

Commercial Real Estate

Second Edition

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Albania

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Leasing

Practical points

Securing the premises

The law does not prohibit the interested party from securing occupation of a premises in advance of being constructed or while being occupied. To do so the interested party (tenant) shall with the landlord enter into a lease contract effective upon conclusion of the construction or upon vacation of the existing occupier. Apart from conclusion of such contract, in order to warrant its future execution, the tenant may be asked by the landlord to deposit a certain amount of money or to provide a bank guarantee.

Taxes and fees payable

The occupier bears local taxes such as green tax, cleaning tax and lighting tax, which are defined on a yearly basis by the Council of the Municipality. According to article 828 of Law no. 7850, dated 29.07.1994, “The Civil Code of the Republic of Albania”, as amended (hereinafter the “Civil Code”), the landlord bears the financial obligations and taxes related to the property (i.e. tax on the real estate).

Fitting out works

According to articles 802-814 of the Civil Code, the occupier does not necessarily have to obtain the owner’s approval for works that it proposes to carry out. However, unless otherwise agreed in the lease contract, the occupier shall under article 814 of the Civil Code return the premises to the landlord in the same condition as it was when handed over. To avoid future disputes related to improvements or alterations of the premises, the parties generally set them forth in the lease contract. When the parties agree on alterations or works to be carried out by the tenant, the owner may request the former to specify them in the contract or to provide details of the respective project. Obtaining the owner’s approval for carrying out works or alterations before the occupier takes possession of the premises is also possible.

Codes of practice

The relationship between an occupier and the owner is governed by the Civil Code provisions and the terms and conditions set forth by the parties in the lease contract.

Key commercial terms

Rent

Rent is usually paid in cash or through bank transfer, as the parties may agree. According to article 59 of law no. 9920, dated 19.05.2008, “On Tax Procedures”, as amended, transactions (rent) with a value of more than €1,100 (one thousand, one hundred) cannot

be made in cash. The parties usually agree that the rent shall be paid in advance on a monthly basis. However, a semi-annual or annual basis can also apply.

The Decision of the Council of Ministers No. 469, dated 03.06.2015, “On designation of the minimal rent levels for tax purposes”, provides the formula for establishing the minimal rental levels. The rental price cannot fall under the levels established by such decision.

Rent adjustments

The rent does not usually increase or decrease during the occupation period. The increase or decrease of the rent is regulated only by mutual agreement of the parties to the lease contract.

Other occupational costs

The occupier usually bears the costs for maintenance of the common parts of the building (condominium fee) and costs related to utilities (i.e. electricity, water supply, heating).

Period of occupation

According to article 803 of the Civil Code, leases cannot last more than 30 years, unless the law provides otherwise. A lease contract of a residential building cannot last more than five years. The law does not provide for a minimum term of duration of the lease.

Remaining in occupation

According to article 821 of the Civil Code, when the initial period of the lease expires, and the landlord does not object to the premises' occupation by the tenant, then the contract is automatically renewed. In such event, the new lease is governed by the same terms and conditions as the previous one. Article 804 of the Civil Code provides for the right of the occupier who has correctly executed its obligations under the previous contract, to be preferred over others, if requesting a further lease.

The parties also can agree contractually for the right of the occupier to request a further lease.

Disposing of the premises

In the defined term lease, the occupier is bound to such term, unless otherwise specified by the parties in the contract. If the occupier disposes of the premises prior to expiry of the lease term without having such right under the contract, then the landlord may claim damage compensation due to unilateral termination (withdrawal) of the contract by the tenant.

In the lease contract, the parties may set forth the occupier's right to dispose of the premises provided that a certain notification period and procedure with the landlord have been followed. The law does not provide for a specific notification period or procedure for communicating to the landlord the withdrawal of the occupier, therefore it is defined by the parties to the contract.

Article 818 of the Civil Code provides for the right of the occupier to occupy the premises under the sublease without prior consent of the landlord, unless otherwise defined in the contract. However, the occupier cannot assign the lease to another party without prior consent of the landlord.

Alterations

The law does not provide for the alterations the occupier is allowed to make. However, according to article 814 of the Civil Code, the occupier should return the premises to the landlord in the same condition as it was when handed over. In practice, the parties will

have defined upon agreement the alterations the occupier may carry out, and the bearer of such alterations' costs. Article 816 of the Civil Code provides that the occupier is not entitled to compensation for the improvements/alterations' cost unless the consent of the landlord for carrying them out has been taken.

