Real Estate

1. What are the main sources of real estate law?

The main sources of real estate law are: (i) the Romanian Constitution; (ii) the New Civil Code; (iii) the Fiscal Code; (iv) the Cadastral Law No. 7/1996; (v) Law No. 50/1991 on the authorisation of construction works; (vi) Law No. 10/1995 on building standards; (vii) Land Law No. 18/1991; (viii) Law No. 1/2000 on the reinstatement of ownership rights over agricultural and forest lands; (ix) Law No. 10/2001 on the legal regime of real estate illegally seized between 6 March 1945 and 22 December 1989; (x) Law No. 247/2005 for reform in ownership and justice; (xi) Law No. 165/2013 on certain measures for finalising the process of restitution, of real estate illegally seized by the State during the communist regime; (xii) Law No. 213/1998 on public property; (xiii) Law No. 350/2001 on urban development and land use planning, (xiv) Law No. 17/2014 on certain measures on the sale and purchase of *extra muros* agricultural lands, the amendment of Law No. 268/2001 on the privatisation of companies that manage State's public and private property for agricultural purposes, and the establishment of the Agency of State Domains, (xv) Law No. 46/2008 regarding the Forestry Code, (xvi) Law No. 312/2005 regarding the acquisition of private ownership rights over lands by foreigners and stateless persons, etc.

2. Does the law distinguish between real estate properties?

Real estate properties are mainly classified as either public or private property. Save for real estates that are exclusively part of the public property, any real estate can be subject to private property rights.

3. Which real estate assets are deemed public property and who are the public property title holders?

Public property includes all real estate that under the law or by its nature is of public use or interest but only if acquired through specific means provided under the law, namely: (i) by public acquisition performed in compliance with the law; (ii) by expropriation for public utility; (iii) by donation or convention, where the asset

became of public use or interest; (iv) by transfer from the State's private domain into its public domain, or from the administrative-territorial units' private domain into their public domain; (v) through other means provided by law. As an example, the public property of the Romanian State includes assets such as roads, beaches, parks, railway infrastructure, etc.

The State and territorial-administrative units (communes, cities, municipalities and counties) own properties consisting of real estate that, according to certain legal principles, belongs either to their public or their private domain.

Under Romanian law, real estate in the public domain (i) may not be subject to transfer; (ii) may not be subject to enforcement procedures and (iii) may not be encumbered by security interests. Any transaction involving an asset that is part of the public domain, and which does not observe the above-mentioned rules, is deemed to be null and void.

4. Can an investor develop a project on public property? How can such properties be exploited by investors?

Generally, it is not possible to develop a real estate project on public property land. However, private real estate projects can be developed on such lands based on partnerships with local authorities. Such projects may involve transfers of lands and buildings from public property into private property, or transfers from the public domain of the State to that of territorial units. The law imposes certain limitations on such transfers. Assets in the public domain may usually be exploited by third parties by means of concession. Any sale, concession or lease of such assets must observe public procurement laws.

Exceptionally, the right to use real estate belonging to public property may be granted, free of charge and for a limited period of time, to public utility entities. Public property real estate may also be given into the administration of self-managed public companies, local or central authorities, other public institutions of local, county or national interest, as the case may be, based on Government or local council decision, as applicable.

5. Who can own land in Romania? Can a foreigner buy land directly?

As a general rule, any legal or natural entity may be the holder of private property rights. However, the Constitution sets forth limitations on the right of foreign citizens and stateless individuals to acquire land in Romania.

In the Treaty of Accession of Bulgaria and Romania to the European Union, Romania undertook that it shall "liberalise" the land market. The principles of the "liberalisation" of the land market in Romania can be summarised as follows:

- As a general rule, foreign natural persons and legal entities of the European Union/ European Economic Area (EEA) can purchase land in Romania under the same conditions as natural persons and legal entities from Romania, as provided under Article 3 of the Law No. 312/2005;
- For the sale of lands for secondary residences or headquarters: starting 1 January 2012, foreign natural persons and legal entities of the European Union/EEA that are not Romanian residents are entitled to direct purchase, as provided under Article 4 of the Law No. 312/2005;
- For the sale of agricultural lands, forests and forest lands: starting 1 January 2014, foreign natural persons and legal entities of the European Union/EEA are entitled to direct purchase, as provided under Article 5 of the Law No. 312/2005.

