

Ružička Csekes s.r.o.

in association with members of **C/M/S/**

CONSTRUCTION AND DEVELOPMENT IN SLOVAKIA

November 2009

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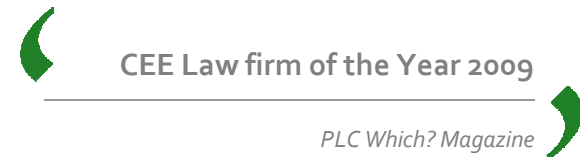
Construction & Development in Slovakia

We offer the full range of legal services for development companies undertaking construction projects in Slovakia, including advice on:

- ✔ buying the land
- ✔ zoning and permitting issues
- ✔ bank financing
- ✔ construction contracts
- ✔ letting and hotel management
- ✔ international investment
- ✔ dispute resolution

At all stages in the development process we bear in mind that the ultimate aim of the development company is to sell, or partially sell, its projects. The ability to achieve a smooth investment by an international fund or institutional investor into projects depends on understanding the investor's concerns and procedures. Issues, which sometimes are regarded by developers as minor, can be of major importance to an international investor. Through its experience in working for funds and institutional investors our team knows the issues of concern to them and how to resolve them to their satisfaction.

We have been working in Slovakia since 1992. Construction, development and real estate is one of our core practice areas.



Our office in Bratislava

In Bratislava CMS has been working for over five years through the law of firm of Dr. Ružička who established his office in 1992. On 1 June this year the firm merged with the CVD law firm led by Erika Csekcs which was also established in 1992. The merged firm brings together 43 lawyers which gives us the critical mass to deepen specialization. Like all of CMS we have formed specialist industry sector teams. All of the lawyers mentioned in this brochure are members of our Real Estate & Construction team or Hotel & Leisure team. The office is currently rated in Band 1 for real estate work in Slovakia by Chambers Europe.

The legal issues which the development industry faces day to day cover the full spectrum, from real estate and intellectual property to employment and contract law. Consequently, the teams consist of lawyers from a range of legal disciplines, such as litigation, M&A lawyers, banking and finance lawyers, IP lawyers, employment lawyers and of course real estate and construction specialists. The teams understand the development industry and advise clients – whether developers or investors, owners or operators – with the many legal issues which they face on a daily basis.

CMS was founded in 1999. It has over 2,200 lawyers, more than 50 offices and is present in over 25 jurisdictions. CMS is recognized as one of the leading providers of legal advice in Europe. Its “lead firm” system – ensuring clients have a single point of contact and control - means that we can deliver seamless service on even the largest cross-border transactions.



The firm offers a dedicated hotels practice, fielding lawyers with prodigious industry knowledge and experience across a swathe of disciplines.



Chambers Guide to the Legal Profession

Buying the land

Contact:



Katarína Kovačová
Partner, Bratislava

Katarína is a partner and joined our team in 1999. She specialises in civil and commercial law, particularly in the real estate sector. Katarína frequently manages real estate due diligence teams. She speaks Slovak, English and German.

Case study:

Zahorská Bystrica

- This was a complex due diligence in which we looked at approximately 150 undeveloped land plots researching ownership title and easements. This included a ten-year retroactive identification of the land plots. We recommend a ten-year retroactive identification because of the Slovak adverse possession rules. We looked at a variety of title deeds, including purchase contracts, cadastral maps, gift contracts, inheritance resolutions, resolutions on adverse possession, and pending judicial proceedings.
- We also looked at encumbrances which were registered in the cadastre, and unregistered encumbrances. A significant amount of the time was spent on identifying plots on cadastral maps.
- The area of land we looked at was not covered by an ROEP (Register of Restored Land Registry) and consequently only a part of the land plots were registered in Register C. A number of the land plots were registered in Register E. Register C represents binding information from the cadastre, while Register E is generally used to register more problematic land plots due to unclear borders. Also a number of plots registered in Register C had previously been registered in Register E and in order to perform the due diligence correctly we needed to do research into the previous registration in Register E.
- The due diligence project, managed by Katarína, was completed in four weeks and the land plots were acquired by the prospective buyer shortly after.
- In conducting due diligence we look out not only for issues which may affect the ability to construct the relevant project but also issues which may affect bank financing or investment by an institutional investor.

