

NOERR NEWS IN CEE

Upbeat atmosphere prevails



Registration of Title in CEE

We are delighted to bring you the first issue of a new series of newsletters being launched by **Noerr's CEE Real Estate Investment Group**.

How reliable are current practices for registration of title in CEE?

Czech Republic

Czech real estate law has undergone significant changes since 1 January 2014, when the new Civil Code and related legislation, especially the new Land Register Act, came into effect. As of 1 January 2015, the land register authorities are required to adhere to the principle of fact-related publicity (in Czech: **"materiální publicita"**). This may simplify due diligences as it is now generally possible to rely entirely on land registry records (previously, it was necessary to investigate and

prove ownership titles dating back at least 10 years which was the formerly prescribed period). A purchaser can only rely on the registry to the extent that it is operated in good faith, however.

For this reason, documents provided by the seller in the course of a due diligence still require review and disclosure by the seller (by way of disclosure schedules or otherwise) and may still have a significant impact in this respect.

Another material change brought about by the new Civil Code and affecting real estate law is the reinstatement of the former legal concept *superficies solo cedit* in the Czech legal system. According to this principle, a building forms part of the land on which it has been built, and this new principle also has an impact on cadastral records: buildings forming a part of land plots are not registered

Dear Reader,

Market players and their advisors are delighted to see that the real estate markets in Central and Eastern Europe are back on track and most analysts are expecting this positive trend to continue in the year ahead. It is therefore critical for investors to look at all aspects of new investments in order to make the most out of new opportunities in this region. As one of the key elements of the decision to invest is the legal security of the investment, the question of how reliable registration of title in the CEE countries is should be a priority matter for consideration. It is with this in mind that we provide you with a high-level overview pointing out some of the features of the registration of title in the CEE countries and explaining the relevant risks of the various legislative provisions for investors.

Yours sincerely

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separately in the Land Register, but are listed in the entry relating to the land plot itself.

If the building and the land plot on which it is situated have different owners, then these are registered separately in the Land Register and their owners have mutual pre-emptive rights.

If part of a building extends onto another land plot, the overhang should be marginal in comparison with the rest of the building. If this is the case, the owner of the building is (in the event of good faith being observed) also deemed to be the owner of the overhang. Otherwise, the overhang might be qualified as an unauthorized structure.

If the building extends further onto another land plot than stated above, the building must be allocated to this other land plot (such allocation should be made with economic objectives in mind). If the economic objective on which this allocation is based is ambiguous, such buildings could be treated as pertaining to both of the land plots concerned (in Czech “rozhrada”).

However, the Czech Land Registry still only has limited experience of such situations. The value of information available from the Land Register will greatly increase (15 new rights in rem and 19 new types of notes are now available for registration). For the first time, leases may now be registered, too.

Given the fact that the new Land Register Act and the new Civil Code have been effective for just one year, court practice to date is also limited.

Hungary

The land registry system is well-established and has a long history and tradition, stemming from its Austrian roots. The registration of title to real property has a constitutive effect, i.e. the ownership of real property is acquired by registration in the land register (the conclusion of a sale and purchase agreement serves only as

title for the registration, but does not constitute acquisition of ownership).

The land registry system generally protects the bona fide purchasers of property who trust in the validity of previous registrations of title. However, such protection takes effect only after a period of 3 years following registration. If a property has no new bona fide purchaser, a claim for the deletion of an invalid registration may be raised without any time limit. Since 15 March 2014, a new Civil Code has been in force in Hungary, which has limited court practice. Under such circumstances, it is paramount that particular care be taken in due diligence procedures.

Poland

The land registry system in Poland dates back to the 16th century and plays a major role in real estate transactions. As a rule, the entry of title to a real property (e.g. ownership) into the land register has a declaratory character. This means that the entry merely confirms the establishment, amendment or cessation of a right or legal relationship.

The constitutive effect of an entry is rather an exception and refers only to a limited number of rights (e.g. perpetual usufruct).

If any discrepancies exist between an entry in the land registry and the “real” legal status of a real property, the contents of the land registry have priority and mitigate in favor of a party who, acting in good faith, acquired ownership or another legal title from a person whose title was already entered in the register.

Romania

Under the New Romanian Civil Code, which came into force on 1 October 2011, entry into the land register has a constitutive character, meaning that the right of ownership to real estate and/or the real property rights are effectively transferred and/or established upon entry into the relevant land register. Even if this legal

provision was meant to bring more security for real estate transactions, its effect was postponed until finalization/completion of the cadastral works for each territorial unit. This means that land book registrations are currently performed solely for opposability purposes towards third parties only, whereas the completion date of the cadastral works for each territorial unit still remains uncertain.

The land register system was implemented throughout the country only very recently with a nationwide unified land registry system of real estate publicity enacted in 1996 by Law no. 7/1996. Before then, real estate registration varied from one historical region to another and consisted of two different systems: the real estate register and the real estate publicity system. In the light of this and of the restitution process for nationalized real property, competent legal advice can be considered of paramount importance in order to ensure secure real estate transactions in Romania.

Slovakia

The registration of the title to land in Slovakia has certain risks that remain hidden to many land owners or buyers. The land registry system in Slovakia was Hungarian until the beginning of 20th century. Austrian influence on the (Czech-) Slovak system in the first half of the 20th century was then followed by devastating changes during the Communist era. Currently the registration of title to real property has a constitutive effect, i.e. the buyer acquires ownership of a real property through entry into the land register.

All entries in the land register are binding until proven otherwise. Acquisition in good faith does not necessarily lead to acquisition of the ownership title. This is where the biggest risk lies for the buyer of land. To protect himself, a buyer should

inspect the historical titles to the relevant land dating back at least 10 years so that he can acquire title to the land by positive prescription.

A further special feature of Slovak law is that is legally admissible for the building and the land under it to have different owners since ownership of land does not result in ownership of the building erected upon it.

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