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# 20 questions for real estate investors

Slovakia

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# Part A

## Parties and Interests

### 1. Parties – Who can own real estate?

Any legal “person” may own real estate. This definition will include individuals, companies, entities established by statute, (e.g. associations of individuals and/or legal entities, associations accumulating property for a given purpose, units of local self-government/self-administration) plus Slovak state itself.

Bodies that are not legal persons, such as unincorporated associations, cannot own real estate directly. Potential owners of commercial real estate include: private developers, insurance companies, banks and other financial institutions, private or public property companies, the Slovak State and local authorities.

From private business transaction is excluded certain property such as natural heritage, rivers, historical monuments, etc., which can be owned only by the Slovak State or municipalities.

After EU accession, all foreign individuals and legal entities are entitled to acquire ownership on real estates in the Slovak Republic with the exception that

- i) they may not acquire land in the “agricultural land fund” located outside the border of the build-up area of a municipality and land in the “forest land fund” located outside the border of a build-up area of a municipality, except of
  - Foreign individuals and legal entities that inherit the property,
  - Foreigners with Slovak citizenship, and
  - EU citizen with the right to temporary residence permit with respect to land in the “agricultural land fund” if he has been farming such land for at least three years after EU accession.
- ii) to real estates whose acquisition is restricted by separate regulations (natural heritage, rivers, etc.)

In order to avoid restriction in respect of direct ownership of real estates by foreign nationals, acquisition through a Slovak-based company (LLC or similar) is often used.

## 2. **Property – What property interests are currently sold?**

Slovak law recognizes several forms of interest in property. These include:

- Ownership
- Right of possession
- Limited property rights – e.g. mortgages, easements, pledges and contractual rights, such as leases.

However, current practice dictates that only ownership interests are sold. The assignment of rights and transfer of obligations under occupational leases is relatively rare with subletting being favored.

Much commercial property is sold by way of a share rather than as assets sale, where the real estate is owned by a special purpose vehicle and the shares in it sold.

A person who treats property as his own or exercises such right for himself is deemed to be the possessor of the property in question. If person, taking into account all the circumstances, posses the real property in good faith for a 10 year period, he might acquire ownership of the real estate by virtue of adverse possession (“usucapio”).

As in some other civil law jurisdictions, leases under Slovak Law do not create a property interest, but merely create a contractual right to use property. Right created under leases is not registrable at the Cadastral Registry, except land leases with minimum period of lease 5 years. The period for which a lease can be entered into is not limited by law, and depends on the agreement of the parties.

Generally, there are three types of leases recognized under Slovak law:

- Leases of property in general regulated by the Civil Code
- Leases of non-residential premises, regulated by Act on the Lease and Sublease of Non-Residential Premises as amended and by Civil Code (Act on Leases)
- Leases of agricultural land, regulated by Act on Agricultural Land.

In practice the Act on Leases governs only leases of non-residential (ie. commercial) premises where only part of a building is leased, such as multi-let office buildings, shopping centres and the like, and not to a letting of a whole building or land. The Civil Code, on the other hand, applies to leases in general.

It should be noted that the Civil Code stipulates explicitly that on a change of the owner of real estate, a tenant is entitled to terminate its lease agreement.

### 3. **Ownership – What types of ownership are there?**

Ownership is the highest title a legal person can hold in relation to property under Slovak law. Ownership of real estate can be equated to freehold title under Anglo-American legal systems.

Most of the real estate in the Slovak Republic is subject to registration at the Cadastral Registry. All land and most developments must be registered.

Ownership is freely transferable. Agreements on the transfer of ownership title must be entered in the Cadastral Registry. Ownership title passes upon execution of the decision of the Cadastral Registry.

Ownership may also be acquired via possession. For this to occur, property must be in the possession of a so-called "rightful possessor" who believes in good faith that the property belongs to him for an uninterrupted period of 10 years.

It should be noted that under Slovak law the owner of a building is not necessarily the owner of the land beneath the building, as it is possible to have separate ownership of a building and the land plot on which it is constructed. Care must be taken to establish whether ownership of a property has been split in this manner.