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Zoning and permitting

Contact:



Jana Togelová
Partner, Bratislava

Jana has been with us since 2006. Her speciality is construction and real estate law and she spent two years working on secondment to the local municipality construction office of Bratislava IV. Jana speaks English and Slovak.

Case study:

Retail centre, Slovakia

Our client, a real estate investment company with a large international fund as shareholder, acquired land and intended to construct a retail centre. Jana and other CMS lawyers:

- ▶ worked with the client and its development managers and other consultants to:
 - apply for building permits and use permits
 - deal with claims from third parties claiming to be participants to the construction proceedings due to unproven land ownership claims
- ▶ liaised with lawyers within the local construction office to facilitate the applications
- ▶ assisted our client by agreeing that our advice to our client could be relied upon by the financing bank, which also saved our client any unnecessary delays in receiving construction and investment finance

Financing

Contact:



Peter Šimo
Partner, Bratislava

Peter joined CMS in 2001 and has been a partner since 2006. Based in Bratislava Peter is member of the international transaction team at CMS advising mainly clients in CEE in the field of banking & finance and corporate transactions. He has extensive experience in finance transactions in particular working for banks on real estate acquisition finance, construction finance and syndicated facilities. Peter is a member of the Austrian as well as of the Slovak Bar Association. He is fluent in English, German, Slovak and Czech and speaks good Russian.

Case study:

Financing of the acquisition of a shopping centre in Martin

Peter advised the bank on financing the acquisition of a shopping centre in Martin. Advice included:

- ▀ conducting of a complex due diligence which included a ten-year retroactive identification of the land plots and buildings. We looked at a variety of title deeds, including purchase contracts and cadastral maps. The main issue arising out of the due diligence was that there was not complete documentation so that we were not able to review the title chain for the last ten years. Besides that we identified some restitution claims with respect to some of the relevant land plots. To cover these risks the borrower obtained title insurance.
- ▀ drafting and negotiating of the facility agreement. The challenge was to draft the facility agreement according to the LMA standards but rather as a short version adapted to Slovak laws, so that the bank would be able, on the one hand, to syndicate the loan and, on the other hand, to accommodate the expectations of the borrower in accordance with the practice on the Slovak market.
- ▀ drafting and negotiating of the security documentation
- ▀ review of and advice on fulfilment of the conditions precedent

Despite the due diligence issues and the requirements for the facility agreement we were able to find a solution providing the required comfort for all involved parties and closed the financing in May 2007.

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Construction issues

Contact:



Hilary McDowell
Partner, Prague

Hilary McDowell is a partner of CMS Cameron McKenna v.o.s. She is also the Co-Head of the CMS real estate practice and construction group.

Hilary has acted for various Czech and Slovak clients in connection with property acquisition, financing, development, structuring and letting, including hotels, retail developments with leisure elements, warehousing, supermarkets, hypermarkets and office developments. She has extensive knowledge of various types of construction contracts and the requirements of institutional investors.

Case study:

Courtyard by Marriott hotel in Luxembourg Plaza, Prague

Hilary acted for a joint venture company owned by Trigranit and Orco in relation to a design and build construction contract with Skanska for the successful development of Luxembourg Plaza. The contract was complicated in that:

- ▶ the development was for one building, but with the office element to be owned by the Orco company and the hotel element by the JV company . As there were many elements of the works that would form part of both the hotel and offices (e.g. structure, core M&E) instructions needed to be given by both owners up until the building was constructed to an extent after which delays would only affect the hotel or the office; thereafter instructions could be given separately – this meant that we also had to have input into the JV agreement.
- ▶ there was a sectional completion as the office and hotel parts had separate completion dates
- ▶ the hotel element also included provisions for the contractor to supply and install the FF&E and the office element included an option to provide instructions for tenant fit out works

Hotel Leases/Management Contracts

Contacts:



Hilary McDowell
Partner, Prague

CMS has an unrivalled profile and experience and is acknowledged as a leading law firm for the hotel industry. The CMS team advises on every aspect of the industry, including numerous airport hotels, resort developments, and hotels that form part of larger mixed-use developments, which have their own special requirements.

