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Lithuania

REAL ESTATE

Contributor

WALLESS



Evaldas Klimas

Partner | Attorney at Law | evaldas.klimas@walless.com

Indrė Jonaitytė-Grice

Partner | indre.jonaityte.grice@walless.com

Mantas Lideika

Senior Associate | mantas.lideika@walless.com

This country-specific Q&A provides an overview of real estate laws and regulations applicable in Lithuania.

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LITHUANIA

REAL ESTATE



1. Overview

The real estate market in Lithuania is based on principles of private ownership and ownership immunity, prudence, fairness, justice and protection of the rights of those legitimately acquiring real estate.

Lithuanian legal system, as it pertains to civil law and public law, follows two main principles: 1) everything, that is not expressly forbidden, is allowed (Civil law); 2) everything, that is not expressly allowed, is prohibited (Public law). Thus, the first principle is applicable for private persons in commercial real estate market and the second principle is applicable for public institutions, who either participate or regulate commercial real estate market.

Majority of legal rules and regulation for commercial real estate are enshrined in Civil Code of Republic of Lithuania, which determines the legal norms for controlling, using and disposing of the commercial real estate and transfer of real estate or leasing it.

2. What is the main legislation relating to real estate ownership?

Real estate ownership in Lithuania is mainly governed by the Civil Code of Republic of Lithuania, which governs all legal aspects of owning, purchasing, selling and transferring ownership of a property.

3. How is ownership of real estate proved?

In order to be protected from third-party rights, ownership of real estate must be registered with the Real Property Register of the Republic of Lithuania. Real Estate Register contains data of ownership, rights, such as mortgage, servitude, etc., legal facts, such as restrictions, transactions related to real estate, etc.

Article 4.253 of Civil Code of Republic of Lithuania determines that the ownership rights shall be registered in Real Estate Register.

Data in the Real Property Register is public, however services to obtain such data is subject to a fee.

4. Are there any restrictions on who can own real estate?

Generally there are no restrictions (except for some special purpose territories and limitation on agricultural and forest land) to acquire land in Lithuania if a foreign investor is established in countries which are (i) not part of political, military, economic or other unions or alliances of states established on the basis of the former Union of Soviet Socialist Republics and (ii) members at least of one of EU / NATO / EEA or OECD.

Under the Constitution of Lithuania, the Lithuanian state is the exclusive owner of the subsoil, internal waters, forests, parks, roads, historical, archaeological and cultural objects of national significance. In other cases, Lithuanian citizens and legal persons with offices registered in Lithuania may acquire title to land, inland waters and forest unrestrictedly, except for acquisition of agricultural land. In the latter case the total area of agricultural land possessed by either a natural or a legal person and persons related to them is limited to 500 ha. For the purpose of this restriction related persons means: (i) spouses, parents together with their children; (ii) persons who directly or indirectly (via an entity in which a person has not less than 25% of votes) have more than 25% of the votes in an entity; (iii) legal persons in which the same person has more than 25% of the votes. Besides the 500 ha limit, for acquisition of agricultural land additional conditions may apply.

Real estate may be encumbered with servitudes (easements), pre-emption rights, lease rights registered with the Real Estate Register, mortgages, and other encumbrances that should be taken into consideration when using or constructing real estate. Residential property may be family assets, disposal of which is subject to limitations established by law, such as an approval has to be obtained from court in order to transfer the ownership rights of such property to third person.

5. What types of proprietary interests in real estate can be created?

Presuming, that proprietary interest in real estate means the rights and duties related to real estate and the ownership and (or) ability to have control over the real estate, the following most common types of proprietary interests in real estate exist in Lithuania:

- Ownership;
- Whether it would be short-term, long-term or lease of state land;
- Right of trust – most common regarding state-owned land;
- Mortgage;
- Servitude;
- Usus fructus.

6. Is ownership of real estate and the buildings on it separate?

Presuming, that real estate is equivalent to land or land plot in this context, yes ownership of buildings and the land under the buildings could have separate owners.

General rule in Lithuanian legal system is that the owner of a land plot owns the upper layer of the land plot, the buildings on the land plot and their appurtenances, other immovable objects, unless otherwise provided by law or agreement (Article 4.40 of Civil Code). However, this rule is not strict and in practice it is not uncommon for buildings and land to have a separate owner.

Usually it happens, when the state or private land is leased, and the building ownership rights are transferred. Under such conditions, according to the Article 6.532 of Civil Code it must be guaranteed that the owner of buildings can free of charge use the land necessary for use of building during the whole lease period.