Slovak law distinguishes between exclusive ownership and co-ownership of land and buildings. This means that a condominium style ownership is permitted where, for example, a person may be exclusive owner of a part (unit) of a building and co-owner with other unit owners of the common areas, the structure and the land on which the building stands. Alternatively, more than one person may own the whole of a building and/or plot of land. In each case, the co-owner is said to have an "ideal" share in such common parts or the whole of the building or land plot.

### 4. **Matters burdening or benefiting real estate – What matters can affect real estate?**

Common matters affecting real estate include:

Matter	Effect	Example
Easements	Under Slovak law, easements can be personal (in personam) or connected with the ownership of real estate (in rem). A personal easement exists when property is encumbered in of an individual legal entity. This right cannot be transferred and usually expires on the death or winding up of the entitled legal entity. Easements which are connected with the ownership of real estate are similar to Anglo-American easements, as the property is encumbered with the rights of the owner from time to time of the other property in question. This easement runs with the	A right of way; a right to construct a building on land the ownership of a third party land; a right to use pipes and cables

Matter	Effect	Example
	property when ownership is transferred. An easement must be entered in the Cadastral Registry to exist.	
Mortgage	<p>A mortgage is established either on the basis of:</p> <ul style="list-style-type: none"> <li>➤ a written contract</li> <li>➤ an agreement on the settlement of inheritance which has been approved by the court</li> <li>➤ a decision made by the court</li> <li>➤ a decision made by an administrative authority or</li> <li>➤ law.</li> </ul> <p>A mortgage must be entered in the Cadastral Registry to become effective, and once registered will give the mortgagee priority over unsecured creditors of the borrower.</p>	Mortgage securing receivables arising out of a loan agreement.
Adverse possession	Acquisition of ownership to real estate based on long term possession in good faith.	Rightful possession of real estate for more than 10 years in good faith that the possessor is a rightful owner.
Contractual rights	<p>Leases (see above) – contractual right to use the property.</p> <p>“Pre-emption right” is a right of the seller to be offered purchase of the real estate in case the buyer wishes to sell the real estate to a third party in the future.</p> <p>Pre-emptive rights can be established either as in personam or in rem rights. In personam pre-emptive rights cease to exist with transfer of the real estate to the third party.</p> <p>In rem pre-emptive rights (remain in place after a transfer of the property), and must be recorded in the Cadastral Registry.</p>	

## 5. Occupation of real estate – Who may occupy real estate?

Real estate is usually occupied by one of the following categories of person:

- Owners - persons with an ownership right to the property
- Tenants - persons with a lease of the property or part of it. It is possible to create a sublease to a leased property. However, a sublease of the property is usually subject to approval of the owner of the property
- Rightful possessions – persons who have occupied the property for a prescribed period of time in good faith, without having any legal rights to do so, but without challenge by the owner of the property
- Persons benefiting from the right of easement – person who may use the property on the basis of in personam (personal) or in rem easement.

## 6. Brokers - What is the broker's role?

Brokers in the Slovak Republic are employed by any party to any transaction involving real estate. Their role may include any of the following tasks, namely:

- acting for a seller to find a buyer for a sale property, including marketing the property for sale
- acting for a landlord to find a tenant for a leasehold property, including marketing the property
- acting for a buyer to find a property to buy
- acting for a tenant to find a property to lease
- acting for any party to a transaction drafting and negotiating heads of terms
- valuing a clients' existing and target properties
- day to day management of property owned by clients, including managing maintenance programs and landlord and tenant work and
- project management of development of new buildings or refurbishments.

Brokers available in the market range from those employed by major international organizations to specialized advisers providing advice on a more restricted basis.

## 7. **Employees - What employment issues affect real estate acquisitions?**

Typical employment issues which may be relevant to real estate transactions include (i) the acquisition of real estate through the transfer of business enterprise of the company that owns real estate and (ii) the transfer of the shares of the company vehicle that owns real estate.

In the event of the transfer of a business enterprise of a company that owns real estate, rights and duties arising from employment relationships with employees of the enterprise pass from the seller to the buyer. The change in the entity of "employer" applies as a consequence of the transfer of enterprise.

