

Real Estate Project Development

Foreign Investors on the Local Market

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A recent research made by a reputable international consultancy company shows that Romania is at present the most profitable destination for investments on the real estate market. The review maintains that, during the last 10 years, the prices in the real estate field will increase over four times the present price. Under these circumstances it goes without saying that more and more foreign investors are attracted to major real estate transactions. An essential success condition is for such investors to know the local "environment", even if the important players that invest hundreds of millions euros in real estate projects impose legal practices in the countries that have experience in the field. Therefore, by the "infusion" applied by the foreign investors, the perception of the legal professionals as regards the true meaning of a real estate transaction has begun to change little by little and part of such investors try to put into practice concepts such as legal due diligence, escrow agreements, intra-group financing and so on. Let us presume that a foreign investor contemplates to acquire complex of outlets and offices spaces. The owner of the project is a multinational company which develops the respective complex by the intermediary of a company incorporated especially for this purpose (named in practice "vehicle company"). Because the vendor is a vehicle company, the investor always has to extend the due diligence to issues related to the corporate matters of such company. Besides the normal investments related to the selling company, special attention has to be given to the approvals of the transaction by the managing bodies of the vendor, and the investor has to find out if there is any decision issued by the extraordinary general meeting of shareholders of the company involved in the transaction as vendor.

Therefore, the purchaser is advised to request, as condition precedent for completion of the transaction, that a decision is taken at the extraordinary general meeting of the vendor's shareholders, adopting the

particular aspects of the transaction (such as the price of the transaction, the terms of payment, contractual guarantees pledged by the vendor, the amount of the indemnities, etc.). This precaution is required in case there is a risk to oppose the validity of the transaction by the vendor himself. In most cases, the construction of the building proves to be financed by banks. In practice, the financing bank requests the setting of a mortgage and of an interdiction to sell and set charges on the land and buildings of the financing company. In most cases, it is not recommended to the purchaser to conclude the document underlying the transaction until the date when the bank agrees in relation to the transaction. Also, it is recommended not to perform the payment of the price until the date on which the assets are actually released from under the mortgage.

Part of the price of the transaction may be paid directly by the purchasers of the financing bank as reimbursement of the vendor's loan (this being required by the bank, as a condition for the release of the assets from under the mortgage).

The investor also needs to check if there are any actions pending before the court for the reimbursement of the land held (that belongs to the buildings), brought by the former owners, as per the legal provisions on retrocession. In case that further to the investigation it is proved that there are disputes or administrative procedures affecting the land related to the buildings, it is better that the completion of the transaction should be affected by the purchaser by a condition precedent so that such disputes or procedures should be settled definitively or cancelled by a transaction.

Another material aspect from the purchaser's

perspective is related to the final quality of the finishing works of the building, which are currently under process of execution. The vendor usually requests the purchaser to express its firm commitment to buy the buildings and to pay in advance part of the price to an escrow account before completion of the finishing works. In this case, the vendor has to guarantee that, immediately after execution of the agreement, the vendor shall not perform bad quality finishing works in order to cut down expenses. In the absence of detailed technical specifications of the building (in regard of the finishing materials), the practical difficulty is to precisely draw the concept of "international first class quality finishing" (usually requested by the purchaser). This, in the purchaser's view, depends on the quality of the materials used and the quality of the execution works, plus an appropriate design (colors, shape). A possible solution is to set a joint team, appointed by the vendor and the purchaser, to supervise and manage the finishing works. There are cases when the purchaser finances the acquisition and therefore the financing bank does not release the price until a first rank mortgage is put on the asset in its favor. In this case, the vendor's bank is to release the mortgage before the vendor's loan is actually repaid. This situation is usually solved by an escrow account opened with the vendor's bank where the purchaser's financing bank deposits the price which is automatically debited by the vendor's bank after the mortgage is released from its end

and the sold assets are encumbered by a new mortgage in favor of the financing bank.

