception commission may: (i) accept the construction works; (ii) delay the reception, if there are defects that may be remedied within a limited period of time, or (iii) reject the construction works, if there are major discrepancies between the construction works performed and the details of the construction design and/or building permit.

## Due Diligence Investigation

Prior to taking an investment decision in respect of a real estate located in Romania, it is advisable that a thorough review of the legal issues pertaining to such real estate is undertaken - due diligence investigation.

The legal due diligence exercise should be focused mainly on the ownership title over the relevant real estate and on the current legal status of such real estate.

Depending on the structure of the envisaged transaction (share deal or asset deal), corporate and financial matters are also analyzed.

The outline below is not exhaustive and should be adjusted in accordance with the features of each project.

Generally, the main sections of a legal due diligence report in an asset acquisition could be summarized as follows:

- status of real estate;
- successive transfers of the ownership title on the real estate;
- changes in the legal status of the real estate;
- encumbrances and rights of third parties on the real estate;
- seller's capacity to enter into the real estate sale-purchase agreement;
- town-plan regulations and construction-related authorizations;
- litigations;
- environmental aspects;
- conclusions - concerns and recommendations.

The following includes a brief description of each of the above-mentioned items.

**Current status of the real estate**

This section of a legal due diligence report contains:

- a brief description of the real estate (i.e. location and neighboring properties, size, land destination, buildings erected thereon and so on);
- a description of the current ownership title over the property and the registration thereof with the relevant real estate registry (i.e. Land Book – as discussed above, a public registry for registration of rights on real estate, in order to ensure enforceability thereof against third parties).

**Successive transfers of the ownership title**

This section regards mainly the history of the ownership title transfers, i.e. inheritance issues, information regarding expropriation (nationalization) procedures and so on.

Such analysis is of a particular importance as according to Romanian relevant legal statutes and the jurisprudence in case of ownership transfer by means of convention, the legality of the current owner's ownership title is influenced by the legality of previous transfers.

Therefore, in order to prove beyond any doubt the ownership right on a certain asset, the person claiming such right would have to prove the validity of successive transfers and the ownership right of all previous transferors.

**Changes in the legal status**

Such section mainly deals with and analyzes the changes undertaken in relation to the legal status of a property (e.g. allotments and mergers, etc.) and the legality thereof.

Particular importance is given to the underlying documentation of various legal or cadastral operations in order to ensure that there are no omissions or facts that could affect the validity of the ownership title.

**Encumbrances and rights of third parties**

This section provides details on any existing encumbrances (mortgages, rights of way, leases, etc.) as well as any other rights held by third parties on the real estate, including registration thereof with the Land Book.

**Seller's capacity to enter into a real estate sale-purchase agreement**

This is carefully scrutinized especially in such cases where the seller is a legal entity. Should this be the case, this section analyzes and identifies any relevant corporate requirements for the valid execution of the sale-purchase agreement (i.e. the need to have specific corporate approvals prior to entering into a transaction, special majorities provided by the Articles of Incorporation and so on).

**Town-plan regulations and construction-related authorizations**

This section of the report regards the following:

- town-planning requirements in respect of the target property in order to identify any possible constraints for developing a certain project;
- in case of constructions, the validity of all the permits and authorizations issued in relation to the target property.

**Litigation**

This section deals with potential pending litigations having as object the real estate and/or the ownership title and focuses mainly on the stage of litigation and the potential outcome of claims. Special attention is given to restitution claims that could have been filed by former owners of nationalized real estate, either in front of the courts of law or in accordance with a special restitution procedure regulated under Romanian relevant legal statutes.

**Environmental aspects**

This section aims to identify, from a legal perspective, if there are any environmental concerns with respect to the real estate and related liabilities of the owners. Recommendations for conducting a specialized environmental audit are being made, should there be any issues that require more in-depth technical knowledge.

**Conclusions - concerns and recommendations**

This is a critical section of any due diligence report as most clients are relying on the outcome of the review when taking an investment decision. In this section we emphasize red flags discussed in a broader manner throughout the report and we summarize potential concerns with regard to the ownership title and the legal status of the real estate.

Needless to say, it also includes recommendations on how such concerns could be mitigated and provides valuable input on the representation and warranties as well as on any conditions precedent that should be included in the transaction documents in order to protect the purchaser.







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