In the event of the transfer of shares of the company vehicle that owns real estate, the "employer" remains unchanged and as consequence the rights and duties of "employees" remain unchanged.

In both cases above:

- accrued continuity of employment is preserved
- the buyer cannot unilaterally change the terms and conditions of employment agreements by reason of the transfer; the buyer can only agree on changes with the employee and
- elected representatives of the employees must be informed and consulted about the transfer of a business enterprise.

Redundancies may arise as a result of a dismissal of employees where there is a reduction in the number of employees required. Care should be taken to ensure that the redundancies are carried out in a procedurally fair manner.

# Part B

## Procedure and Terms

### 8. Procedure - What are the steps in a sale and purchase transaction?

Commercial real estate transactions usually start when proposed heads of terms are drafted, negotiated and agreed by the seller and the buyer. The heads of terms (or letter of intent or memorandum of understanding) set out the principal terms agreed between the parties and are generally expressed to be "subject to formal contract" and not legally binding. They form the basis of the documents to be drafted by the lawyers.

Once the heads of terms have been finalized, they are sent to the parties' lawyers. The seller's lawyers will usually collate all information relating to the property and send it to the buyer's lawyers together with a draft of an agreement to conclude a future transfer agreement (future agreement) with the form of transfer agreement attached. A future agreement is not required if there are no conditions to the purchase, in which case the parties proceed direct to the transfer agreement. The buyer's lawyers undertake thorough due diligence of all legal documents relating to the property (see section 10). If the purchase is made with borrowed finance, the lender of the finance may instruct its own lawyers to carry out due diligence on its behalf and negotiate loan and security documentation.

Once the form of future agreement and transfer agreement are agreed, the seller and buyer sign the future agreement. Once the conditions to the purchase (if any) are satisfied one party will invite the other to conclude the transfer agreement.

Before signing the future agreement and the transfer agreement, the buyer's lawyers will conduct a search at the Cadastral Registry to ensure that the seller still owns the property and that there are no new encumbrances affecting the property.

The signature of the seller (transferee and/or obliged party by encumbrances) on the transfer agreement (but not the future agreement) must be verified by a notary. The future agreement and transfer agreement may be signed in English with a certified Slovak translation of the transfer agreement prepared for registration purposes, although in practice it is better to also sign the Slovak version of the transfer agreement for registration purposes.

Following conclusion of the transfer agreement, the lawyers need to deal with registration of the transfer documents at the Cadastral Registry. It is common practice for the purchase price to be paid into escrow (bank or notary) to be released partly on registration of the buyer as the exclusive owner in the Cadastral Register free from encumbrances.

## 9. **Other common contract terms - What other provisions does a real estate sale contract commonly contain?**

An agreement for the sale and purchase of property must be in writing, must contain all main terms and conditions as specified by the law, and must be signed by both the seller and the buyer. The signature of the seller (transferee and/or obliged party by encumbrances) must be notarized.

Provisions relating to value added tax will be included where relevant to ensure that the agreed tax position is preserved. Besides the essential terms of the sale and purchase agreement, such as the exact specification of the property and price, the document should also mention the following, namely:

- the title document under which the seller acquired ownership
- all liabilities burdening the property (mortgages, easements, pre-emptive rights, leases)
- the conditions of payment of the purchase price
- a date of a handover/takeover of the property
- a provision on which of the parties will file the petition for the change of ownership
- the conditions on the basis of which any party will be entitled to withdraw from the agreement and
- a seller's warranty that it is a sole unrestricted owner of the property and that the real estate is and will remain in the (legal and actual) condition described in the agreement until registration of the buyer's title in the Cadastral Registry.

## 10. **Due Diligence - What investigations does the buyer normally make?**

### **General**

The prudent buyer is likely to commission a survey of the building and in appropriate cases, soil and geological investigations, plant and machinery tests and environmental investigations.

There are three limbs to due diligence by the buyer's lawyers.

Firstly, title to the property will be investigated. The buyer's lawyers will consider the entries on the Cadastral Register and, where relevant and possible, historical title documents.