Case study:

Hotel, Prague Gate Prague

- ▶ Hilary advised client on the construction, financing and leasing of a 3* hotel which forms part of a larger administrative development.

4* internationally branded hotel, Prague

- ▶ Hilary has acted for successive owners of this hotel for over 10 years. Advice has included:
 - financing and refinancing
 - refurbishment programme
 - leasing of concessions within the hotel
 - disputes with operator in respect of payments under the Management Agreement
 - employment issues
 - maintenance contracts for M&E



“According to clients, the ‘perfect’ Hilary McDowell ‘knows practically everything about real estate’. Competitors enjoy working with this ‘very mature and experienced lawyer’ because ‘she makes a deal go smoothly and is always focused on completion’.”

Chambers & Partners Global 2006-2007

International investment

The two happiest moments in the life of a developer and an investor are the moments when they acquire a property and the moment when they sell it. Provided that the project has been well prepared in the stages described in the previous sections of this document, obtaining experienced advice on the sale of the projects enables the sale to close smoothly and quickly

Contact:



Ian Parker
Partner, Bratislava

Ian Parker is an English solicitor and a member of the Slovak Bar Association. He has extensive experience of M&A and other investment in Slovakia and elsewhere in the CEE region. His primary field of expertise is in corporate transactions, in particular in working for private equity, and real estate investment funds as well as advising clients on green-field developments. Ian speaks English and Czech, and understands Slovak.

Case study:

Bratislava (2008)

A successful Bratislava development company was negotiating an investment by an international fund into two of its residential projects in Bratislava. Ian worked together with the developer's in-house legal team to:

- ✔ negotiate the English-law joint venture agreement between the developer and the investor;
- ✔ organize the disclosure process;
- ✔ negotiate the terms of the development services and marketing services agreement (under which the developer remained the service provider) ;
- ✔ negotiate the terms of the ancillary documents such as shareholder loans, parent guarantees, indemnities and counter indemnities;
- ✔ negotiate the terms of escrow agreement with a major international bank acting as escrow agent.

Despite some complicated structural and due diligence issues the transaction closed in October 2008. The developer and investor intend to use the agreed joint venture agreement as the basis for their cooperation on other projects.

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Disputes

Unfortunately even the best prepared projects can sometimes result in disputes. We have extensive experience of dispute resolutions, not only in national courts, but also in domestic and international arbitration. We defend our clients' interests to the utmost at all levels.

Contacts:



Monika Fridrichova
Senior Assistant, Bratislava

Case study:

Slovakia

Monika has represented an investor in a complex set of court and administrative proceedings arising out of third party land title claims. Proceedings have involved district and regional courts and the Supreme Court. She has:

- ✔ - represented the client in court proceedings related to legal title, confiscation, expropriation, restitution, and usucaption of land
- ✔ - defended the client's position in administrative proceedings started by third parties who claimed to be participants to building and use permit proceedings
- ✔ - applied for extraordinary judicial remedy to the State Prosecutor
- ✔ - drafted a constitutional complaint to the Constitutional Court
- ✔ - advised on the possibilities of using preliminary measures such as injunctions.

Proceedings are currently still in progress.