Law No. 17/2014 regulates the procedure for the sale of *extra muros* agricultural lands to both Romanian citizens and citizens of any European Union Member State, the States which are party to the EEA, or from the Swiss Confederation, and to stateless persons domiciled in an European Union Member State or a state that is a party to the EEA or to the Swiss Confederation, and to Romanian legal entities, respectively to legal entities from European Union Member States, States that are party to the EEA or the Swiss Confederation.

Law No. 17/2014 imposes limits on the principle of direct access of entitled natural persons and legal entities to purchase *extra muros* agricultural lands in Romania by requiring observance of the pre-emption right of the following categories (listed here by priority - starting with 13 October 2020):

- **1st-rank pre-emptors**: co-owners, relatives of first degree, spouses, relatives and relatives by marriage up to the third degree included;
- **2nd-rank pre-emptors**: owners of agricultural investments for plantations of trees, vines, hops, irrigations, exclusively private, and/or agricultural lessees. If the lands put up for sale accommodate agricultural investments for plantations of trees, vines, hops and for irrigations, the owners of such investments have priority for purchasing such land;
- **3rd-rank pre-emptors**: owners and/or lessees of agricultural lands neighbouring the land put up for sale, in compliance with the provisions of paragraphs (2) and (4);
- **4th-rank pre-emptors**: young farmers;
- **5th-rank pre-emptors**: the Academy of Agriculture and Forestry Sciences "Gheorghe Ionescu-Sisesti" and the units for research and development in the agriculture, forestry and food sectors, organised and regulated by Law No. 45/2009 on the

organisation and operation of the Academy of Agriculture and Forestry Sciences "Gheorghe Ionescu-Sisesti", and the research and development system in the agriculture, forestry and food sectors, and the education institutions with agricultural profile, for the purpose of purchasing *extra muros* agricultural lands which have the destination strictly required for agricultural research, and which are neighbouring the lands owned by them;

- **6th-rank pre-emptors**: natural persons domiciled/residing in the administrative-territorial units where the land is located or in the neighbouring administrative-territorial units;
- **7th-rank pre-emptors**: the Romanian state, through the Agency of State Domains.

If the holders of the pre-emptive right do not express their intention to purchase the land within the legal time limit, Law No. 175/2020 establishes a series of requirements for the purchase of *extra muros* agricultural land by natural persons and legal entities that are not categorised as holders of the pre-emptive right, respectively: (i) to be domiciled/residing/headquartered on the national territory at least 5 years prior to the date when the offer to sell is registered, (ii) to carry out agricultural activities on the national territory for at least 5 years prior to the date when the offer to sell is registered, (iii) to be registered with the Romanian tax authorities at least 5 years prior to date when the offer to sell is registered, for the natural persons, respectively, to prove that at least 75% of the overall income of the past 5 tax years was earned from agricultural activities, for the legal entities. Moreover, the legal persons must meet the following conditions as well: (i) the shareholder/stakeholder controlling the company must be domiciled on the national territory for at least 5 years prior to the date when the offer to sell is registered and (ii) if the shareholding comprises legal entities, the controlling shareholders/stakeholders – natural persons must prove that they have had a domicile on the national territory for at least 5 years prior to the date when the offer to sell is registered.

If the pre-emptive right is not exercised and no other natural person or legal entity which fulfils the conditions indicated above expresses its intention to purchase within the legal timeframe, the sale may be freely executed to any natural person or legal entity.

According to Law No. 175/2020, the alienation by sale of an extra-muros agricultural land before the 8th anniversary of its purchase by the seller is conditioned by the seller's payment of a 80% tax of the amount representing the difference between the sale price and the purchase price, calculated based on the grid of notaries in that period.