Additionally, Lithuanian legal acts (Part IX of Civil Code) allows superficies – the right to use land owned by another private person for the construction or acquisition of buildings and to manage the right of ownership or use of the subsoil.

It should be noted that the Law on Land foresees a finite list of grounds under which the state-owned land can be used – right of trust, lease, right of use and servitudes.

7. What are common ownership structures for ownership of commercial real estate?

Commercial real estate can be held directly by

individuals or through entities.

Common ownership structures include:

- Limited liability company;
- Holding with different subsidiaries;
- Fund;
- Joint venture;
- Proprietorship (i.e., individual).

8. What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?

Legal due diligence (LDD) in Lithuania follows a similar process to other European countries. This process is divided into few parts: 1) preparation; 2) investigation and 3) results.

During preparation part LDD objects and goals are set. Confidentially and non-disclosure agreements are prepared in order to comply with data protection laws and regulations. Time and LDD deadlines are determined.

During investigation part team of lawyers or (on small scale transaction) a lawyer collects facts and documents from both the seller and purchaser of commercial real estate. This is usually done by providing LDD checklist, which specifies categories of documents or other information, which needs to be provided. This stage also encompasses analysis and evaluation of provided information and, if necessary, interviews with relevant persons. Generally, lawyers search and identify all the possible and present risks associated with the acquisition and determine the risk probability and severity.

During results part most often the LDD report is presented in written form to the client and the lawyer explains the main risks involved. The lawyer or team of lawyers may offer an opinion as to the validity of acquisition, however, usually it is just strictly an opinion and not a legal advice.

9. What legal issues (if any) cannot be covered by usual legal due diligence?

Most often LDD reports are limited by available public information and information provided by the client.

Furthermore, LDD reports does not evaluate strictly financial or technical matters, if they do not directly correlate with legal issues. It is usually recommended to perform a technical due diligence in parallel to the LDD.

10. What is the usual process for transfer of commercial real estate?

1. Conducting limited legal due diligence to evaluate potential commercial real estate and determining whether to proceed with further acquisition procedure (Red Flag Reports);
2. Signing the letter of intent, memorandum of understanding and (or) preliminary agreement;
3. Performing legal due diligence;
4. Signing the sale-purchase agreement;
5. Registering relevant information on concluding the sale-purchase agreement in public registers (Real Estate Register);
6. Closing

11. Is it common for real estate transfers to be effected by way of share transfer as well as asset transfer?

Both transaction options are applicable in case of real estate transfer, while the choice between the two is contingent upon the aim of the transfer and the tax aspects.

12. On the sale of freehold interests in land does the benefit of any occupational leases and income automatically transfer?

Presuming, that freehold interest in land means outright ownership of real estate for an unlimited period, then yes, the benefit of any occupational leases and income automatically transfer to new owner.

General rule in Lithuanian legal system is that the lessor just has inform both the new owner and the lessee about potential transfer of ownership according to Article 6.495 of Civil Code. Lessee agreement to such transfer of ownership is not required.

13. What common rights, interests and burdens can be created or attach over real estate and how are these protected?

Common rights, interests and burdens, that can be created or attached over real estate and their protection in Lithuania is as follows:

- Mortgages are protected by ensuring the rights of Mortgage creditor. Mortgage entitles the holder of mortgage to satisfy his claim, which is secured by mortgage, before any other creditors of the debtor. Mortgage

enforcement rules are described in Article 4.192 of Civil Code, which determines that if the debtor defaults or other grounds specified in the mortgage agreement arise within the term specified in the mortgage agreement, the mortgage creditor may apply to a notary for the execution of a notarial enforcement record. Notarial enforcement record is enforced by providing such record to bailiff, who recovers the debt from the debtor;

- Special land use conditions. Special land use conditions set the rules and restrictions regarding the use of certain land plot or part of land plot around or near specific objects (for example, railroads, electricity lines etc.). These conditions are set in Law on Special Land Use Conditions and protected by restricting the ability for owner of land plot to use land plot in ways not expressly determined in Law on Special Land Use Conditions;
- Cultural heritage restrictions. A lot of real estate in Lithuania is considered as cultural heritage object or is in cultural heritage protection territories, thus subject to rules set in Law on Cultural Heritage Protection. Any development and (or) construction works in such territories must be coordinated with Cultural Heritage Department under the Ministry of Culture or its subsidiaries;
- Protected areas. Lithuania has a handful of territories, which are considered protected for specific reasons, for example to protect nature. These territories are protected by Law on Protected Territories, which sets the rule for activities inside such territories;
- Lease agreements and the fact of lease itself is registered in Real Estate Register (a public register administered by state enterprise "Registrų centras"). Lease rights protection are determined in Lease agreements and in Part XXVIII of Civil Code.