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Experience statement (CEE)

Slovakia

- representing POLUS INV (100% Slovak subsidiary of Trizec Hahn Corp.) in concluding a lease agreement with the Municipality of Bratislava District III for the construction of Polus City Center. Thereafter continued to advise as general counsel on all matters required for completion of construction as well as operational start up, and on corporate and financing matters.
- Bank Austria Creditanstalt AG on regular basis on property finance transactions, e.g. financing of first five (out of planned 11) property acquisitions and subsequent development of shopping centres by Stop.Shop companies throughout Slovakia, financing of the acquisition of all shares in a Slovak company, which owns the IPP office building in Bratislava, by the Heitman group. Our work included drafting and negotiating of the facility and security documentation as well as conducting confirmatory due diligence.
- Eurohypo AG on regular basis regarding various acquisition financings, e.g. financing of the acquisition of a shopping centre in Martin, a logistic centre in Senec and financing of the acquisition of all shares in the company owning the Park One office building in Bratislava by a Spanish investor.
- Erste Bank der oesterreichischen Sparkassen AG with respect to Slovak law security agreements securing a loan to a Slovak development company for acquisition of real estate in Slovakia.
- KBC/CSOB on its financing of the Ballymore EUROVEA development (large-scale leisure, residential, and office complex in central Bratislava)
- Bratislava Airport on the construction of a new passenger terminal in Bratislava.
- Alpine Slovakia – project TRI VEŽE Bajkalská – on regular basis.
- A Belgian developer on title report on land ownership and acquisition of land in Slovakia and Slovak law issues with respect to development of a hotel project.
- Gretsch – Unitas GmbH (GU Slovensko) on acquiring ownership title to land, title report, construction of plant.
- CERES - Vienna Gate - Hynes, Vienna Gate - Tancred in purchase of flats for expats.
- Raiffeisen Leasing GmbH – in title report to the land ownership, acquisition and leasing of real estate property in Trnava, Senec and Košice.
- Raiffeisen Leasing GmbH in acquisition of land and potential financing of future development of flats.
- Bilfinger Berger on regular basis with respect to questions of Slovak property and construction law in particular relating to FIDIC based construction contracts. We have, for example, advised Bilfinger Berger on Slovak law issues with respect to the project Eurovea in Bratislava or with respect to the construction contracts in the tender process for the project Panorama City in Bratislava, construction of a part of highway D1, road I/64 by Topolčany and reconstruction of the flood barrier in Štúrovo.
- Mayfield on developments in Žilina, Košice and Bratislava.
- First Title on confirmatory report on accuracy of the due diligence report produced by the land owner for title insuring company.
- Slovak government on PPP investments into three motorway construction projects;

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- ✔ LUTZ Moebelhaus International in initial expansion in development of furniture wholesale centres network.
- ✔ Swiss Rieter Automotive on its proposed greenfield investments in Slovakia.
- ✔ A fund managed by Pramerica Real Estate Investors on the acquisition of Tulip shopping centre in Martin, Slovakia.
- ✔ Baumax/Fritz Schoemer on expansion of DIY market.
- ✔ EWD SL Group on real estate restructuring project. Work included due diligence of legal title to land and legal opinion addressed to title insurer.
- ✔ BZ Group on hotel project in Bratislava city centre; on development of Business and Shopping Centre Poprad (in pipeline); on the biggest residential complex (750 flats) in Bratislava (65.mil Euro, 2006); on preparation of a new international hotel complex in Bratislava; on construction of the apartment development in Novosvetska – Šulekova in Bratislava. Work includes property acquisition, construction, contracts, project financing and structuring and corporate matters.
- ✔ TATRACENTRUM Bratislava/Raiffeisen Property Invest, GmbH/ on contractual relations and general development advice.
- ✔ BAUMAX – on legal and tax issues in preparing its 35 store network.
- ✔ Big Box (Credo Group) – comprehensive legal support in the development of retail chain in Slovakia.
- ✔ IKEA Projekt Bratislava on development of the shopping centre in Bratislava.
- ✔ RREEF in its joint venture with Prague-based property development company Discovery Group to develop a 30 million Euro retail shopping centre in Nitra, Slovakia.
- ✔ Indian Apollo Tyres on its proposed greenfield investment.