The same 80% tax is applicable as well in case of direct or indirect sale of the controlling interest in the companies that own *extra muros* agricultural land and which account for more than 25% of their assets. The tax is applicable to the value difference

of those lands calculated based on the notaries' official price chart between the date when the land was acquired and the date when the controlling interest was sold. In this case, the corporate income tax for the value difference of the sold shares shall be applied to a base proportionally reduced by the percentage of those agricultural lands in the fixed assets and any double taxation shall be strictly forbidden. Failure to observe the obligation to pay the tax shall lead to absolute nullity of the sale.

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Also, Law No. 175/2020 provides:

- That, once purchased, the *extra muros* agricultural land will have to be used exclusively for agricultural activities from the date of the purchase and if there are agricultural investments on the land for tree crops, vines, hops and irrigation, their agricultural destination will have to be preserved;
- For the extension of the term for exercising the pre-emption right from 30 calendar days to 45 business days and adds to the procedure the 30-calendar daytime limit imposed for natural persons and legal entities to exercise their intention to purchase, as described above;
- For a Sole Register to be created as regards the transfers and use of extra muros agricultural land, which will include information with respect to the disposal of *extra muros* agricultural land;
- For new sanctions: the sale of *extra muros* agricultural land by failure to observe the pre-emptive procedure or without obtaining the necessary permits shall be penalised

by absolute nullity (prior to the amendment, Law No. 17/2014 provided the relative nullity as sanction) and the fine for the failure to observe Law No. 17/2014 has been increased and ranges from RON 100.000 to RON 200.000.

Moreover, Law No. 46/2008 regulates a pre-emption procedure for the sale of lands from the forestry fund. The legal pre-emptors are the co-owners and the neighbours. In case the State or the territorial administrative unit is neighbouring the land to be sold, their pre-emption right shall have priority over those of the other neighbours, provided the forest land of the State or territorial administrative unit is in the public domain. The seller must notify in writing the pre-emptors, through the service of a bailiff or notary public, with the obligation of the pre-emptors to exert their right within a 30-day period. The sale purchase agreement concluded without notifying the pre-emptors or in consideration of a lower price, or under better conditions than those mentioned in the selling offer, is affected by relative nullity.

Non-EU citizens and stateless individuals not domiciled in a EU Member State/ EEA and legal entities outside the EU/EEA may only acquire lands in Romania under reciprocity conditions, as regulated by international treaties (and by taking into consideration the conditions provided by special legislation – e.g. Law No. 17/2014 regarding *extra muros* agricultural lands).

Any foreign investor may acquire lands (including *intra muros* lands) in Romania by setting-up a special purpose vehicle with its headquarters in Romania. This will be a Romanian legal entity and, therefore, will be entitled to acquire land without the legal limitations imposed on foreigners.

6. Are there any formal conditions for the transfer of real estate property? Is authentication required?

Under Romanian law, deeds having as object the transfer of ownership over real estate must be concluded in writing and in authenticated form (i.e. signed in front of a Romanian public notary), under the sanction of absolute nullity. Corporate transfers (the transfer of the shares of a company owning real estate) may be made through corporate transactions that do not require notarised deeds.

7. Is there any transfer tax (or equivalent) payable on the sale or purchase?

For transfers of the ownership title or of any other right over real estate, an income tax is owed to the state budget by the transferor. The value of the income tax is computed

and collected by the public notary upon the authentication of the transfer deed. The registration of the transfer deed with the relevant Land Book is conditional upon the payment of the income tax.

Under the Fiscal Code, individuals obtaining income from transferring the right of ownership (or dismemberments of ownership) over real estate (constructions of any kind and the affected land and/or land of any kind free of constructions) are compelled by law to pay income tax to the state budget.