14. Are split legal and beneficial ownership of real estate (i.e. trust structures) recognised

Even though, Articles 4.107 and 4.108 of Civil Code does allow property trusts rights to arise from law, administrative act, contract, will and (or) court decision, in practice Lithuanian legal system does not recognise trust structures for ownership of commercial real estate, because there is no legal act, which allows for such ownership forms to exist in commercial real estate market.

The only trust structures, which are regulated by Lithuanian legal system, are state or municipality land trust structures. Article 7 of Law on Land determines the situations, when the state or municipality land could be trusted to subject, which would implement ownership right of state or municipality. Usually, such trust structure is created for public purposes or for better performance of state or municipality's functions.

It is important to mention, that Lithuania does allow the creation of certain types of collective investment undertakings. Such enterprises are regulated by Law on Collective Investment Undertakings, which sets the rules and control mechanisms for the activities of coordinated collective investment undertakings, special collective investment undertakings for non-professional investors and the management companies of these collective investment undertakings and the state supervision of these activities.

Usually, collective investment undertakings invest and manage certain commercial real estate or other types of projects. The aforementioned law does allow creation of investment funds, which are considered as assets under the right of trust of the management company of the collective investment undertaking to which the unit-holders (fund participants) have the right of claim in proportion to the number of investment units owned by each unit-holder (fund participant) (Part 15 of Article 2 of Law on Collective Investment undertakings).

15. Is public disclosure of the ultimate beneficial owners of real estate required?

No, however this information must be disclosed to notary or legal advisor if a transaction is entered.

16. What are the main taxes associated with commercial real estate ownership and transfer of commercial real estate?

Taxes associated with commercial real estate transfer in Lithuania are:

- Income tax. Income tax is regulated by Law on Resident Income Tax and is applicable for natural persons. General rule is that the income tax is applicable for real estate, which was sold not earlier than 10 years after the previous acquisition and is applicable only to received income from the sale of the real estate (minus the previous acquisition price and the mandatory payments related to the acquisition). Currently, the tax rate is 15 %.
- Profit tax. Profit tax is paid by legal persons.

Rules for what is considered profit and what is taxable by profit tax is determined in Law on Profit Tax. Currently, the tax rate is 15 %

- Value added tax. The general rule is that if you buy real estate with value added tax, then you should sell it with value added tax. However, this general rule and the tax itself has a lot of exemptions and non-application situations. The value added tax is regulated by Law on Value Added Tax. Currently, the value added tax rate is 21 %.
- Notary expenses. Notary expenses are not taxes *per se*, but they still must be included into expenses for performing commercial real estate transfer. According to Article 1.74 of Civil Code real estate transactions must be in notarial form and thus subject notary expenses. Notary expenses depends on the agreed price for the property, which is being sold, and is calculated as percentage of such agreed value. Notary expenses for commercial real estate transfer are calculated in the following manner: 0.37 % of the price of the real estate agreed by parties, but not less than 33 EUR and not more than 5,000 EUR.

Taxes on asset sales are:

- Real Estate Tax (RET) applies on buildings/premises owned by companies and individuals. The tax rate may vary from 0.3% to 3% depending on municipalities.
- Land tax applies on land owned by companies and individuals, except for the forest land. Land tax rates range from 0.01% to 4% of the average market value of the land depending on local municipalities.

Additionally, in case of lease of state-owned land plot, a fee in range from 0.01% to 4% of the average market value of the land can be applicable depending on local municipalities.

17. What are common terms of commercial leases and are there regulatory controls on the terms of leases?

Common terms of commercial leases could mean both the length of lease agreement and the clauses of lease agreement, therefore in this answer we will provide overview of length and common clauses of commercial lease agreements.

The length of lease agreement. General rules, as described in Article 6.479 of Civil Code, are: 1) lease

agreement could be for a fixed term or for an indefinite period, but in all cases the term of the agreement cannot exceed one hundred years; 2) the term of lease agreement is set by the parties of the lease agreement. If the term of the lease is not specified in it, it is considered that the lease agreement is for an indefinite period.

Usually, the commercial lease agreements have a fixed term, which varies from 1 to 5 years, sometimes for logistical or storage type real estate the lease term could be even longer.