Bulgaria

- ✔ Advised on the sale of 100% of the shares of the capital of TriGranit Development Bulgaria EOOD, a wholly-owned subsidiary of TriGranit Holding
- ✔ Advised on the registration of certain TriGranit trade marks in Bulgaria,
- ✔ General legal advice to TriGranit (2006)
- ✔ Tishman International on one of the biggest real estate developments in Bulgaria budgeted at €250 million. The project involves the acquisition of real estate assets located 300 metres from the new Sofia airport terminal for the development of a multi-purpose mix of offices, logistics, hotel and storage facilities
- ✔ Land America Financial Corporation Inc. in relation to a shopping centre project located in the tourist region of Varna, Bulgaria.
- ✔ a leading New York based Real Estate Company in relation to a proposed retail park development near Sofia with joint venture partner

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- Iberdrola Inmobiliaria, the leading Spanish real estate investors in relation to their acquisition of land near the village of Lozenetz on the Black Sea coast. The company acquired 11 neighbouring plots adjacent to the coast for the purpose of developing a tourist resort consisting of hotels and residences. The total area of the land plots is approximately 126 000 sq. meters and the deal value is EUR 31 million. The acquisition involved complex negotiations with multiple sellers and advice on the new Black Sea coast development.
- Westhill, a UK investment advisory company and property developer, in relation to its proposed residential developments in some of the most popular tourist regions of Bulgaria
- Bridgecorp Plc - advising client on the purchase of land and development rights for the construction of a Bourgas Mall - a deal of approximate value EUR 59 million and on the subsequent preparation of leasing agreements and relevant documentation
- Merrill Lynch International (London) and joint venture partner, Pinnacle in relation to a commercial real estate development near the towns of Kostinbrod and Bozhurishte, Bulgaria

Czech Republic

- Advising a joint venture between Orco and TriGranit in relation to the construction contract for the development of a Courtyard by Marriott hotel in Luxembourg Plaza in Prague 2
- PZ Stavinvest s.r.o. on the financing of development of warehouse and administration facilities; and refinancing of all existing facilities
- Mayfield Management s.r.o. on a new development project in Prague - Šeberov. Corporate, commercial and real estate advice, consisting of structuring the deal, acquisition of shares of Impost s.r.o., establishing the special purpose vehicle, drafting agreement on provision of services and purchase agreement for acquisition of real estate from Městská část Prahy
- Bank Austria Creditanstalt on the construction finance of shopping mall Palác Pardubice
- Mayfield Group on the development and of office building Radlice Louvre in the Mayfield Galleries complex
- DHL Exel Supply Chain, s.r.o. on the build and lease of new logistics facilities in the Czech Republic (Pohořelice)
- Standard Life Investments Ltd. in its joint venture with PDC Europe in respect of various development sites in the Czech Republic and Poland

Hungary

- TriGranit Zrt on a tax litigation matter in connection with a VAT reclaim. Also advised the client regarding a duty payment dispute against the Tax Authority. Value - app. EUR 650,000
- TriGránit Zrt.: advising in connection with various projects forming the new "Palace of Arts", including the new national Concert Hall and the Ludwig Museum, as part of the Millennium City Center in Budapest, utilizing PPP and other innovative project structures as part of a diverse, multi-purpose public and private development plan.
- *Advising in connection with the development of a new headquarter for Vodafone, including negotiation of the lease agreement and assistance in the financing.
- WING Zrt. on the development and construction of the future government district in Budapest, Hungary. Representing the client as one of the bidders on the PPP project

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- ✔ A major Hungarian developer on all aspect of regarding the construction of the new headquarter of Hungary's national public-service media supplier.
- ✔ Futureal, a major Hungarian real estate developer, on the forward sale of a future shopping mall, Corvin Atrium (as part of the Corvin Setany development project) in Budapest to Kleppiere
- ✔ Futureal on the property development and acquisition of and office building in the XIII district of Budapest
- ✔ Futureal on the forward sale of a shopping centre in Nagybánya, Romania: The retail project, to be called GOLD PLAZA, aims at becoming the dominant retail development of the whole Maramures region

