

Chapter 1

Romania

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I INTRODUCTION

i Ownership of real estate

The Roman law system distinguishes between rights *in rem*, as rights over or in connection with real estate, and rights in personam, as personal rights on performance of obligations.

Ownership is a right *in rem* and grants its holder the full right to use and dispose of the real estate. The other rights *in rem* (i.e., superficies, usufruct, easements, *usus* and *habitatio*) grant their holders only part of the attributions of full ownership.

The superficies right is of particular importance to investors and, starting with the New Civil Code (which entered into force as of 1 October 2011),² enjoys unitary regulation. The superficies right entitles its owner to erect and to own a building on a third party's land, with the owner of the building obtaining the right of use on the land. The superficies right can be obtained for free or for a fee and is available for a maximum of 99 years, with the possibility to be extended repeatedly.

The ownership may be public or private. Public ownership belongs solely to public entities (the state, counties or localities) and operates on real estate regulated by law as being publicly owned. Private ownership may belong to public or private entities and operates on any real estate that is not subject to public ownership.

There are several forms of private ownership:

- a* exclusive ownership: granting free use and disposal of the real estate to a single entity;
- b* co-ownership by share quotas: real estate owned by more than one entity on ownership quotas, usually as pro-rata shares; and
- c* joint ownership: real estate owned by more than one entity without determining their quotas (usually in wedlock).

A recent institution under Romanian law is the fiduciary agreement,³ which creates the possibility for any person to transfer rights (including ownership) to one or more fiduciaries (e.g., credit institutions, investment companies, management companies and insurance companies) to exercise full prerogatives of such rights for a specific purpose and period (not exceeding 33 years) and for the benefit of one or more beneficiaries (constitutor, fiduciary or third person).

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2 Law 287/2009 on Civil Code.

3 The fiduciary institution is similar to the trust under the Anglo-Saxon law system.

In Romania, there is no leasehold ownership. A lease is a right in personam and provides its holder only the personal right to use the property in exchange for the payment of the rent during the contractual period.

ii Registration system

Romanian real estate is registered with the land registry operated by the National Agency for Cadastre and Land Registration. The land registry is publicly available and ownership information can be obtained by requesting a land book excerpt. An online system for accessing land registry services was recently implemented and accelerated in 2020 owing to pandemic restraints.

The land book excerpt consists of three parts:

- a the real estate description (surface, location and use type);
- b ownership information (owner, title and relevant documents); and
- c encumbrances (e.g., mortgages, easements, interdictions and litigations).

The registration of real estate with the land registry was given constitutive effect as of 1 October 2011. As a general rule, the rights *in rem* over real estate registered with the land book may only be transferred by registration with the land book, based on the valid title on the real estate. Similarly, rights *in rem* may be cancelled solely by removal from the land registry, based on their holder's written consent or a final judgment.

Nevertheless, this general rule will only be implemented after completing the cadastral measurement formalities within each territorial unit, envisaged for the years to come.⁴

Until then, all formalities with the land book registry only have an opposable effect, so failure to register real estate operations with the land book registry does not affect their validity, but deprives the parties from legal protection against third parties who are not bound to observe these operations.

iii Choice of law

Real estate transactions must observe certain rules to be effective in Romania, such as authentication of the transfer deed by a notary public, registration with the land book registry, price payment in local currency (for legal persons) and a fiscal certificate being attached.

Generally, parties to a transaction on real estate in Romania are free to choose the law applicable to contractual matters to the extent that the chosen law does not prejudice the Romanian legal provisions that cannot be exempted. Should the parties fail to choose a governing law, Romanian law (*lex rei sitae*) will apply.

II OVERVIEW OF REAL ESTATE ACTIVITY

Starting with 2021, Romania's fiscal deficit decreased, and this trend is estimated to continue short term; a growth of 2.2 per cent was estimated for 2023 considering the high inflation and the tightened policy rate. Projections for the next two years indicate a slightly upward trend, with annual growths of 3.6 per cent in 2024 and 4 per cent in 2025.⁵ Monetary

4 The registration procedure with the land book was accelerated by Law 264/2021, which amended and completed Law 7/1996 on cadastre and real estate publicity.