For real estate transfers including constructions of any type and their related lands, by means of *inter vivos* deeds, as well as in case of lands of any type (without constructions), individuals owe a tax which is calculated by applying the quota of 3% over the taxable income.

The taxable income is determined by deducting from the value of the transaction the non-taxable amount of RON 450.000.

Such tax is not due in the following cases:

- The ownership right over lands and constructions was acquired based on special legislation;
- The ownership right was acquired by means of donation between the relatives and the affinities up to the 3rd degree inclusive, as well as between spouses;
- In the case of cancellation with retroactive effect of the transfer deeds;
- The finding based on Article 13 of Law No. 7/1996 regarding buildings subject to systematic registration where proof of ownership is missing, which shall be subject to the registration of factual possession in the technical documents;
- For transfer of ownership over real estates from the personal patrimony, according to the provisions of Law No. 77/2016 on discharge of mortgage-backed debts through transfer of title over immovable property, in order to settle the obligations assumed by way of credit, for a single payment transaction.

Notary fees related to the execution of the transfer deed and the costs for the registration of the deed with the Land Book, generally paid by the buyer, are not included in the above-mentioned taxes.

8. How is title to real estate evidenced? Is there a public register?

A real estate title is evidenced and is made opposable to third parties by registration in the relevant Land Book (Romanian: *Carte Funciară*).

The Land Book provides for a description of estates (cadastral number of the estate, dimensions of the estate, its categories of use and, as the case may be, the buildings and the location of the estate by indicating neighbouring areas), for various aspects related to the ownership right (name of the owner, the legal deed or fact which gives rise to the owner's right, any rights-of-way, legal facts, personal rights or other legal relations or actions taken in connection with the property) as well as for aspects regarding the background of various dismemberments of ownership (the right to use the land located under a construction, dwelling rights, easement rights, mortgages and real estate privileges, leases and assignments of income, encumbrances and related procedures including pursuit of the estate or its proceeds).

The Cadastre Law sets forth the manner in which legal operations regarding real estate properties are to be published.

The records are kept by the National Agency for Cadastre and Real Estate Publicity, through its territorial units. 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 unit.

A right over real estate recorded in the Land Book is presumed to exist, if acquired or created in good faith and lacking any proof to the contrary (registrations in the Land Book do not constitute absolute evidence). Where registration procedures related to a deed or right have been duly performed, third parties may not prove that they were not aware of such deed or right. The Civil Code establishes two relative legal presumptions: that the registered act or right exists, if it was not amended or de-registered; and that a de-registered deed or act does not exist.

Until the expected change in their legal regime, as detailed herein below, registrations with the Land Book shall be carried out according to the Cadastre Law, to the effect of opposability, rather than constitution of rights.

The right to demand fulfilment of registration formalities is protected under the Civil Code, while contractual clauses seeking to limit the right to perform certain registration formalities are deemed null and void.

9. Is a Land Book review of the previous registrations legally required?

A prior review of the registrations in the Land Book related to any specific real estate property is recommended. A Land Book excerpt is required upon the execution of a transfer agreement, as to evidence proper registration of the previous owner and the

lack of transfer prohibitions.

10. Are there any major legislative novelties regarding Land Book registrations?

As a major legislative novelty in real estate regulations, the Civil Code, in force as of 1 October 2011, provides that the final registration (Romanian: *intabularea*) of a certain right with the Land Book shall have a constitutive effect, i.e. leading to the creation of the respective right, rather than a mere opposability effect, as previously provided. However, this new rule shall only become applicable after the complete implementation of the unitary and mandatory cadastral system providing for a technical, economical and legal record of real estate, a system already initiated in Romania starting 1996.

According to the new rules, the private ownership right over an immovable asset will cease upon the registration with the Land Book of the previous owner's waiver of the transferred right, given under certain regulated forms. However, the ownership right will be obtained without registration when derived from natural accession, inheritance, forced sale, expropriation for public utility reason or other cases expressly regulated under the law. Also, in certain expressly provided cases, registration may have acquisitive effects (for example, in the case of real rights).