Repair of the premises

Under article 805 of the Civil Code, the occupier is required to carry out repairs related to daily maintenance. If the premises require repairs other than those of daily maintenance, the occupier shall notify the landlord. In case of urgent repairs, the occupier may carry them out and claim return of the costs incurred, provided that the landlord has been immediately notified of such repairs. Except where the landlord accepts to keep the alterations made to the premises by the occupier, the latter has the right to remove them when vacating the premises, provided that the removal does not damage the premises. In such case the landlord shall compensate the occupier for the alterations carried out.

Investment

Practical points

Exclusivity

The investor can ensure that the current owner does not try to sell the property to another party by entering into a restriction agreement with the seller and registering it with the registry of immovable properties at the Immoveable Properties Registration Office. Upon registration of the restriction agreement with the immovable properties registry, third parties will be provided with the information that such property will be acquired by the investor. Also, upon registering the restriction agreement the Real Estate Registration Office will not accept registration of any subsequent sale transaction that the seller may have concluded with another buyer.

Restrictions on disposing of property

According to article 5 of law no. 7980 dated 27.07.1995, "On buying and selling of land", as amended, foreign entities/foreigners have the right to purchase land, private or state-owned property, with the condition of realising investment on the land not less than three times the value of the land, in accordance with the building permission.

Pursuant to article 4 of law no. 8337 dated 30.04.1998, "On the transfer of the property titles of agricultural lands, forests, meadows and pastures", the transfer of the property title of such properties is not allowed for foreign entities/foreigners, but they have the right to have a leasehold of 99 years.

Impacts on timing

Verification of the seller's ownership rights over property is an important aspect which affects the transaction. As the initial step of the transaction, the investor should request the owner to provide it with recently issued property records reflecting the actual status of the property. The investor may as well perform verifications regarding the status of the property at the notary itself or at the Real Estate Registration Office (RERO).

Key milestones in the acquisition process

The key stages in the acquisition process consist of: i) verification with the RERO of the ownership of the seller and the current situation of the property; ii) once the seller and the buyer have agreed on acquisition terms and are willing to finalise the sale contract, the notary obtains a recently issued copy of the property records. In the meantime the buyer

should deposit the purchase price at the bank account of the notary; iii) signature before the notary of the sale-purchase contract by the parties; iv) registration of the sale purchase contract with the RERO after the respective taxes and fees for transfer of the property title from the seller to the buyer having been paid; and v) once the RERO issues the property certificate reflecting the buyer's ownership over the property, the notary transfers the purchase price to the seller.

Requirement for transfer of monies

Please refer to the paragraph above. The overall process for transfer of the money usually takes up to 15 days.

Execution procedure

According to article 83 of the Civil Code, the contract for sale of the immovable property must be concluded in front of a notary. The contract is signed by the seller and buyer themselves or by their authorised person/persons.

The same applies when dealing with overseas companies as well. The signatory of the sale-purchase contract should be duly authorised to represent the company in such transaction. The sale-purchase contract should be signed by the notary as well, and registered with the RERO.

Other procedural requirements

Please refer to 'Key milestones in acquisition process' and 'Execution procedure', above.

Taxes and fees payable

According to article 709 of the Civil Code the buyer (investor) bears costs related to execution of the sale-purchase contract, unless otherwise agreed by the parties. Such costs consist of:

- (i) Notary fee for notarisation of the sale-purchase contract (defined in Order no. 279, dated 14.06.2012, "On the approval of the notary services tariffs" of the Ministry of Justice and Ministry of Finance, as amended).
- (ii) Fee applicable by the Real Estate Registration Office for registration of the sale-purchase contract (defined in the Instruction no. 5341/5, dated 09.07.2012, of the Ministry of Justice and Ministry of Finance, as amended).

Once the property has been transferred to the investor, the latter should pay as per article 22 of law no. 9632, dated 30.10.2006, "On local tax system", as amended, the tax on the building being calculated per square metre. The level of such tax is defined by the Council of the Municipality, within the limits established by law, and paid on a yearly basis.

Other taxes related to the sale-purchase transaction of the property are borne by the seller (i.e. tax for the transferring of the property title from the seller to the buyer, profit tax).

Key commercial terms

Deposit

Please refer to 'Practical points', above.

Timing

The overall process of property acquisition takes approximately 20 days.