5 <https://mktgdocs.cbre.com/2299/e8e123c5-f516-46db-a17e-bcf28937f65e-799713409.pdf>.

policy is set to remain tight with the policy rate at 7 per cent, affecting the flow of credit to the economy and investments. However, planned investments under the Recovery and Resilience Facility and inflows of other EU funds are set to more than offset the impact of tight credit conditions.⁶

The overall investment volume in the first nine months of 2023 was €246 million, down 62 per cent from Q1 to Q3 2022 (down 81 per cent from the same period in 2022 and 29 per cent from the previous quarter). This result was based on 21 transactions, including a portfolio transaction that accounted for 24 per cent of the total. In the third quarter of 2023, the leading sectors were retail with transactions of €29 million, office space at €15 million, industrial at €10 million and hotels at €9 million.⁷ Comparing the volumes per sector in H1 2023 to H1 2022, there was a year-over-year decrease in transaction related to office space, while retail transaction volumes remained the same and industrial and hotel transactions increased.⁸

The Bucharest modern office stock amounted to 3.38 million square metres at the end of H1 2023. By the end of 2023, two new buildings were expected to be added to the stock, both part of the central office sub-market. With no office building projects estimated to deliver in 2024, future supply is expected to pick up in 2025, when around 109,000 square metres will be brought on the market after the delivery of six office schemes as either standalone projects or part of a business park. In the first half of 2023, total leasing activity in Bucharest amounted to 188,400 square metres, 42 per cent higher than H1 2022. Take-up (total transactions excluding renewal or renegotiation) represented 48 per cent of the total leasing activity and was quite similar to the one recorded in H1 2022. Bucharest prime rent increased in the first months of 2023, reaching €20 per square metres per month at the end of H1 2023.⁹ Office prime yields increased to 7.5 per cent, while the general vacancy rate reached 15.84 per cent.¹⁰

In the first half of 2023, Romania's modern industrial stock reached 6.91 million square metres after the delivery of 223,000 square metres since the beginning of the year. The regional cities notably claimed more in aggregate than the capital city, respectively 73 per cent versus 27 per cent. Nonetheless, the overall distribution of the modern stock continues to indicate Bucharest as the main logistic hub with a share of 48 per cent (3.34 million square metres). By the end of 2023, around 407,000 square metres are expected to be added to Romania's industrial and logistics stock. Headline rent embarked on an upward trend since the year's start, reaching €4.25 square metres per month at the end of H1 2023, while the net effective rent is around €3.75 square metres per month for a 5,000 square metres standard unit. Rent increases can easily be linked to inflation or indexation and construction costs, as well as to buoyant demand and limited availabilities. Production companies take the main stage in terms of demand for logistics and industrial market, claiming 21 per cent in H1 2023 and an astonishing 200 per cent increase compared to H1 2022.¹¹

6 https://economy-finance.ec.europa.eu/economic-surveillance-eu-economies/romania/economic-forecast-romania_en.

7 <https://www.cbre.ro/insights/figures/romania-real-estate-investment-volumes-q3-2023>.

8 <https://mktgdocs.cbre.com/2299/e8e123c5-f516-46db-a17e-bcf28937f65e-799713409.pdf>.

9 *ibid.*

10 <https://mktgdocs.cbre.com/2299/a7d95d0c-f8b9-4974-823b-f63488edd2bf-337442656.pdf>.