Other new rules included in the Civil Code have already entered into force. Provisional Land Book registrations and Land Book notations may only be made in the cases expressly provided by the law. Real rights subject to a condition may not be registered with the Land Book and can only be recorded as provisional Land Book registrations.

The date on which a registration with the Land Book becomes effective is the date on which the application is registered with the Land Book. Where there are concurrent titles emanating from the same predecessor in title, the holder of a right registered with the Land Book is deemed to be the first person who made such registration, irrespective of the date of the title the Land Book registration relies upon.

In cases of transfer of leased assets, the lease contract shall be enforceable against the acquirer under the following conditions: (i) for immovable assets registered with the Land Book, only if the lease agreement was noted; (ii) for immovable assets not registered with the Land Book, only if the certified/certifiable date of the lease agreement occurs prior to the date of the transfer; (iii) for immovable assets subject to publicity formalities, if the lessee fulfilled such formalities; and (iv) for other immovable assets, if the asset was used by the lessee at the time of the transfer.

11. Should an investor pay particular attention to any specific item during due diligence over real estate property?

Within the process of acquiring land for the purpose of developing real estate projects in Romania, investors should always consider the critical issue of claims filed by former owners abusively deprived of their property during the communist regime (by way of abusive expropriation, abusive confiscation, abusive nationalisation, etc.). Starting 1991, the Romanian Parliament issued a series of enactments regulating the restitution of such properties, such Land Law No. 18/1991, Law No. 1/2000, Law No. 10/2001, Law No. 247/2005 and most recently Law No. 165/2013.

The general rule is that illegally seized property must be returned in kind (the original real estate, at its original locations/site). Should restitution in kind be impossible, former owners shall be granted compensation. By way of exception, ownership titles issued based on the laws on restitution of land are registered with the Land Book *ex officio*.

Law No. 247/2005 sets forth the legal framework governing compensations, by way of establishing *Fondul Proprietatea S.A.*, a securities collective placement body, in the form of a financial investment company. However, starting 20 May 2013, when Law No. 165/2013 entered into force, a new compensation framework was established, applicable to all cases of restitution, except where restitution in kind is still available. Under the new legal provisions, in case restitution in kind is not available, there are two compensation procedures: (i) compensation by equivalent (by other lands or constructions - if possible) or (ii) compensation by the awarding of points, each point having a value of RON 1.00. A National Fund for agricultural lands and other properties, administered by the Agency of State Domains, is to carry out the new compensation scheme.

In case the restitution of agricultural lands on the old sites is not possible, after the existence of the ownership right and the size of the land parcel validated by the county commissions of land fund or, as the case may be, by the Bucharest Municipality Commission of Land Fund, the former owner(s) or their heirs are entitled to receive lands located on another site. In this respect, within 180 days from the date of establishment of the Local Land Inventory Commission, each such commission shall determine the situation of agricultural forestry lands, located in the public or private domain of the state or, as the case may be, of the administrative-territorial unit, which may be the object of restitution of the property right for each administrative-territorial unit.

In case the restitution in kind on another site is not possible, compensation by the awarding of points shall apply. In order to complete the process of restitution in kind

or, as the case may be, by equivalent lands on a site other than the ones illegally seized during the communist regime, there shall be established the National Commission for Compensation of Real Estates (subordinate to the Chancellery of the Prime Minister). The secretariat of the National Commission, based on the relevant documents, proceeds to verify such documentation from the point of view of the existence of the property right of the person who considers himself entitled to compensation measures.

The real estate object of a compensation decision is evaluated based on the grid used by public notaries (valid at the date when Law No. 165/2013 came into force) and the resulting value is expressed in points.

Within a 3-year period from the issuance date of the compensation decision but not earlier than the 1 January 2017, the holder of points will be able to opt for compensation in cash. Cash compensation is paid in instalments. Starting 1 January 2017, the holder of compensation points can make a request, annually, to the National Authority for Property Restitution, for the issuance of a payment order. The National Authority for Property Restitution shall issue, during five consecutive years, payment orders, in equal annual instalments, within the limit established by the compensation decision. The value of one instalment can not be less than RON 20.000 provided that the amount thus granted does not exceed the total value of the established compensation.

