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Characterised by investment analysts as one of the most profitable European real estate markets, Romania is currently experiencing an influx of investments targeted mainly at residential, commercial and office sites. Although a careful analysis of the investment target is a prerequisite in any type of deal, a thorough investigation of the ownership title is of particular importance in Romania, due to specific legal provisions applicable in this respect. As other countries in Central and Eastern Europe, Romania was subject to a communist regime characterised by the nationalisation of private properties and even by a temporary interdiction of transactions regarding plots of land. After 1990, as part of structural reforms implemented in Romania, the restitution of former nationalised or otherwise expropriated properties has been subject to different mechanisms implemented by specific legal provisions, while the courts of law have been busy with numberless restitution claims filed by former owners of immovable assets. Due to the fact that some of the mechanisms implemented by the laws applicable in relation to nationalised immovable assets have not been thoroughly coordinated with the general principles of civil law that governed the legal regime of property, the case law generated by restitution claims has been sometimes inconsistent, and different solutions have been given to similar cases. As restitution claims referring to nationalised immovables may be grounded either on general principles of law, in which case the claims are addressed to courts of law, or on specific legal provisions that regulate an administrative restitution procedure, different decisions, with different consequences, have been adopted by the courts of law.

A new question has been recently raised, with respect to the legal regime applicable to the construction on a formerly nationalised plot of land, in the case when the ownership title held by the person who ordered such constructions is invalidated in favour of the title held by the former owner of the respective plot.

According to general principles of civil law, the owner of a plot of land is deemed to be also the owner of any construction erected on it. Should such a presumption be reversed, by showing that construction works have been carried out at the request and on the expense of a third party, the owner of the land is still entitled to claim an ownership right on the respective construction. This principle, which grants preference to the owner of the plot of land and entitles it to take over any assets and/or materials that are incorporated in the respective plot, may be applicable also in the case when the ownership title held by a developer of certain buildings ('constructor') on a plot of land is terminated due to a restitution claim successfully lodged by a former owner of the respective plot. In such a case, the constructor (i.e. the person who has order the construction of buildings on a plot of land belonging to a third party) is entitled to receive compensation from the owner of the respective plot, who has exercised the right to take over the constructions. The value of such compensation would be equal either with the countervalue of materials and workforce spent by the constructor for the respective buildings, or with the amount with which the market value of the relevant plot of land had increased due to the buildings erected on the site. Such compensation would be applicable only in the case the constructor had acted in good faith, considering that it had been entitled to conduct the respective construction works on the relevant plot of land.

Although the principles described above are generally applicable, they might be differently implemented by Romanian courts in the case of nationalised immovable assets that are claimed back by their former owners. In the case of administrative restitution procedures of nationalised immovables, according to which nationalised plots of land on which new constructions have been erected, they may not be restituted to their former owners. Some courts of law have recently faced requests to extend the application of such specific legal provision also to the restitution claims that are grounded on general principles of civil law. Namely, the courts of law have been required to dismiss restitution claims lodged in respect of nationalised plots of land, in the case that

good-faith constructors have erected new buildings. These requests have been supported with arguments referring to the good faith of the constructors, as well as to the necessity of having an equal treatment applied to formerly nationalised immovable assets. </p> <p>Although case law on this subject is still at an early stage, a consistent practice on this subject matter would be of particular importance for the good-faith acquirers of nationalised plots of land, who face restitution claims lodged by former owners of the respective plots. </p> <p>In any case, the acquisition of a formerly nationalised immovable asset should be always preceded by a thorough investigation of the ownership title and of all risks that may be associated with it. Even if it may sometimes be difficult to assess the validity of the ownership title, due to the particularities of the legal principles governing this concept (i.e. in case of ownership transfer by means of convention, it is held under Romanian law and jurisprudence that in order to prove beyond any doubt the ownership rights of a certain asset, the person would have to prove the validity of successive transfers and the ownership right of all transferors), the risks associated may be easily identified and remediation mechanisms may be implemented so as to provide sufficient comfort for future investments. </p><em>Oana Ureche is a senior associate at Tuca Zbarcea in <st1:city w:st="on"><st1:place w:st="on">Bucharest</st1:place></st1:city>.</em>