11 *ibid.*

Romania's retail stock reached 4.15 million square metres at the end of H1 2023 (forecasted to reach 4.39 million square metres by the end of 2024, considering the under-construction and planned retail schemes comprising total leasable areas of modern shopping centres and retail parks throughout the country). The new additions are represented solely by small to medium-sized retail schemes with a combined surface of 69,300 square metres. Small cities are leading with 87% of the year's deliveries area. At the end of H1 2023, prime rents maintained at the same level from the end of the previous year for high street locations, respectively at €45 per square metres per month, and at €75 per square metres per month for shopping centres.¹²

III FOREIGN INVESTMENT

In 1 January 2014, all restrictions imposed by Romanian law on land ownership by foreign individuals and legal entities from EU Member States were removed. Land acquisition by non-EU nationals is permitted subject to reciprocity,¹³ according to international treaties; however, non-EU nationals cannot acquire ownership of Romanian land under more favourable conditions than EU citizens.

Buildings are not subject to such restrictions and can be freely owned by foreign individuals and entities.

It is common practice for foreign individuals and entities to indirectly acquire and hold real estate through legal entities under Romanian company law.

Foreign investors benefit from national favourable treatment, have access to all sectors of the economy¹⁴ and are granted important benefits, such as the full repatriation of capital and profits obtained in Romania, full protection against expropriation and nationalisation and access to incentives and funds provided by EU and Romanian legislation.

In the context of land market liberalisation, a regulation was enacted in April 2014¹⁵ providing a pre-emption right for co-owners, lessees, neighbouring owners and the state, in this order, at equal price and equal conditions, when selling agricultural lands outside the locality's borders. This regulation has undergone two amendments (in August 2020 via Law 175/2020¹⁶ and June 2022 via the Government Emergency Ordinance 104/2022¹⁷), mainly referring to:

- a* new categories of pre-emptors and amendment of the pre-emption order introduced by Law 175/2020;
- b* restrictive conditions precedent for the purchasers; and

12 <https://mktgdocs.cbre.com/2299/e8e123c5-f516-46db-a17e-bcf28937f65e-799713409.pdf>.

13 The reciprocity principle states that foreign nationals are subject to the same restrictions related to real estate acquisitions as applied to Romanian nationals by their own country.

14 The main investment opportunities and key sectors in Romania are automotive and car component production, aerospace, wood industry, energy and renewable energy, IT&C, infrastructure, agriculture, food industry, pharmaceuticals and healthcare, chemicals, fast-moving consumer goods, tourism, real estate and construction and natural resources.

15 Law 17/2014 on certain measures to regulate the sale and purchase of agricultural lands located outside the locality's borders.

16 For the amendment of Law 17/2014 and Law 268/2001 regarding the privatisation of commercial companies.

17 *ibid.*

- c* clarifications regarding the calculation of the 80 per cent tax due by the seller upon the transfer of agricultural lands before the elapsing of eight years from the purchase date and the payment date of the tax.

IV STRUCTURING THE INVESTMENT

The acquisition of Romanian real estate is usually structured either as an asset deal (by which the real estate is purchased directly) or a share deal (by the acquisition of the shares of a Romanian company owning the targeted properties).

i Asset deal

The asset deal investment may be implemented either by simple acquisition of assets or as transfer of business (ongoing concern transfer). In the latter case, the acquisition includes not only the property, but also the business attached to the respective asset (e.g., movable and immovable assets, agreements, employees and trademarks).

Through direct transfer of assets from the owner to the investor, the impact of the historical problems related to the title or to the vendor is diminished or even excluded.

This way, the acquirer:

- a* does not take over the fiscal exposures of the current owner and the obligations from the agreements not transferred to the investor (outside the transfer of business);
- b* secures a transfer of ownership in good faith and subject only to the land book registration rules;
- c* may register higher expenses with the fiscal depreciation than the vendor (as existing owner) and, to this end, the acquirer would register a reduced taxable profit and, implicitly, a lower income tax; and
- d* may maintain certain authorisations (attached to the transferred assets) that do not lose their validity (e.g., firefighting permits); however, other authorisations (e.g., operating permits) must be obtained again by the investor.

The taxes attached to asset deal investments are higher than for share deals.

ii Share deal

The share deal consists of transferring the entity (usually a company) owning the real estate by transferring the shares in the respective entity.