By submitting details of the property to the Cadastral Registry, the buyer's lawyers will receive the relevant list of ownership for the seller and the property confirming whether the ownership right of the seller is registered. Additional details of the registered interests (easements, mortgages, pre-emptive rights) then need to be obtained from the Cadastral Registry. If the

ownership list reveals a "P" (plomba) in the relevant section it means that there are pending proceedings regarding the property. More details about the pending proceedings can be found in the relevant Cadastral Registry.

Where the property is leased, or subject to other occupational interests, the terms of the relevant occupational documents e.g. administrative permits to be considered carefully to ensure they are not contrary to the buyer's intentions for the property. The buyer's lawyers will also need to check whether these documents require the consent of any third party to be given to the transaction.

Secondly, the buyer's lawyers will carry out due diligence, which will include conducting various searches to check the position regarding municipal land use plan and zoning plans, environmental matters, financial encumbrances etc. Where the seller is a company, the buyer's lawyers will also conduct corporate searches of the seller at the Companies Register to ascertain whether or not the company is registered or declared bankrupt and therefore able to dispose of its assets freely, the current name and registered office of the company and who is entitled to act on behalf of the company.

Thirdly, the buyer's lawyers will raise additional enquiries of the seller's lawyers to obtain information regarding a large number of practical matters which may affect the property and ask any relevant questions in relation to the title to the property.

#### **Pre-completion**

Very shortly before completion the buyer's lawyers will also conduct searches at the Cadastral Registry for confirmation that there are no pending proceedings regarding the property and at the Companies Registry for confirmation that the seller has not been declared bankrupt. These searches should confirm that the information gained in the due diligence process remains unchanged just before execution of the transfer agreement.

#### **Reporting to the client**

Before the signing of agreements, the buyer's lawyers usually report their due diligence findings to their client, raising any matter of particular importance or concern.

## **11. Terms implied by law – What provisions are implied by Statute, Code or otherwise?**

Some of the most significant issues are as follows:

#### **Registration of ownership**

To complete the process of the change of ownership, the transfer agreement must be filled with the Cadastral Registry. Ownership title passes upon execution of the decision of the Cadastral Registry. The entry in the Cadastral Registry has constitutive effect.

**Principle of availability for public inspection:**

The Cadastral Registry is a public register accessible to everyone.

**Principle of trust:**

Anybody may trust in good faith that the entry in the land register are complete and correct, if at the moment of acquisition of title no proceedings have been registered which contest the content of the land register, or if the land register content does not give rise to controversial provisions which would contradict the prevailing legal situation.

**Principle of rank or priority:**

Applications for registration with the land register (land register applications) will be dealt with in the order in which they are received). The year, the month, the date, the hour and the minute of the submission shall be marked on the application for registration.

**Change of Landlord:**

It should be noted that the Civil Code explicitly stipulates that on sale of the property which is subject to leases, although the new owner takes position of the landlord vis-à-vis the tenants, a tenant is entitled to terminate its lease agreement. Unless agreed otherwise by the parties, this provision shall not apply for the lease of non-residential premises under Act on lease and sublease of the residential premises.

## **12. Registration and Notarisation of real estate - What are the basic requirements?**

The Slovak Republic has a central land register the Cadastral Registry. The Cadastral Registry is run through regional district land registries which are responsible for specific areas of the country. The Cadastral Registry shows the legal status and details of the owners and other persons authorised in connection with the property. As the Cadastral Registry is publicly accessible, third parties are assumed to have knowledge of the content of the records kept by the Cadastral Registry.

The Cadastral Registry provides a record of who owns the property, the registrable rights benefiting or burdening the property and the title under which the owner acquired the property. The record is contained on an ownership list (title deed), which shows all property owned by a particular legal entity or natural person in certain cadastral area.

