Development of a retail project

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We have tried in this article to present an overview of the stages that investors need to go through with a view to developing a retail project on the Romanian real estate market, with emphasis on the patterns prevailing on the market, and to also point out the traps that one might be faced with during the performance of such projects.
Since an exhaustive presentation of the types of transactions that can lead to the development of a retail project is not realistically possible, we will try and classify these transactions subject to two criteria.
Subject to the first criterion, the estate to be developed in the project respectively, one may distinguish two types of projects. The first type requires the development of an already existing structure, namely land and building. This type of project can be found especially in the case of investors who, for various financial reasons, do not wish to implement a "Greenfield"-type project. Those investors, such as Anchor Group, will create or adapt, as the case may be, the technical parameters subject to the structure existing on site. As an example of such projects developed on already existing structures, one may identify the so-called "circuri ale foamei", building structures designed before 1989 for completely different purposes or the ground floors of blocks of flats located in the central areas of the cities/towns.
A different type of retail project developed on land free of any constructions is known as "Greenfield". Unlike the category of investors who develop projects on already existing structures, the investors who choose a Greenfield project usually implement a technical concept and develop a trademark known internationally and on the Romanian market. They are interested in acquiring a land free of constructions or, if there are any, they are not going to be capitalized but demolished with a view to building the construction to the technical parameters imposed by the investors. For example, we would like to mention investors such as Carrefour or Auchan.

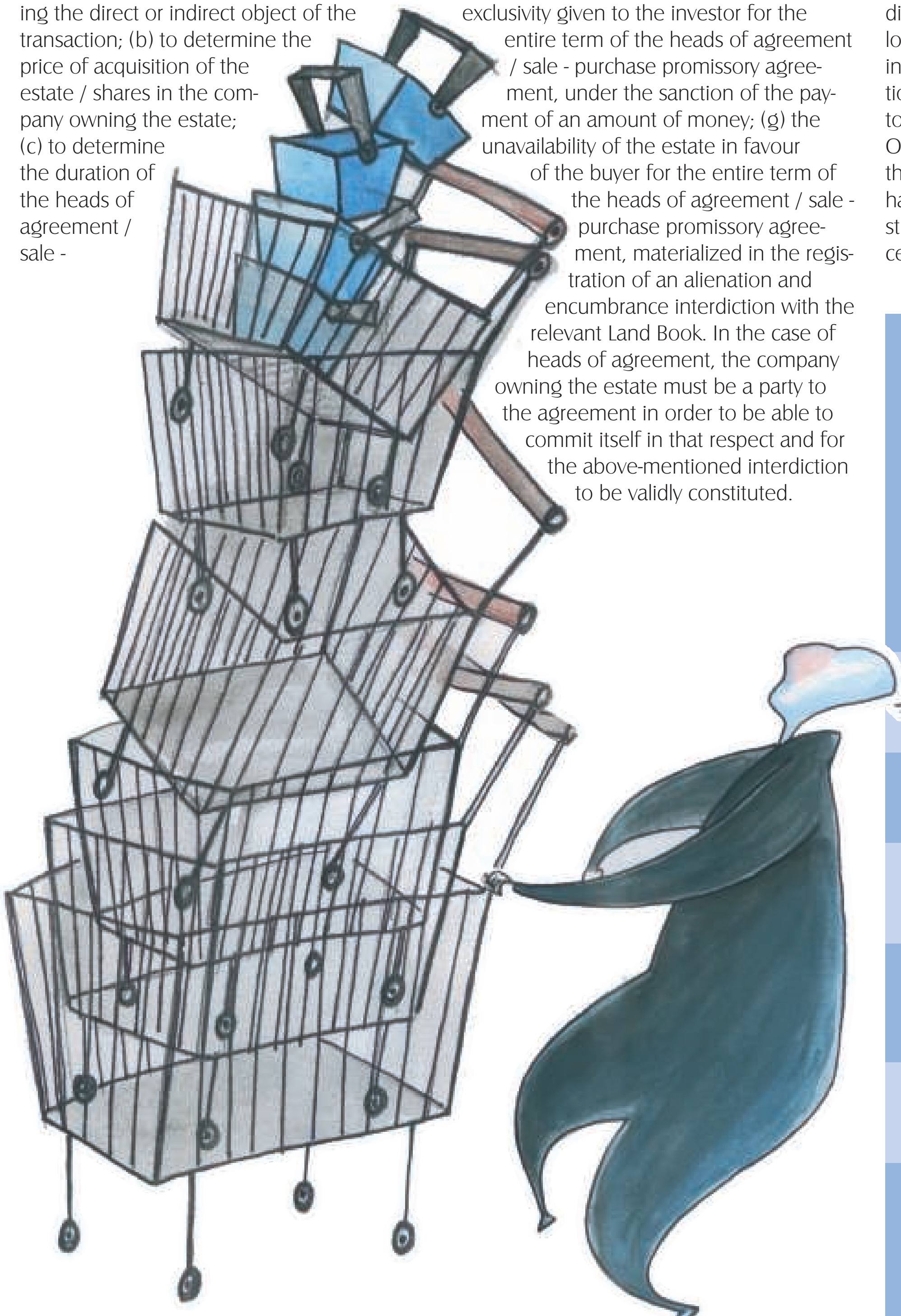
Subject to the second criterion, the titleholder of the ownership right over the estate (land / land and building) to be developed in the project respectively, the means of capitalization of am estate land or land and buildings vary subject to the legal status of the targeted property. Thus, in the case of estates privately owned by individuals or companies, the investor without the approval of any authority or public institution can validly acquire the estate comprising only land or land and building. The formality required under law for a valid transfer of the ownership right over a piece of land by sale, donation or exchange consists of the conclusion of the agreement in an authenticated form. In the case of buildings, the conclusion of the agreement in an authenticated form is no longer mandatory, but it is advisable.