The most commonly used corporate structures are the joint-stock company and the limited liability company (LLC).

The joint-stock company is the most complex corporate structure, composed of a minimum of two shareholders, with a minimum share capital of €25,000, in Romanian lei equivalent, and complex management rules. This is the entity suited for the investors interested in capital-driven structures and the only type of company to be listed with the stock exchange.

The LLC is a simpler corporate structure, which may be incorporated even by a single shareholder and up to a maximum of 50 shareholders, and does not have a minimum value of the share capital.

In both corporate structures, the company's obligations are guaranteed with the company's patrimony and the shareholders are liable only to the limit of their contribution to the share capital.

Another possible investment structure for an asset deal or share deal is the joint venture agreement. The participants bring together funds, assets, or both, as contribution for developing a project, the ownership of the assets remaining in the participants' patrimony. The participants establish their rights and obligations in the agreement and appoint one among them as manager, representing the joint venture.

The joint venture does not imply the incorporation of a separate entity by its partners.

V REAL ESTATE OWNERSHIP

i Planning

The urbanism certificate has the main role in developing real estate projects, representing the outcome of land plot planning and providing general information for building on specific land.¹⁸

After confirmation that a building may be developed, the investor should obtain information on the land plot scope of use (economic regime) and on construction conditions (technical regime), based on the urbanism certificate.

The urbanism certificate also provides information on the approvals and permits necessary for a building permit, but does not grant the right to build, this being established only by the building permit.

The authorisation procedure is governed by Law 50/1991, which encompasses the entire legal process from obtaining the urbanism certificate to receiving the building permit.

New amendments were brought about in 2023¹⁹ with additional requirements for publicity procedures, such as:

- a* that the information and conditions to be fulfilled by the beneficiary of the authorisation are made public by the issuing authority;
- b* registration with the land book by the beneficiary of the information and conditions provided by the authorisation; and
- c* enacting for the interested social organisms an administrative term of 30 days from the last publicity operation for the submission of the prior complaint and a procedural term of 60 days, calculated from the date of receiving the answer to the prior complaint or from the expiration date of the legal term for its resolution.

Other recent regulations²⁰ authorise the placement of investment objectives specific to the production of electricity from renewable resources on agricultural lands in *extra muros* areas, within a maximum surface of 50 hectares, based on a building permit and permanent or temporary removal from the agricultural circuit, without the transfer of the lands in *intra*

18 Law 350/2001 on land planning and urbanism, as amended by Law 13/2022 on the approval of Government Emergency Ordinance No. 79/2021, Law 45/2022 for the amendment and completion of some normative acts and Law 246/2022 on metropolitan areas, as well as for the amendment and completion of some normative acts.

19 Law No. 102/2023 for the amendment and completion of Law No. 50/1991 regarding the authorisation of the execution of construction works, of the Administrative Litigation Law No. 554/2004, as well as for completing Article 64 of Law No. 350/2001 regarding territorial development and urban planning.

20 Law 254/2022 amending and supplementing the Law 18/1991 and other normative deeds and Law 262/2022 amending and supplementing Law 18/1991 and supplementing Law 50/1991 on the authorisation of construction works, which aim to increase the investors' interest in purchasing or leasing agricultural lands located in *extra muros* areas.

muros areas.²¹ The lands may also be used in a dual system for both agricultural and green energy purposes. Additionally, the right to build is granted even in the absence of approved urban planning documentation for construction works for the production and storage of electricity and hydrogen from renewable sources located in the inner city and outer city limits of the territorial administrative divisions.²²

ii Environment

Irrespective of having a facility under development or a standing investment, the owner is bound to observe the environmental regulations.

These apply to any type of pollution and are related to all operational permits necessary for the development or exploitation of facilities (e.g., firefighting, operating, environmental, health and security work and civil protection).

The real estate beneficiaries bear the liability for ensuring compliance with the environment protection laws, which depending on the outcome of the breach may be administrative, civil or criminal liability.