- ▶ Part A of the list of ownership gives the description and the location of the property by reference to land plots and identification numbers for buildings, together with any rights benefiting the property and a note on protection of the property. It should be noted that the street addresses of the property is not shown on the list of ownership for the property,

therefore, for better identification is it sometimes advisable to take an advice form the qualified geodet

- Part B of the list of ownership gives details of the registered owner of the property
- Part C of the list of ownership gives description of the rights encumbering the property, such as mortgage rights or easements or pre-emptive rights
- the list of ownership can contain various pieces of relevant information relating to the property
- the list of ownership refers to agreements or document on the basis of which the ownership as well as the other rights registrable in the Cadastral Registry were created.

The Cadastral Registry may also contain where appropriate a special nope P (plomba) which might mean either a pending procedure concerning the property or a restriction of the owner's ability to deal with its ownership title without the consent of another party.

### **13. Disputes - How are they dealt with and resolved?**

Agreements on acquisition and disposal of property as well as agreements on rights registrable in the Cadastral Registry must be governed by the Slovak law. The parties can choose what method of dispute resolution they would prefer. Methods of dispute resolution could include court proceeding or arbitration. The choice should be stated expressly in the contract. If not, disputes will be determined by the relevant Slovak court.

Arbitration may be conducted by the Slovak Arbitration Court attached to the Economic and Agricultural Chamber of the Slovak Republic, or by another permanent arbitration court or by any arbitrators chosen by the parties.

Arbitration proceedings are favoured particularly in cross-boarder high volume transactions. Arbitration proceedings have the following advantages/disadvantages:

- except in certain limited circumstances, it is not possible to appeal against the arbitral award rendered at the end of proceedings
- rapidity and considerably fewer formalities
- possibility to appoint a selected arbitrator/specialist to decide on complicated/technical matters
- wide scope of enforceability of arbitration awards all over the world.

When choosing the method of resolving disputes, the parties will have to regard to various issues, including the following:

- The domicile/nationality and governing law of the contracting parties and any relevant statutory limitations which may inhibit such choice or the effectiveness of such a choice
- Whether or not awards can be enforced in the relevant jurisdictions. For example, is there an international treaty that will allow enforcement of an award in a particular jurisdiction? Many jurisdictions will not enforce awards that have not arisen through the consideration and final judgment of a court/judge
- The fact that obtaining the decision of an expert may be faster and cheaper than obtaining one from arbitrator.

The Slovak legal system does not provide specific regulation for nor does it legally recognise mediation proceedings.

# Part C

## Permits Insurance and Environment

### 14. **Permits - What permits are required for the use and occupation of real estate and are they personal?**

Applications to obtain a planning permit to develop land must be filed with the local construction authority, which has responsibility for controlling the use and development of land in its area. Local construction authorities have statutory time period within which a decision must be made as to whether a planning permit should be issued. There are various statutory rights in relation to appeals, which can be made if an application is refused. The applicant does not necessarily need to be the owner of the land so anyone can apply for a planning permit in respect of land, provided that the applicant received the approval of the owner of the land on which the applicant intends to build. During the planning permit proceedings the relevant authority considers each application with regard to (i) compliance with the zoning plan of relevant territory (ii) protection of the environment and health and safety and (iii) the standpoints of other participants in the planning proceedings. A planning permit will contain conditions which will regulate the impact of the development of the land.

Construction cannot commence until a valid, effective building permit has been issued. The construction authority determines the binding conditions for implementation and use of a development in the building permit. The conditions determined by the construction authority will ensure protection of public interests during construction and use of the building, its integrity, compliance with the general technical building requirements, or other regulations and technical standards, and also compliance with the requirements set by the state administrative authorities concerned, primarily the exclusion or restriction or negative impact of the building and its use on the environment. A building permit generally ceases to be valid if construction has not commenced within two years of the date on which the building permit took legal effect, although a longer period may be granted by the construction authority, or the validity can be extended on request by the applicant.

Generally, a building permit will be required for the construction of a "new build" property and for work that is proposed for refurbishment of an existing building, and where an existing use (for example office space) is to be changed to another distinct use (for example retail premises). Minor building works do not require a building permit only announcement.

If works are to be carried out to historically or architecturally important buildings, the investor must get a positive statement from the cultural heritage protection authority before a planning or building permit will be issued.