It is not uncommon for term of lease agreement to run out without any party of lease agreement taking actions to end the lease agreement. In that case, Article 6.481 of Civil Code determines, that if, at the end of the term of the agreement, the lessee continues to use the real estate for more than ten days and the lessor does not object, it is considered that the contract has become indefinite.

Clauses of lease agreements. Two main clauses, that must be determined in lease agreement for it to take effect are: 1) the object, which is being leased, and its properties and; 2) the price of lease (Article 6.477 of Civil Code).

Usually, standard lease agreements, which are prepared by the lessor, are used in commercial lease market. Such standard lease agreements often include lease payment determination principles (whether the lease payment is calculated for every square metre or whether it is a fixed fee for the whole object), a right of lessee to inspect the object before leasing it, strict responsibility for the breach of lease agreement, the assessment of deterioration, natural wear and tear and improvement of premises, procedure for the termination of the lease agreement and other clauses.

It is not uncommon for lease agreement to contain a waiver of right to have priority to continue leasing the premises. This clause is included in lease agreements, because otherwise Article 6.482 of Civil Code, which grants a priority right to lessee to continue leasing the premises, shall be applicable.

18. What (if any) Covid-19 related regulatory controls are in place which affect landlords' abilities to enforce tenant obligations in commercial leases?

No specific regulation regarding Covid-19 related regulatory controls of lease is currently applicable.

A draft Law on the effects of the new coronavirus

(COVID-19) on the enforcement of leases was submitted to Seimas (the Parliament) for consideration in the beginning of year 2020. It foresaw that during the quarantine period and for three months after the revocation of the quarantine the landlord would not have a right to unilaterally terminate the lease agreement because the lessee fails to pay the rent. The law was not passed or approved.

A decision of the Government dated 3 May 2020 foresaw a possibility to gain a compensation of part of lease fee for companies which were adversely affected by Covid-19. In order to get the compensation, the landlord and the lessee had to agree on the reduction of the rent.

19. How are use, planning and zoning restrictions on real estate regulated?

There are three main sources of use, planning and zoning regulation on real estate: 1) legal acts (for example, Law on Special Land Use Conditions, Law on Territorial Planning and etc.); 2) territorial planning document (for example, specific city master plan, detailed plan, special plan and etc.); 3) special requirements obtained from state or municipality institutions, which specifies use and planning conditions.

Use restrictions. Use restrictions applicable to specific real estate can usually be found in Real Estate Register (a public register administered by state enterprise "Registru centras"). Most common use restriction are special land use conditions. Special land use conditions set the rules and restrictions regarding the use of certain land plot or part of land plot around or near specific objects (for example, railroads, electricity lines etc.). These conditions are set in Law on Special Land Use Conditions and protected by restricting the ability for owner of land plot to use land plot in ways not expressly determined in Law on Special Land Use Conditions.

Planning restrictions and zoning restrictions. Planning and zoning restrictions usually can be found in territorial documents, most often in specified city master plan. Master plan and its drawings usually divides municipality's territory into several different parts based on land plot purpose, existence of natural sites, cultural heritage sites etc. Explanatory note of master plan provides the regulation and restrictions regarding what buildings could be build, the density, intensity etc.

Furthermore, planning and zoning restriction could also be found in Cultural Heritage Register (public registered administered by Cultural Heritage Department). Any development, planning and (or) construction works in such territories must be coordinated with Cultural Heritage Department or its subsidiaries.

Zoning restrictions are also applicable for protected areas. Lithuania has a handful of territories, which are considered protected for specific reasons, for example to protect nature. These territories are protected by Law on Protected Territories, which sets the rule for activities inside such territories. Protected territories are identified in Cadastre of Protected Areas (public register administered by State Service for Protected Areas under Ministry of Environment).

20. Who can be liable for environmental contamination on real estate?

General principal in Lithuanian legal system, as determined in Article 23 and 32 of Law on Environmental Protection, is that the "polluter pays". This principle means, that person, which creates contamination is responsible for all damages, which arises due to such contamination. Furthermore, such person must take all the necessary preventive and rectification measures in order to mitigate the situation.

This principle derives from European Union legislation, more precisely from Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability regarding the prevention and remedying of environmental damage.

21. Are buildings legally required to have their energy performance assessed and in what (if any) situations do minimum energy performance levels need to be met?

The Law on Construction sets the standard requirements regarding energy performance of the buildings.