As of 1 January 2021, Law 246/2020 establishes unitary, mandatory measures for the protection, improvement and sustainable use of the Romanian soil, as well as for the systematic monitoring of soil quality. The subjects of these regulations are both individuals acting in the private sector (being compelled to obtain a soil quality certificate in the case of a sale or change of landowner for some specific types of land) and the public authorities.

The obligation to obtain a soil quality certificate is not yet applicable, since the relevant Rules of Application have not yet been adopted.

Additional provisions referring to environmental protection are related to the issuance of the construction authorisation for investment objectives, which is bound by the prior environmental impact assessment or the prior opinion of the competent authority for environmental protection and by the issuance of the environment authorisation.²³

iii Tax

All asset owners owe local taxes on land and buildings. Exemptions may be available if the buildings serve a public or social interest.

The land tax is determined on surface, location (e.g., inside or outside the locality's borders) and use category (e.g., construction or agricultural), as established by the local authorities.

The fiscal regulations,²⁴ applicable from 1 January 2023, provide that the tax on buildings will be determined by the building category, but in different quotas, namely a minimum of 0.1 per cent of the fiscal value of residential buildings, a minimum of 0.5 per cent for non-residential buildings and a minimum of 0.4 per cent for agricultural buildings. The tax rate for residential and non-residential buildings is the same for owners, whether

21 This provision is an exception from the general rule, which prohibits the placement of buildings on these types of lands.

22 Law No. 166/2023 for the amendment and completion of Law No. 350/2001 regarding territorial development and urban planning, as well as for completing Law No. 50/1991 regarding the authorisation of construction works.

23 Law No. 50/1991 for the authorisation of construction works.

24 Government Ordinance 16/2022 for amending and supplementing Law 227/2015 on the Fiscal Code, repealing some normative deeds and other financial-fiscal measures.

natural or legal persons. The taxable value of the buildings will be determined by adding the value of the building, the annex buildings, if any, and the value of the land areas covered by these buildings, as provided under market studies on the indicative values of real estate in Romania. The calculation method applicable to buildings comprising both residential and non-residential premises is determined in accordance with the use of the areas with a share of more than 50 per cent by applying the quota corresponding to the majority use. Currently, the fiscal value of buildings must be updated every five years by valuation.²⁵

Pursuant to the entry into force of Law No. 296 of 26 October 2023 regarding some fiscal-budgetary measures, natural persons who on 31 December of the previous fiscal year owned solely or jointly residential buildings located in Romania are compelled to pay a special tax on immovable assets, if the taxable value of the building exceeds 2,500,000 Romanian lei. The special tax on immovable assets of high value is calculated by applying a rate of 0.3 per cent on the difference between the taxable value of the building communicated by the local fiscal authority and the threshold of 2,500,000 Romanian lei.

For transfers, taxes vary depending on the transaction structure. In a share deal, the stake seller owes the corporate income tax, which amounts to 16 per cent²⁶ of the capital gain (reduced to zero if the shareholder is a company owning more than 10 per cent of the shares for a minimum of one year, subject to additional conditions), or the personal income tax of 10 per cent.²⁷ For foreign nationals, additional benefits may be available under the conventions for the avoidance of double taxation.

In asset deals, 16 per cent corporate income tax²⁸ applies on the profit, except for natural persons, for whom the tax is 3 per cent of the taxable income. Currently, natural persons are exempt from taxation in asset deals lower than approximately €91,000, in Romanian lei equivalent (referred to as a non-taxable amount), the 3 per cent being applicable to the difference between the transfer price and the non-taxable amount. Pursuant to the new fiscal regulations, the tax rate applicable for natural persons will be 3 per cent for real estate owned for up to three years and 1 per cent for real estate owned for more than three years.²⁹

The tax in real estate transactions is currently levied on the value declared by the parties in the contract. If the value stipulated by the parties is lower than the minimum value provided by the market survey, the tax will be levied on the aforementioned minimum market value.³⁰

A reverse taxation mechanism is applicable to construction and lands whose transfer is subject to VAT, which applies if both seller and buyer are registered for VAT purposes in Romania. Otherwise, the normal VAT system applies.