Poland

- ✔ day-to-day legal assistance to a Polish developer Dom Development with regards to all aspects of their business activity, including construction of residential and commercial projects in Warsaw
- ✔ Layetana Developments Polska in transactions involving purchase of land and development of residential projects.
- ✔ Opal Property Developments in transactions involving purchase of land, development and financing of residential projects
- ✔ Bank Peako S.A. on the acquisition of property and development of five residential projects in Warsaw
- ✔ TMW Pramerica Property Investment GmbH on the acquisition of a commercial property in Kraków

Romania

- ✔ Eurohypo on a EUR 150 million syndicated investment facility made available to the Anchor Group for purposes of refinancing certain outstanding facilities related to the construction and operation of a shopping centre.
- ✔ Salamanca (group of Fleming Family & Partners) in relation to land acquisitions and joint ventures for residential developments
- ✔ Atenor, a leading Belgian real estate investor (regional client for CMCK in South-East Europe) on land purchase and partnership agreements on an ideally situated plot, allowing the phased construction and development of a series of office and shopping buildings in Bucharest (with a total useable area of 60 000 m²)
- ✔ Mivan, one of the world's most versatile specialist construction companies, present in over 40 countries in 30 years and specialises in Interiors & Theming, Property Development and General Contracting, in relation to development issues and the lease of retail units in a chain of shopping centres located throughout Romania
- ✔ Westhill in relation to land acquisitions for the development of shopping malls, joint-venture, borrowing, forward-sales and leasing of retail units

Russia

- ✔ a Russian developer on the forward sale of a shopping mall in Moscow to a European investor (approximately USD 350 mln), the second largest real estate transaction on the market
- ✔ a major local developer - representation of landlord in leasing of approximately 200,000 thousand sq. meters of warehouse premises to various tenants, including lease and preliminary lease negotiations, and specialised fit out requirements
- ✔ a major local developer (as borrower) - on over USD 450 mln. property financing (as a borrower) in Moscow region and Leningrad region
- ✔ RREEF on several acquisitions of property in St Petersburg and regions of Russia
- ✔ European property investment banks, including Eurohypo AG and Aareal Bank on real estate aspects for many large-scale property financing deals, including a USD 450 mln debt financing in the hotels sector, a EUR 220 mln loan to refinance Ritz Carlton hotel in Moscow;
- ✔ Merrill Lynch on a US\$ 110 mln structured acquisition financing of a shopping centre in Moscow

Ukraine

- ✔ a major European developer on a joint venture to construct a 120,000 m² office development on Kyiv's Left Bank
- ✔ a major Ukrainian developer on the acquisition and development of a 75,000 m² and commercial centre in Kyiv
- ✔ an European developer on the acquisition and construction of a 120,000 m² business park near Boryspil airport
- ✔ EuroHypo on its first loan transaction in Ukraine, a loan agreement for over €75 million to refinance the construction of a major office building in Kyiv
- ✔ HypoReal on its \$140 million loan to finance the acquisition of Globus shopping centre, Kyiv
- ✔ WestLB in a \$65 million loan facility for a real estate project



For me CMS leads the field for construction law. The CMS lawyers I have worked with across Europe and beyond, over the last 7 years, have combined industry knowledge, legal expertise and a can-do spirit the like of which I haven't seen in other firms.)

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Law-Now

Latest updates on legal developments

Keeping up-to-speed with the constant stream of legal developments can be a daunting task. Trying then to determine what is of relevance to your business, and whether or not it is a major issue is another matter. Law-Now is our electronic news alert service that keeps you apprised of important legal issues and what you need to do about them.

You can register on-line for this service at www.law-now.com and receive alerts on the important legal developments across a number of legal jurisdictions. It is a free online information service.

Law-Now service covers a range of topics including *Slovakia: General business issues* category, as well as real estate, construction and banking topics from other jurisdictions that are likely to be most relevant to you.

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