During the consultation period that the local construction authority must undertake, interested third parties are able to put forward objections (or support) that should be considered by the authority before deciding whether a planning permit or building permit should be granted. In addition, even after permit has been obtained, there will be a period within which third parties are entitled to challenge the validity of permits granted and this should be kept in mind by lawyers and agents acting for the developer, before any work on the permitted development begins.

Once a building has been constructed or construction works completed, an application must be made to the construction authority to issue an occupancy permit. The construction authority examines whether construction has been carried out in accordance with the planning and building permits and with applicable building regulations and health, safety and environmental legislation. The occupancy permit issued by the relevant construction authority then approves a use of a building for a particular purpose.

A building cannot be occupied and lease cannot be valid in relation to it, until an occupancy permit is issued.

## **15. Insurance and Risk - What insurance will the parties effect and when does the insurance risk pass at the time of sale?**

Before a sale is completed, insurance is generally the responsibility of the owner of the property. However, where such property is the subject of a lease, the terms of the lease can prescribe which party has responsibility to insure.

The insuring party should have a fully comprehensive buildings insurance policy to protect the structure and fixtures and fittings of the property in the event of damage or destruction by any of a comprehensive list of insured risks, such as storm, lightning, fire and water damage. The policy may also cover additional special heads of cover such as subsidence, earthquake and, if available, terrorism.

In certain areas of the Slovak Republic, the policy usually also covers flood coverage but premiums and excesses are quite high, due to the number of claims made in recent years.

Insurance policies (the insurance contracts containing the contractual terms between the insurance company and the insured) may either comprise a single policy for one particular property or a block policy designed to cover a portfolio of properties. Larger institutional investors may self-insure.

In recent years, it has been possible to take out insurance if there is some specified defect in the title to the property. For an additional premium, the benefit of such policies may usually be claimed by subsequent owners of the property and tenants.

Insurance policies (except title policies) are personal and not transferable on sale. On a sale, timing of the transfer of risk is normally prescribed by the transfer agreement as being the date of filing the application to the Cadastral Register to register the transfer.

## **16. Environmental - What are the common environmental issues?**

Real estate may be contaminated as a result of current and former uses. Primary legal responsibility follows the "polluter pays" principle: the person who spilled, released or discharged a substance will normally be liable for any ill-effects it causes. However, environment laws may also operate to make future owners and occupiers liable for contamination already present at the real estate when they acquire it. This can occur if:

- the substance is causing, or there is still potential for it to cause, actual harm to humans, to real estate, to personal property, to protected ecosystems or pollution of groundwater or surface waters, as each owner is obliged to maintain its property in such a state so as not to cause any loss and damage to any third person or protected ecosystem or surface waters and
- either the new owner knows about the presence of the substance but fails to take adequate steps to limit the harm it causes, or no person more directly responsible for causing or knowingly permitting the substance to be present at the real estate can be found (for example, because a more directly responsible company has since been wound up).

If development is proposed, then planning permission may be issued only after an environmental impact assessment of the construction on the environment is submitted to the building authority and the planning permission may set conditions under which the development may be carried out to prevent potential contamination.

Acquisition due diligence may involve the appointment of environmental consultants to consider documentary information and to carry out a site visit (Phase I). If considered necessary, further, intrusive investigations (Phase II) may then be undertaken. It is important to identify potential problems early so that there can be negotiation on price, the need for and scope of any remediation and/or the need to put in place protection in respect of any existing contamination related losses that may arise in the future. Such protection may take a number of forms, including obligations to remediate any contamination discovered post-acquisition, indemnities in respect of first party loss or third party claims to cover any of these risks.

# Part D

## Finance and Taxes

### 17. **Pricing/Valuation - What sets the price/valuation of real estate?**

Pricing of real estate investments is a combination of the aggregate rent being paid by occupational tenants of the property and the value that investment buyers consider that a property of the specific type and location is worth at the time of valuation taking that income into account.

The rent for a particular property is likely to be assessed by multiplying the area of the property by the market rental value per square metre. The market rental value will take into account factors such as the location of the property, its type and condition, and the length of the lease term. A fair value of the property is interacted to a "general value" determined by valuation of the property depending on special legislation (Act on valuers and interpreters) which stipulates rules for property assessment based on the nature of property (property method) or present value such as discounted rent income (business method).