If the land is not for construction purposes, the transfer is VAT-exempt (with no deduction right). VAT exemptions also apply to transfers of buildings, except for new buildings.

For all real estate transactions where an exemption applies, the seller can opt to levy VAT, based on prior notification of the tax authorities.

25 As such term was extended by Law 296/2020 for amendment of the Fiscal Code.

26 The microenterprise taxation regime applicable for certain companies has not been considered.

27 Personal income tax was reduced from 16 to 10 per cent as of 1 January 2018, according to Government Emergency Decision 79/2017.

28 A microenterprise taxation regime applicable for certain companies has not been considered.

29 The new fiscal regulations removed the non-taxable threshold.

30 Government Ordinance 8/2021.

A reduced VAT rate of 9 per cent is applicable between 1 January and 31 December 2024 for the acquisition by natural persons of living households (a single housing unit) with a maximum usable area of 120 square metres (excluding household annexes, but including the building's land) and not exceeding the value of 600,000 Romanian lei, excluding VAT.

iv Finance and security

The acquisition of real estate is mostly financed by banks. The foremost securities are mortgages, which may be established over immovable assets, an owner's shares and certain current and future rights attached to the property (e.g., rent, indemnities and bank accounts).

The mortgages established over the immovable assets are valid if the relevant agreement is concluded in authenticated form before the public notary and become effective as of their registration with the land book registry, and regularly go along with interdictions to transfer the asset, to build or to otherwise affect the property (e.g., partitioning, consolidation, lease and easements).

v Fire safety requirements

Certain constructions³¹ (e.g., tall buildings, office and commercial buildings or buildings exceeding 600 square metres, as well as buildings for cultural or touristic activities) are subject to a fire safety authorisation. The authorisation must be obtained prior to the commencement of any construction, and the person bound to obtain it is either the investor or the beneficiary of the investment.

As per Government Emergency Ordinance 80/2021, the validity of the fire safety authorisation will be maintained for buildings whose use is changed, and the authorisation procedure need not be repeated provided that the new use complies with all the provisions of the fire safety regulations.

The fire safety authorisation is issued after submitting technical documentation and is valid as long as the conditions met at its issuance are fulfilled and no changes are made to the building. The lack of such authorisation triggers administrative fines, but in the event of a major breach of the fire safety requirements (irrespective of the existence of the authorisation), the authorities may stop the building operation. Criminal liability may be triggered if a fire causes injuries or death.

vi Completion of the project

Romanian law regulates the reception of construction works, certifying the construction works' fulfilment and takeover by the investor.

Law 7/2020³² provides new obligations for owners and investors related to the handing-over process, the building being commissioned and ready for use only after the completion of the reception procedure, which includes reception of the construction works; and reception of the utilities connection works and commissioning the utilities (provided the building is connected to public utilities networks).

31 Government Decision 571/2016 for approval of the categories of buildings and fittings out subject to fire safety approval or authorisation, Law 307/2006 on fire protection, as amended by 203/2018 and Government Emergency Ordinance 80/2021.

32 For the amendment of Law 10/1995 and Law 50/1991.

VI LEASES OF BUSINESS PREMISES

i Features of lease agreements

The lease of all premises is governed by the New Civil Code.

The lease agreement signed by the parties and registered with the fiscal authorities or authenticated by a notary public represents enforceable title as regards the payment of rent and the obligation to return the premises (upon the term's expiry or following the expiry of a notice period) on the evacuation of the tenant. Thus, the landlord may directly initiate the enforcement procedure for failure by the tenant to observe these obligations.

ii Duration and the right of renewal

The lease period may be determined by the parties. Should the parties not provide the lease term, the lease is considered concluded for one year. The lease agreement may be concluded for a maximum of 49 years.

