

Acquisitions of Real Estate in Slovakia by Foreigner Investors

Knowing whether a foreign person is authorized to acquire real property is a significant factor in a foreign investor's decision to invest in real estate. In the past, states substantially restricted a foreigner's chances of acquiring real estate, especially land. But times have changed.

As a rule, European law requires EU member states not to restrict acquisitions of real property by nationals of other member states. Any direct or even indirect restriction may be considered contrary to the fundamental principle of free movement of capital within the EU internal market. However, during EU accession negotiations some new member states negotiated certain temporary exemptions from this rule.

FOREIGNERS' POSSIBILITY TO ACQUIRE REAL ESTATE

Generally, Slovakia is relatively liberal in this field, since it allows foreigners to acquire almost any real estate. It only negotiated a seven-year transition period (i.e. until May 2011) for the complete liberalization of agricultural and forest land acquisitions by residents of other EU member states. Exceptionally, the European Commission might decide, at the Slovak Republic's request, to extend this period by three supplementary years at the most. Consequently, under current Slovak legislation fully non-restricted real property acquisitions are allowed for all investors - not only EU residents but investors from all countries - except for agricultural and forest land (and some further exceptions applicable in specific cases). Until the end of the transition period, agricultural and forest land located outside built-up areas may not be freely acquired by foreigners, i.e. natural and legal persons not established in Slovakia.

There are, however, exceptions to these restrictions. Apart from acquisitions as a consequence of inheritance and acquisitions by Slovak citizens, even if non-residents, agricultural land may be acquired by natural persons - nationals of EU member states - who have temporary residence permits in Slovakia and conduct business for a minimum of three years on the land. Slovak legislation restricting foreign acquisitions of real property also considers legal persons incorporated in Slovakia (i.e. companies established and having a registered seat in Slovakia) as being Slovak residents irrespective of who the real or effective owner of the company is. In this context it must be noted that the possibility of establishing, owning and managing companies

in Slovakia by foreigners is not restricted and is quite simple. Company executives from non-OECD states need only obtain a Slovak residence permit. Therefore, even the temporary restriction of agricultural or forest land acquisitions by foreigners may easily be defeated by establishing a company (obviously a limited liability company) for the special purpose of land acquisition. Consequently, foreigners from all countries are allowed to acquire real property including land in Slovakia, either directly without having to establish a Slovak legal entity, or through establishing a company for the purpose of acquiring agricultural or forest land.

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PROJECT FEASIBILITY ASSESSMENT IS ALWAYS NECESSARY

Evidently, considering whether real estate acquisition by a foreign investor is allowed under Slovak law is only the first step. Further steps in deciding whether to realize an acquisition include assessing the legal, economic and technical feasibility, with respect to different administrative regulations, especially land planning, construction and environmental regulations.

A current issue is that investors wishing to acquire agricultural land (i.e. land that forms part of the agricultural land fund) for the purpose of constructing on it must pay particular attention to the new fee for excluding the land from the agricultural land fund. The Slovak government wants to introduce a charge for exclusions from the agricultural land fund, which is required if a construction is to be erected on land belonging to the fund. According to the government's current proposal, the fee would be up to SKK 500 per square meter. This would namely concern greenfield projects and their economic feasibility.

FACING LOCAL LAW RISKS

From the foreign investors' point of view, Slovak real estate law may have some peculiarities that must be taken into consideration. For example, Slovak law does not recognize the principle according to which ownership of a land plot includes ownership of any building located on it. Consequently, the owners of a land plot may be different from the owners of any buildings on it.

Moreover, every investor must pay increased attention to whether the seller of real property is the ultimate and real owner of it. Although real property ownership is registered in the Land Register, the accuracy of the data included in it may not be relied upon since the Land Registry conducts only limited reviews of the validity of submitted acquisition documents (e.g. purchase agreements) and Slovak law provides only minimum protection for persons who when acquiring real estate rely, in good faith, on the veracity of the data in the Land Register. A Land Registry decision approving an entry in the Land Register and the subsequent registration of the transfer in this register may not be considered as a guarantee that the ownership right was validly transferred and that the registered person is in fact the real owner of the real estate.

Another risk regarding the validity of data registered in the Land Register arises from restitution laws, i.e. laws governing the restitution of property confiscated during the communist regime. Subject to potentially pending restitution claims, owners' rights may appear unclear or likely to be contested. For these reasons, a thorough legal due diligence of any real estate intended for acquisition is always recommended. In Slovakia, using title insurance is not usual but is possible. In conclusion, Slovak law allows foreigners to acquire real estate to a wide extent. However, potential investors must be aware of the specific peculiarities and risks associated with Slovak law. Qualified legal assistance is considered essential and highly recommended in most cases.

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