All persons who acquire rights in connection with the restitution of illegally seized property are obliged under the provisions of Law No. 165/2013 to notify the National Authority for Property Restitution about the transactions they concluded in connection with such rights within 15 days from the conclusion of such transactions.

For persons having acquired rights in connection with the restitution of real estate illegally seized by the State during the communist regime (i.e. the assignees), Law No. 165/2013 provides for compensation through points as the sole possible remedy, consisting in a number of points equal to the amount of the price already paid to the former entitled person (based on the private convention/agreement signed with the entitled persons) plus 15% out of the difference up to the value of the property determined based on the public notaries grid.

The number of points cannot be higher than that granted based on the evaluation of the real estate in accordance with the public notary grid.

The compensation granted where the price already paid by the assignees to the former owners is not mentioned in the restitution file, consists of a number of points equal to 15% out of the value of the real estate as established based on the public notary grid.

12. Which is the institutional framework of planning control?

Urban planning policies are carried out by public administration authorities, according to Law No. 350/2001, which establishes the general framework for urbanism policy, among other matters.

13. Are there any mandatory urbanism documentation?

The main urbanism documentations are the General Urbanism Plan (Romanian: *Plan Urbanistic General*-PUG), the Zonal Urbanism Plan (Romanian: *Plan Urbanistic Zonal*-PUZ) and the Detailed Urbanism Plan (Romanian: *Plan Urbanistic de Detaliu*-PUD).

The PUG is the guideline for the development of a certain locality and establishes, *inter alia*, the city limits, the use to which lands located within the city limits may be put, the protected areas, the development of the technical infrastructure, requirements for constructions location and features. The PUG may be updated from time to time, every 10 years at most. The validity term of the PUG is extended, based on the decision of the local council / General Council of Bucharest Municipality, until the new general urban plan comes into force, provided that the elaboration / updating of the general urban plan is initiated before the expiration of the period of validity.

The PUZ mainly ensures coordination between the development plans and the PUG of a specific locality. The PUZ is prepared for certain specific areas of a locality and includes regulations relating to street network organisation, the construction regime, function of the area, building alignment, receding planes and distances to lateral and backside limits of the plot, architectural features of the buildings, permitted construction materials, maximum permitted height, land use coefficient, land occupancy ratio, infrastructure development, etc. Once approved by the competent Local Council, the PUZ[1] becomes compulsory for the respective area in relation to the technical parameters contained.

The PUD is a specific regulation that sets forth detailed requirements regarding the location and area of a construction on a specific plot, including regulations regarding accessibility and connection to the urban networks; general constraints regarding the built volumes and the fittings; functional and esthetical harmonisation with the surrounding areas. The PUD is a specific regulation of a plot in relation to the neighbouring plots and cannot change the higher ranking plans.

1 On 26 February 2021, the General Council of the Municipality of Bucharest passed a series of decisions aiming the suspension of the coordinating Zonal Urban Plans of districts 2, 3, 4, 5 and 6 of Bucharest for a period of 12 (twelve) months as of entry into force of the G.C.M.B. Decisions, During the suspension period, the urban planning certificates and the building/demolition permits to be issued by the General Mayor of Bucharest and by the District Mayors of Bucharest shall comply with the provisions of previous urban planning documentations issued prior to the decisions approving the Coordinating PUZs.

14. Who has the initiative of preparing land development and urbanism documentations?

The initiative of preparing land development and urbanism documentations such as Zonal Urbanism Plan regarding central areas, protected areas and areas for monuments protection and also Zonal and Detailed Urbanism Plans for the development of public interest objectives, exclusively belongs to the public administration authorities. Other kinds of town planning documents may also be initiated by legal and natural persons.