Romanian law provides the prolongation by tacit renewal: if the tenant continues to execute the lease agreement following the term's expiry without any opposition of the landlord, a new lease is considered to have been concluded, under the same conditions, including the guarantees. However, the new lease term will be undetermined.

iii Repair works and related costs

In the absence of an alternative parties' agreement, regular repairs that result from normal wear and tear are the tenant's responsibility and repairs that relate to the building's structure and common areas are the landlord's responsibility.

Insurance of the building is usually the landlord's responsibility, but a share of its value may be included in the service charges owed by the tenant. The tenant may be obligated to conclude insurances related to the rented space and its activity.

iv Service charge

Usually, in addition to rent and other costs, a tenant of commercial premises (office, retail or logistic) may be obligated to pay service charges as part of the aggregate expenditures incurred by the landlord in respect of all the expenses regarding the building (utilities for common areas, management fees, insurance premiums and property taxes).

v Subletting and assignment of rights

The tenant is entitled to sublease the premises or to assign its rights on the premises, if not expressly forbidden in the agreement.

Similarly, unless otherwise stipulated in the agreement, the lessor is entitled to assign its rights from the lease agreement without the consent of the tenant.

vi Rent

The rent may be freely established by the parties, either globally or fixed on time units. No rent control exists in the private sector. Should the parties fail to establish the payment terms, rent must be paid:

- a* in advance, if the lease term is under one month;
- b* on the first business day of each month, if the lease term is between one month and one year; or
- c* on the first business day of each quarter, if the lease term is at least one year.

Rent is generally calculated based on the premises' area and may be subject to VAT. As standard practice for the lease of premises in commercial centres, the financial obligations of the tenant comprise:

- a* minimum guaranteed rent established in Euros per square metres;
- b* turnover rent established as a percentage for a certain period (usually per year) of the net total turnover achieved by the tenant in connection with the premises, which is payable if it is higher than the prepaid minimum guaranteed rent; and
- c* operating costs, including common operating costs, marketing costs and own operating costs (utilities), measured either by independent consumption metres or by engineered value.

vii Tenants' liability

Leases for commercial premises are usually executed in favour of the landlord (excepting in cases of anchor tenants with a strong market position and negotiation power), and therefore all matters regarding tenants' liability and financial obligations are strictly regulated under such agreements.

Regularly, the tenant is liable for early termination of the agreement (save for the termination by the landlord's fault), being compelled to pay the rent and related costs calculated until the end of the lease period or until the premises are leased to a new tenant at a similar rent level.

Usually, the tenant obtains at its own cost the permits and authorisations necessary for the premises' use and related renovation works. The tenant's renovation works are not to be reimbursed to the tenant, except for the lease termination by the landlord's fault.

Generally, the tenant assumes the risk of damage caused to the premises and is liable for the alteration and degradation of the premises, including in the case of fire, except for in force majeure or fortuity cases.

Furthermore, the tenant is liable to observe the general fire protection regulations³³ applicable for office or retail premises.

viii Security of tenure

There are no mandatory provisions regarding the guarantees that the tenant must provide to the landlord to secure the tenure.

In practice, the tenant provides either a deposit or a letter of bank guarantee, valid throughout the lease period, for a value generally amounting to three months' rent and operating costs.

ix Fiscal provisions

As of 1 January 2023,³⁴ landlords have the obligation to register all lease agreements and amendments thereto with the tax authorities.

Their net income, to which a 10 per cent tax is applied, will no longer be calculated by deducting from the gross income expenses up to a 40 per cent rate, but the taxable income will be equivalent to the gross income.

33 Law 307/2006 on fire protection, as amended by Government Emergency Decision 80/2021, and Order 712/2005, as amended by Order 786/2005 and Order 187/2010 issued by the Ministry of Internal Affairs.