Minimum energy performance requirements for buildings are mandatory:

1. new buildings under construction (parts thereof);
2. buildings (parts thereof) to be reconstructed, renewed (modernized) or repaired, when the price of their reconstruction, renovation (modernization) or repair, which restores or improves the physical and energy properties of the building partitions and (or) engineering systems, is more than 25 per cent the value of the building, excluding the value of the plot of land on which the building stands. The requirements of this paragraph shall apply as far as technically, functionally and economically feasible.

The general minimum requirement for energy

performance of the new buildings as of 1st January 2021 is A++.

Furthermore, the Law on Construction prescribes cases in which an energy performance certificate has to be received.

Energy performance certification of buildings is mandatory:

1. upon completion of the construction of new buildings (parts thereof);
2. upon completion of the reconstruction, renovation (modernization) or overhaul of buildings (parts thereof), when the cost of their reconstruction, renovation (modernization) or overhaul, which restores or improves the physical and energy properties of building partitions and / or engineering systems, is more as 25 per cent of the value of the building, excluding the value of the plot of land on which the building stands;
3. when selling or renting buildings and (or) parts thereof (apartments, separate use premises for other purposes);
4. hotel, administrative, commercial, service, catering, transport, cultural, scientific, sports, medical and recreational buildings with a useful floor area of more than 500 square meters (from 9 July 2015 - more than 250 square meters).

As for exceptions, minimum mandatory energy performance requirements are not applicable for:

1. buildings which are cultural heritage structures, if compliance with the requirements would adversely change their characteristic properties or appearance;
2. temples and building for other religious activities;
3. temporary buildings intended for use for a maximum of 2 years;
4. low-energy non-residential buildings for production and industrial, storage and agricultural use;
5. separate buildings with a total useful floor area of not more than 50 square meters;
6. recreational and summerhouse buildings used for a maximum of four months in a year;
7. unheated buildings;
8. buildings which are in an emergency state, the renovation of which, taking into account the costs, would be useless.

22. Is expropriation of real estate possible?

Yes, expropriation of real estate is possible in Lithuanian legal system, however expropriation is subject to very strict rules.

The Lithuanian legal system follows and implements the rules set in the Protocol 1 of Article 1 of European Convention on Human Rights, which determines, that "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law." Lithuanian courts explain this legal provision as meaning, that every expropriation in Lithuania must be: 1) in the public interest, 2) subject to the conditions provided for by law and 3) against fair compensation.

Two main laws regulate expropriation procedure: Law on Land and Civil Code. Law on Land determines the conditions and procedure for expropriating the land or land plot for public purposes and provides mechanisms to establish fair compensation. Article 4.100 of Civil Code sets the rules for taking other real estate and things for public purposes.

23. Is it possible to create mortgages over real estate and how are these protected and enforced?

Yes, mortgages can be created over real estate.

Mortgages are protected by ensuring the rights of Mortgage creditor. Mortgage entitles the holder of mortgage to satisfy his claim, which is secured by mortgage, before any other creditors of the debtor. It is important to note, that mortgage does not restrict the debtor's rights to manage, use and dispose of the

pledged property, however such rights must be exercised in accordance with the rights of the mortgage creditor. In any case, with few minor exemptions, when transferring a pledged object to the ownership of another person, the mortgage follows the object.

Mortgage enforcement rules are described in Article 4.192 of Civil Code of Republic of Lithuania, which determines that if the debtor defaults or other grounds specified in the mortgage agreement arise within the term specified in the mortgage agreement, the mortgage creditor may apply to a notary for the execution of a notarial enforcement record. Notarial enforcement record is enforced by providing such record to bailiff, who recovers the debt from the debtor.

24. Are there material registration costs associated with the creation of mortgages over real estate?

The registration of a mortgage generates registration fee and notary fee charged as follows:

- Mortgage registration fee is 8,6 Eur (as of 1st September of 2021);
- Notary fee: such fee varies depending on the value of the mortgage as follows:
 - lower than 220,000 EUR: from 0.17 to 0.25 %, but not less than 13 EUR and not more than 120 EUR;
 - above 220,001 EUR: from 0.17 to 0.25 %, but not more than 240 EUR;

25. Is it possible to create a trust structure for mortgage security over real estate?

Yes, under Lithuanian law trust structures for mortgage security are recognizable.

Contributors

Evaldas Klimas
Partner | Attorney at Law

evaldas.klimas@walless.com



Indrė Jonaitytė-Gricė
Partner

indre.jonaityte.grice@walless.com



Mantas Lideika
Senior Associate

mantas.lideika@walless.com