15. Are any amendments permitted to existing urbanism documentation?

Should an investor seek an amendment to the urbanism documentations approved for a certain area, or should the specific conditions of the location or nature of the project require it, the local public authority is entitled, in specific cases, to condition the authorisation of the investment on the preparation by care of the private investor of an amended PUZ and on the approval thereof by the local public authority or, in certain cases, to condition the authorisation of the investment on the preparation and approval of a PUD.

16. May urbanism documentations be initiated or approved for the purpose of bringing unauthorised/non-compliant constructions into conformity with the law?

Starting from 1 January 2012, no urbanism documentations (such as PUZ or PUD) may be initiated or approved for the purpose of bringing into conformity with the law constructions built without a building permit or in disregard of the provisions in the building permit.

17. Which is the document listing the construction requirements for a specific plot of land?

The construction requirements established under the existing urbanism regulations are described, for individual parcels of land, through urbanism certificates (Romanian: *certificat de urbanism*). The purpose of such certificates, which may be issued at the request of any interested person, is mainly to provide information on the legal, economic and technical regime of a certain plot, including in relation to the buildings constructed on it, to detail the town planning requirements as applicable to it and to indicate the approvals and permits required in order to begin construction on the plot.

The urbanism certificate is issued by the local public authorities (the Mayor of the locality where the land is located, or the Presidents of the County Council, if the land on which construction works are going to be performed exceeds the boundaries of a single territorial-administrative unit), and does not grant its holder the right to perform construction works. The urbanism certificate may be issued in paper format or digital (electronic) form having the same value.

18. Which is the document that entitles an investor to perform construction works?

Construction works can only be performed on the basis of a building permit (Romanian: *autorizație de construcție*) issued by the local public authorities with a view to ensuring compliance of the future construction with the legal provisions regarding location, design, and purpose.

Building permits are issued by the same authorities empowered to issue urbanism certificates. If the beneficiary is changed before completion of the works, the building permit remains valid and is automatically transferred to the new beneficiary, who is bound to observe its provisions.

19. Are there any conditions or steps to be carried out prior to obtaining the building permit?

Depending on the type of land (within or outside the city limits), as well as on its purpose of use (agricultural or industrial), certain steps must be taken before applying for a building permit. If the plot is classified as farming (agricultural) land, its class might be required to be changed prior to obtaining a building permit, a process that requires a certain administrative procedure (including preparing cadastral documentation and obtaining approvals from various governmental agencies) and entails costs. The building permit may only be issued after the completion of the following steps: (i) obtaining the urbanism certificate; (ii) obtaining the relevant endorsements and approvals from various authorities as indicated in the urbanism certificate and (iii) submitting the technical documentation of the future construction.

20. To whom are the building permits issued to? Is there a specific prerequisite condition for the investor?

Building permits may be issued to the holder of a real right in the estate (land and/or construction), such as: ownership, administration right, concession right having as

object land in the public or private domain of the State or administrative-territorial units, right of use, usufruct right, superficies or easement right. A building permit may be issued based on a free-lease or lease agreement only for temporary buildings, and only provided that the owner expressly consents to such constructions being built on its land.

21. Are there any fees or taxes applicable for the issuance of building permits?

The building permit is issued subject to the payment of a tax of (i) 0.5% of the estimated value of residential construction works; (ii) 3% of the estimated value of works related to site organisation, provided that such works are authorised individually, and not together with the main construction works to which they refer; (iii) 2% of the estimated value of construction works for camping facilities, cottages, camps or caravans or (iv) 1% of the estimated value of any construction works (such tax is further adjusted at the end of the project based on the final construction price). Should an extension of the building permit be required, an additional tax amounting to 30% of the initial authorisation tax must be paid.

22. Is there a procedure to ascertain that the construction works have been finalised?

The completion of the construction works and their compliance with the requirements laid down in the building permit are ascertained by means of reception minutes - a deed prepared by the representatives of the local authorities, of the constructor and of the beneficiary. The reception minutes constitute the deed ascertaining the completion of the construction works and is one of the documents based on which the new building may be registered with the Land Book.