34 Government Ordinance 16/2022 for the amendment of the Fiscal Code.

VII YEAR IN REVIEW

i The Fiscal Code

The fiscal regulations related to the real estate market have been subject to multiple changes over the past few years (e.g., Government Ordinance No. 16/2022 and Law 296/2023), mainly providing for the following:

- a* reducing the threshold for the microenterprise's regime from €1 million to €500,000, leading to approximately 8,000 companies switching to the general 16 per cent profit tax;
- b* the tax rate on the microenterprise income will be 1 per cent to the extent that the revenues do not exceed €60,000 and that the microenterprise does not perform certain activities regulated by the Fiscal Code or 3 per cent for microenterprises that have a revenue over €60,000 or that perform certain activities (e.g., hotels, restaurants and IT);
- c* the microenterprise income tax becomes optional, being applicable based on certain conditions, such as:
 - having at least one employee;
 - the income from consulting or management activities being less than 20 per cent of the total income; and
 - the shareholders holding less than 25 per cent of the participation titles in more than three Romanian companies that qualify to apply the microenterprise income tax;
- d* extension of the list of legal entities not subject to microenterprise income tax (e.g., banking activities);
- e* amendments to the VAT system (e.g., VAT will be levied at 9 per cent on accommodation, restaurant and catering services, supply and the installation of photovoltaic panels, thermal solar panels, heat pumps and other high efficiency heating systems);
- f* companies' obligation to accept electronic payments (e.g., for retail and wholesale activities and service providers with an annual turnover of more than €10,000);³⁵
- g* increasing the tax rate for dividends paid between Romanian companies and to non-residents from 5 to 8 per cent; and
- h* the possibility for local authorities to increase local taxes according to individual criteria (e.g. economic, social, geographical, urban or local budgetary needs).

ii Other relevant aspects

New regulations on price adjustments in public procurement contracts provide that the prices of materials will be updated,³⁶ by an adjustment coefficient, for any increase or decrease in the cost of materials on which the contract price was based. FIDIC standard contracts do not fall under the scope of these regulations.

In 2022, the legislation on public procurement was amended several times.³⁷ Some of the changes consist of:

35 Currently the threshold is €50,000.

36 Government Decision 15/2021 on regulating fiscal-budgetary measures.

37 The most significant amendments were brought about by Government Emergency Ordinance 26/2022 and by Law 208/2022.

- a* new rules on price adjustments because of the increase in prices in the electricity and natural gas markets, on fuel and the transport of goods, with direct impact on the production and distribution of all products used in construction;
- b* a correlation between the legislation on public procurement and on green public procurement; and
- c* amendments for expediting infrastructure projects of national interest and facilitating public investments (e.g., doubling the value of the thresholds for direct purchases, new provisions regarding the method of direct acquisition for products and services).

VIII OUTLOOK AND CONCLUSIONS

Romania has made impressive strides in enhancing its economic performance and prosperity over the past two decades, supporting convergence in living standards with the European Union. The Romanian economy decelerated to 1.7 per cent in the first half of 2023, despite resilient private consumption and investment aided by EU funds. Growth will moderate in 2023, in alignment with the European Union's weakened economic activity, but rebound in the medium term.³⁸

38 <https://www.worldbank.org/en/country/romania/overview>.

VALENTIN CREAȚA

Popovici Nițu Stoica & Asociații

Valentin Creața is co-head of the real estate practice of Popovici Nițu Stoica & Asociații, leading the real estate development group.

Valentin holds a degree in law from the University of Bucharest and is a member of the Bucharest Bar.

Throughout his career, spanning the past 23 years, Valentin has provided key advice to high-profile real estate investors and developers in relation to major acquisition, construction and operation projects, including the country's largest shopping centres and residential projects, office buildings, logistics centres and industrial parks.

Valentin represents clients in a wide range of corporate governance cases and complex commercial matters, leading the real estate transactions team into the largest transactions in the market. He is highly experienced in structuring and implementing high-ranked real estate portfolios and assisting extended greenfield and brownfield developments.

According to international legal directories, 'the real estate team at Popovici Nițu Stoica & Asociații operates to "the highest professional standards" and "is deeply committed to their needs"; Valentin Creața is recommended'.

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