

Acquiring and leasing property in the Czech Republic

BY KRISTYNA FISEROVA, LAWYER, PETERKA & PARTNERS.

62

Acquiring property

The right of ownership under Czech law is contained in the acquisition title. This article provides a brief description of how to acquire property in the Czech Republic and some legal issues which could arise.

A right of ownership can be acquired based on a purchase agreement, by gift, by a decision of a public authority (succession) or by legal and uninterrupted possession of a property for 10 years. For investors the most frequent method of acquiring property is by a purchase agreement governed by the Civil Code. In this case Czech law requires the agreement to be in writing. The signatures of the seller and the buyer must be on the same document and be certificated by a notary, a municipality officer or the attorney who drafted the purchase agreement.

Before the conclusion of the purchase agreement it is necessary to ascertain the title of the property and other information concerning the property. This information can be found in the Land Registry, which is the public record containing detailed information about each registered property, especially the description and the boundaries of the property. Besides rights of ownership the Land Registry contains information on mortgages and easements which must be registered to be valid

and which burden the property and therefore in the case of any transfer they will also be transferred. Nevertheless, other rights (including leases) are not included in the Land Registry.

The filing of an application with the Land Registry to register the title follows the conclusion of the purchase agreement. The purchaser acquires the ownership of the property on the basis of registration in the Land Registry, with retroactive effect, on the day of the filing of the application for registration. The registration process in the Czech Republic can take weeks and sometimes even months. In this regard, advance payments, escrow account mechanisms or the possibility of not paying the purchase price until the transfer has been duly registered are often used.

In the Czech Republic the right to own property is also subject to restitution claims by persons who had their property confiscated after the Second World War. Persons entitled to the restitution of property are defined under the law. These persons are, however, limited by a relatively short period in which to stake their claims. Nevertheless, under Czech law there is a general possibility which allows an owner to request the handover of the property, even though they are not registered as the owner in the Land Registry, on the basis of a petition seeking a

declaration of ownership and a petition on the handover of the object.

Under Czech law the sale of property is taxed. Generally, the seller pays a 3% property transfer tax. The buyer is regarded as a guarantor of the tax liability and in the case of nonpayment by the seller the tax authorities can require the buyer to meet the obligation. On the sale of commercial property, VAT is payable at the base rate of 19% if the property is sold within three years of its acquisition.

In the Czech Republic the acquisition of property by foreigners is allowed on the following conditions:

- (i) Foreigners can acquire property only if they have Czech citizenship, a permanent residence permit or a residence permit as EU and EEA citizens. Other foreigners can acquire property in the Czech Republic only by inheritance or marriage with a Czech citizen etc.
- (ii) A foreign company can acquire property if it establishes a company or a branch and is authorised to exercise business activity.
- (iii) A company under Czech law is created by one or more foreign natural persons or foreign corporation(s).

Leasing property

Property can be used on the basis of a lease. However, under Czech law a lease is not a legal title to own property but is only a

contractual relationship between a lessor and a lessee. For investors, the most frequent kind of lease is a commercial lease.

A commercial lease means a lease of non-residential premises. Under Czech law, non-residential premises are, for example, a room or a complex of rooms that are, according to the decision of the building office, used for purposes other than residence, in particular, premises for manufacturing, trading, providing services, research, administrative activity, art and educational activity, archives, garages, stockrooms and the parts of public spaces of buildings and apartments authorised for usage as non-residential premises.

A lease contract must contain the mandatory requirements such as the subject of the lease, the purpose of the lease (a lease of non-residential premises usually results from the certificate of occupancy), the purpose of the business activity, if the lease is agreed for business purposes, the amount of rent and the amount of the reimbursement for performance provided in relation to the use of the non-residential premises (though there is a possibility to stipulate in the lease contract, instead of the exact amount of the rent and of the reimbursement, the method of its determination) and the period for which the lease

contract is concluded, if the lease contract is concluded for a definite time. Any lack of certainty in respect of these mandatory requirements automatically renders the lease invalid. A lease contract must be concluded in writing. Leases cannot be registered in the Land Registry.

By law, the rent and the reimbursement for performance provided in relation to the use of non-residential premises (e.g. services provided, such as the supply of water, pavement cleaning, etc.) are paid monthly in

advance on the first day of the respective calendar month. The parties can, however, agree on the maturity and the method of payment differently. In the event that the lessee cannot use the non-residential premises due to the fact that the lessor is not fulfilling its obligations, the lessee has the right to a proportional discount on the rent.

Income from a lease is subject to income tax. Generally, the lease of real estate is VAT exempt and a landlord is not entitled to claim the input VAT deduction from related

inputs (the services received related to the real estate or its purchase price).

However, if a lessee is a VAT payer and the real estate is used for business activity, the landlord may decide to impose VAT on the lease.

A lessee is authorised, with the prior written approval of the lessor and for a definite period, to assign non-residential premises or a part of them to a sub-lessee. The sublease contract must be in writing. The sub-lessee has all the rights and obligations that the lessee of the non-residential premises has.

A lessee is obliged, in the event of a termination of the lease contract, to return the non-residential premises in the same state in which they were taken over, unless agreed otherwise. Generally, a lease contract is terminated by a notice of termination. The period of notice is three months and starts on the first day of the month following the month when the notice of termination was issued, unless agreed otherwise. A lease concluded for a definite period terminates upon the expiry of the term. ■



PETERKA & PARTNERS

Advokátní kancelář, Law Offices, Cabinet d'avocats

DRIVING YOUR BUSINESS FORWARD

Real Estate & Construction • Mergers & Acquisitions • Litigation & Arbitration

Corporate & General Commercial • Banking & Finance

IP & IT • Labour Law • Bankruptcy Proceedings • EU Law • Tax Law



P R A G U E

B R A T I S L A V A

K Y I V

www.peterkapartners.com