Absent a building permit, constructions completed before 1 August 2001 may be registered with the Land Book based on (i) the tax certificate certifying payment of all tax obligations due to the local public authority and (ii) the relevant cadastral documentation.

23. Which documents are required for the Land Book registration of a building?

Under the current legal provisions, constructions are registered with the Land Book based cumulatively on the building permit, the reception minutes and cadastral

documentation. As an exception, the ownership right over constructions may also be registered with the Land Book by execution phases in which case the following documents are required: (i) the building permit certificate attesting to the stage of the construction works, issued by the Mayor of the administrative-territorial unit; (ii) the minutes ascertaining the physical stage of the construction works, endorsed by the representative of the public administration authority which issued the building permit, as well as (iii) the cadastral documentation.

24. Is there any limitation imposed on the transfer of real estate?

As a general rule, privately owned real estate may be freely transferred. Exceptions to the free legal circulation rule are included in special laws.

For instance, a limitation to the free transfer of real estate is included in the Romanian Forestry Code with respect to the transfer of forest lands, which may only be permitted subject to observing the co-owners' and neighbours' pre-emption rights. Where the forest lands subject to the transfer of ownership right are located at the limit/adjacently to public property, the Romanian State prevails over other pre-emptors.

Under Law No. 422/2001 on the protection of historical monuments, the Romanian State, respectively the territorial-administrative units, also enjoy a pre-emption right in the case of transfers of properties classified as "*historical monuments*" under the applicable legal provisions.

Certain limitations to the free transfer of real estate are regulated by specific restitution laws, such as the interdiction of transfer of such properties while they are subject to an ongoing administrative procedure and/or litigation.

Under Law No. 17/2014, sale and purchase agreements regarding *extra muros* agricultural lands concluded in breach of the pre-emption rights of the co-owners, lessees of the land in question, neighbours, the Romanian State through the Agency of State Domains are sanctioned by relative nullity.

25. What were the major changes brought by the COVID-19 crisis in the field? Will these changes last?

Against the background of the COVID-19 crisis, contractual parties can invoke force majeure or, depending on the situation, hardship.

The pandemic does not constitute, per se, a case of force majeure. The application for a certificate confirming the force majeure event is solved within 15 days from the date the required documentation is submitted in full and the fee is paid.

The fact that a force majeure clause explicitly addresses the occurrence of an epidemic or a pandemic is not deemed sufficient for the purpose of invoking force majeure. In all cases where force majeure is invoked, the request for confirmation must be accompanied by justification, as well as notifications sent to the other contracting party. The party invoking force majeure must actually prove that it cannot fulfil its contractual obligations due to specific circumstances arising from the epidemic and outside its control. At the same time, the claiming party must be able to prove it not in a position to take reasonable measures in order to avoid or reduce the occurrence of the event or its effects.

As a rule, if the performance of the contract becomes excessively burdensome due to an exceptional change in circumstances which would render grossly unfair the debtor's obligation to perform, the contract may be altered (renegotiated) or even terminated (under the hardship clause). This applies even more so in the case of contracts that have as object generic, fungible goods or money payments. The debtor must try, within a reasonable timeframe and in good faith, to negotiate a reasonable and fair alteration of the contract. Should negotiations fail, the court may order:

- Either that the contract be adapted, in order for the parties to share in a fair manner the losses and gains arising from the change in circumstances; this means that the judge intervenes in the contract directly or indirectly, by imposing on the parties an obligation to renegotiate; or
- That the contracted be terminated at the time and in the manner the court sees fit.

The court may opt for either adapting or terminating the contract only to the extent that:

- The change in circumstances occurred following the conclusion of the contract;
- The change in circumstances and the extent of this change were not and could not have reasonably been taken into account by the debtor upon entering the contract;
- The debtor did not assume, and could not be reasonably deemed to have assumed the risk.