Again, there is no fixed methodology for assessing the value of the property for investment purposes and the international developers and investors active in the market tend to use the methodology used in their home countries. Exchange rate risk is taken into account in valuation of leases, with leases, where the rent is quoted in Euro, even though payable in Slovak Crowns, attracting a higher valuation.

### 18. **Financing - How is a real estate acquisition financed?**

The principal ways in which real estate acquisition is financed are:

- Through the buyer's own cash resources or general corporate banking facilities
- By using the capital value of the property to raise specific finance secured on the property.

A typical security package will involve the grant of mortgage over the real estate itself together with supporting pledges over the shares of the borrower, bank accounts, insurance policies, rental income from the property and the like. Floating charges used in common law jurisdictions are not recognised by the Slovak law. However, the Slovak law does have a concept of a pledge of an enterprise which in fact is similar to a floating charge, but not so frequently used.

Under the Slovak law, if bankruptcy proceedings are commenced in respect of the borrower, a bankruptcy administrator is appointed by the court. In case of bankruptcy or administration of the property owner, the mortgage creditor has a priority right in the pledged property.

## **19. Security over real estate - How is security over real estate created and protected?**

A fixed security interest over land or building is generally created under a document called a mortgage. A pledge over movable assets, a pool of assets or over an enterprise, must be registered in the Pledge Register held by the Notary Chamber. In case of land, buildings, apartments or other real estate property to which the title is registered in the Cadastral Registry, all mortgages must be registered in the Cadastral Registry by making an appropriate application to it. For unregistered real estate such as minor building works, mortgages must be registered at the Pledge Register.

## **20. Taxes and Costs - What are they and who pays them?**

### **Land transfer tax (transfer tax)**

The real estate transfer tax was abolished and, therefore, there is no taxation on the transfer of land.

### **Income tax**

The gain (profit) accrued by the sale of real estate is taxable by corporate income tax or personal income tax. The corporate tax as well as the personal income tax rate is 19% (flat tax). Rent as well as gain on disposal of the property is taxed in general tax basis of the company derived from accounting books. Certain personal income tax exemptions may apply for persons owning real estate for at least 5 years and for persons owning a flat for at least 2 years, if he has registered permanent residency in that flat.

### **Value added tax**

The VAT rate is 19%. VAT exempt is the supply of a land with exception of supply of a building plot. Building and related land are exempt from VAT passing 5 years from a day of the first use of the building after its construction. Lease of the property or part of the property should be exempt from VAT unless VAT payer decides differently, the lease can be then taxable delivery to tenant registered for VAT purposes. If the VAT payer supplies the building plot, this supply is subject to VAT. If the purchaser is a subject registered for VAT, it may have the right to deduct VAT (if the building plot will be used for the provision of taxable supplies of the purchaser).

### **Municipality taxation**

The municipality taxes include land tax and building tax. Rates of the real estate taxes are within the competence of local municipalities. They are paid by the owner or administrator of the property.

### **Registration fees**

The fee charged by the Cadastral Registry for registration of agreements for transfer or establishment of right of ownership or rights in rem amounts to a stamp charge of SKK 2,000, plus SKK 6,000 should the decision be issued within 15 days from submission of the petition/application.

Registration of mortgages: a stamp charges of SKK 2,000, plus SKK 6,000 should the decision be issued within 15 days from submission of the petition/application.

### **Notary fees**

Notary fees can be charged for verification of the signatures of the parties (SKK 60 per signature), or for preparing a Notarial Deed in the form of the execution title (0.5 – 1% of the value of the transaction).

During due diligence fro an acquisition, the buyer will also pay the costs of conducting searches. The buyer will also pay fro any valuations and surveys of the physical state of the property and any environmental audits and studies or desktop studies.

It is not uncommon on commercial acquisition for seller and buyer to have each appointed its own broker, to whom they will pay any commission due.

Generally each party pay its own expenses.

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