In the case of estates in the public or private property of central or local public authorities, irrespective whether they belong to the public or private property of central or local public authorities, they can only be capitalized in complying with certain formalities pre-determined by law. Thus, as a rule, unlike the estates privately owned by authorities, who can only be sold by public auction, the publicly owned estates cannot be alienated. As far as they are concerned, the investors can only acquire a usufruct or operation right after having gone through certain stages that will be detailed hereinafter.
In order to develop a retail project, any investor will need to go though certain stages: from the identification of the suitable estate on which they wish to develop a project to the sale of that project. These stages are roughly: (1) acquisition of the estate; (2) building of construction; (3) leasing out of the building to retail companies and possibly (4) sale of the project.
The first stage that an investor will go though with a view to developing a project is the acquisition of the land or, in some cases, land together with existing buildings.
As a rule, either the acquisition of the estate is materialized in the execution of an agreement under which, directly or indirectly, the ownership right over the estate is transferred to the investor. However, if it belongs to the public property of the state or the local public authority, it is no longer possible. A stage the investor goes through therefore will reviewed separately, subject to the owner of the estate.

Thus, in the case of the acquisition of an estate privately owned by individuals or companies, a number of steps need to be taken. Firstly, any project commences obviously with the identification of the estate and the contact with the owner with a view to beginning negotiations. From a legal point of view, a number of previous investigations can be conducted over this period with a view to determining the legal status of the estate (for example, to obtain informative excerpts from the competent Land Book offices).
After the preliminary negotiations, the second step in most cases is the execution of heads of agreement or a sale-purchase promissory agreement. Subject to what kind of transaction will be concluded (having as finality the acquisition of the estate), whether a sale of shares (the so-called "share deal") in the company owning the estate or a direct sale of the estate (the so-called "asset deal"), the parties will conclude (i) heads of agreement or (ii) a -purchase promissory agreement.

The object of the heads of agreement will be the shares sale - purchase promise, and the object of the sale - purchase promissory agreement will be the estate sale - purchase promise.

Irrespective whether it is heads of agreement that indirectly results in the acquisition of the ownership right over the estate, or it is a sale - purchase promissory agreement, the investor must have in mind at least the following aspects: (a) to correctly and accurately identify the estate representing the direct or indirect object of the transaction; (b) to determine the price of acquisition of the estate / shares in the company owning the estate; (c) to determine the duration of the heads of agreement / sale - purchase promissory agreement, at least equal to the period he investor and his consultants need to conduct the technical, legal, and financial-fiscal due diligence, as the case may be; (d) obligation of the seller to provide the buyer with all the necessary documents and information to perform the due diligence; (e) termination of the heads of agreement / sale - purchase promissory agreement without damages and the return of the advance payment, if the case may be, provided that the outcome of the due diligence is not satisfactory for the investor; (f) exclusivity given to the investor for the entire term of the heads of agreement / sale - purchase promissory agreement, under the sanction of the payment of an amount of money; (g) the unavailability of the estate in favour of the buyer for the entire term of the heads of agreement / sale - purchase promissory agreement, materialized in the registration of an alienation and encumbrance interdiction with the relevant Land Book. In the case of heads of agreement, the company owning the estate must be a party to the agreement in order to be able to commit itself in that respect and for the above-mentioned interdiction to be validly constituted.



The third stage is the execution of the sale - purchase agreement, the object of which is either the shares, or the estate, if the outcome of the due diligence is satisfactory to the investor and meets his project requirements.

Upon conclusion of the agreement, one must have in mind certain aspects, such as exact and correct identification of the object thereof, terms of payment of the price, in which case the price can be fully paid (if the outcome of the due diligence is fully satisfactory and there no longer is any obligation for the seller) or in instalments, provided that there are conditions precedent of the seller's and in favour to the buyer, etc.
Once the estate purchased by the investor, the first stage in the project development has been completed. Thereafter, the construction will be erected based on the concept of the investor.

A retail project
in six easy steps

1 Choosing the suited type of the project (land or land with a building)

2 Pointing the building and cotact the owner

3 Land or land with a building acquirement

4 Signing an agreement or a sales pre-contract

5 Signing a sales contract

6 Erase the building according with the developer’s concept