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The Client's Guide

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Doing Real Estate in Romania

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The post-accession property regulatory framework adjustment process has reached or will soon reach completion stage. The legislative environment has thus suffered major changes in a short period of time bringing immediate effects on the account of long-term stability and predictability. The new enactments are expected to also help restructure the real estate market, and it is anticipated that investors will welcome the legal reforms.

These major changes include:

- a new Property Restitution Law
- a new Civil Code and a new Civil Procedure Code
- effective acknowledgment of EU citizens' right to own real estate in Romania
- an improved urban regeneration of the legal framework.

New property restitution law

After more than twenty years since the beginning of this reform, some major developments are to occur in terms of final restatement and refinement of the property restitution legal frame.

During April 2013 the Romanian Government has confirmed the final form of a new legislative act on regulating the regime on restitutions, due to significant pressure exercised at an international level, through recent case-law against Romania from the European Court of Human Rights.

The final proposal includes two matters that may be of concern to any exiting or prospective investor in hard assets in the Romanian market.

First, the State and local authorities, including the Agricultural Research Centres, are called to generate a new inventory of the public and private State property portfolios in view of restitution.

Secondly, a new window of opportunity is likely to be created for former owners to (re)claim restitution in kind of their real estate.

For the event these two provisions go through at the executive level, intense activity in both litigation and restitution administrative proceedings is expected.

A new Civil Code with major impact on the real estate sector. A new Civil Procedure Code

Following the coming into force of the new Civil Code at the end of 2011, it was the new Civil Procedure Code's turn to start having legal effect earlier this year, although it is still questionable whether logistics and resources are available for the Romanian judicial system to go by the book.

While the first year of the application of the new Civil Code was rather experimental, the circle is now complete and Romania enjoys fully new and unified civil and commercial law framework.

The legislative process and amendments are severe in many aspects, but it is expected to improve Romania's image as a friendly, easy-to-deal with jurisdiction.

Regardless of whether the amendments qualify as absolute novelties or were already anticipated by doctrine and case law, the impact is always there when dealing with transactions, development, leasing, securities, company law, insolvency and many others as well.

The entire package is firstly meant to ensure less formalistic approaches, along with faster litigation, but the next years are crucial in terms of implementation for achieving the long expected predictability.

Effective acknowledgment of EU citizens to own directly real estate

When negotiating its accession to the EU, Romania obtained a temporary derogation from the principle of allowing citizens and entities from EU to directly acquire land in Romania, under the same terms and conditions as Romanian citizens do.

All derogations were enacted under Law no. 312/2005 regulating the acquisition of ownership rights over lands by foreign citizens, stateless persons and foreign entities that came into force in January 2007.

Now, after 5 years as of Romania's joining the EU, part of the said derogation has expired, and non-resident individuals and legal entities hold the capacity to directly purchase lands, for residential purposes and for setting up secondary headquarters. The other derogation concerning the acquisition of agricultural and forestry lands will be removed starting January 2014.

Improved urban regeneration framework

In terms of the new legal framework affecting developments, rather harsh urban regulations were enacted in the recent past. The view is to align the national regulations concerning the urban and territorial planning to the European principles in this field and to consolidate the role of the public authorities as responsible entities in the planning and control process.

One important change relates to limiting the private initiative in preparing the zoning urban plans. Thus, for those cases when the issuance of the building permit is conditional upon the prior obtaining of a zoning urban plan, generally, the initiative on preparation of urban plans no longer belongs to private investors, but to the local authorities. Major investors keep, however, the initiative for preparing zoning urban plans for important real estate projects (e.g. hypermarkets and supermarkets, large infrastructure, new residential compounds, etc.).

These amendments are aimed to discourage the chaotic construction and the incoherent and anesthetic transformation of localities by reinforcing the public authorities' role in this domain. Despite good intentions, lack of public funding to promote new projects might lead, on the one hand, to a discriminatory treatment between strong investors and those owning smaller lands and to the freezing of some real estate projects and, on the other hand, to an increase of the political interference in this field.

Another change meant to strengthen the discipline in the construction field concerns the impossibility to initiate and approve urban documentation to the purpose of validating post factum buildings erected in the absence of a building permit or without complying with the existing permitting documentation terms. As it looks, non-compliant buildings where no such subsequent authorisation was obtained prior to January 1, 2012 shall be, depending on the case, fully or partially demolished.