Employees

The new owner of the property has no obligations towards the previous owner's employees unless, together with the property, the commercial activity (factory, etc.) conducted over/in such property has also been transferred. In such event, under article 138 of the Labour

Code of the Republic of Albania, the rights and obligations deriving from employment contracts with the previous owner are also transferred to the new owner and will be effective until termination of the term defined therein.

Warranties for construction of buildings

Articles 864-866 of the Civil Code define the obligation of the contractor to provide warranties and guarantees for the construction to the investor.

The contractor and the investor are entitled to specify such warranties and guarantees in the contract to be entered into between the parties.

Transfer of other tax or financial benefits

No taxes or other financial benefits are transferred to the incoming investor.

Development

Practical points

Land ownership and assembly

The investor may acquire information regarding the owner of a certain parcel of land at the RERO. The owners cannot be required to sell their land to a developer.

Land transfer

The developer can buy the land straight away or may enter into an agreement with the landlord/the seller to pay the purchase price by instalments. In this scenario, the developer will become owner of the property once the last instalment of the purchase price is paid (article 746 of the Civil Code).

Taxes and fees payable

According to article 709 of the Civil Code, the buyer (investor) bears costs related to execution of the land sale-purchase contract, unless otherwise agreed by the parties. Such costs consist of:

- (i) notary fee for notarisation of the sale-purchase contract (defined in Order no. 279, dated 14.06.2012, “On the approval of the notary services tariffs” of the Ministry of Justice and Ministry of Finance, as amended); and
- (ii) fee applicable by the Real Estate Registration Office for registration of the sale-purchase contract (defined in the Instruction no 5341/5, dated 09.07.2012, of the Ministry of Justice and Ministry of Finance, as amended).

Other taxes related to the sale-purchase transaction of the land are borne by the seller (i.e. tax for the transfer of the property title from the seller to the buyer, profit tax).

Key commercial terms

Price

The value of the land in Albania is regulated by the Decision of the Council of Ministers no. 514 dated 30.07.2014, “On approval of the property value for each district of the Republic of Albania”, as amended, which provides the land value for every region of the country. In case the parties agree to sell/purchase at a price lower than that defined in such Decision, the applicable fees and taxes shall be calculated taking as reference the value defined in the decision.

Payment structure

Once the land has been transferred, the investor has to pay the full value of it. Transfer of ownership cannot be done if the investor has not paid the full value of the land. According to

article 746 of the Civil Code, parties may agree for payment to be executed by instalments, and the investor becomes the owner of the property when the last instalment is paid.

To secure payment of the purchase price, the parties may agree in the contract for the application of penalties. Under article 748 of the Civil Code, failure of the buyer to pay 1/3 of the purchase price entitles the seller to terminate the contract and request damage compensation; alternatively they may keep all the paid amount as compensation if so agreed by the parties in the contract (article 749 of the Civil Code).

Deal structures

Forward-purchase structures are very common in the Albanian real estate market. In this scenario the buyer usually does not have to pay the entire purchase price at once, but can pay it through instalments until completion of the construction and conclusion of the final sale-purchase agreement.

It is not common, but tenants sign up to pre-lets as well.

Taxes and fees payable

In reference to the purchase of the land, please see ‘Development, Practical points’, above. By contrast, regarding the development of land, under article 27 of law no. 9632, dated 30.10.2006, “On local taxes system”, as amended, and article 46 of law no. 107/2014, “On territory planning and development”, the developer shall pay the “tax on infrastructure impact”, which varies from 1%-4% of the investment value.

Financing

Practical points

Level of loan

Lenders are usually willing to advance up to 70% of the value of the premises.

Security

To secure the loan, lenders usually require mortgaging of the property subject of the transaction, third parties’ mortgage or securing liens.

Lender due diligence

Lenders tend to carry out comprehensive due diligence including: analysis of investor’s activity; analyses of balances/financial statements; market experience of the investor; etc. Lenders may also require the investor to carry out due diligence related to agreements concluded with land owners, construction permits, investment plan, other various agreements, etc.

Enforcement

Lenders can take enforcement actions when the investor fails in fulfilling its contractual obligations (i.e. payment of the loan as defined in the loan contract), despite being notified about such failure. Failure of the investor to comply with contractual obligations entitles the lender to request commencement of mandatory enforcement procedures through the bailiff, by executing the assets and bank accounts of the investor.

Key commercial terms

Length of loan

Financing arrangements usually last up to two years for commercial entities and up to 20 years for individuals.

Interest rate and payment dates

Interest can be fixed or variable. If payment is to be made by instalments, the interest is payable at the maturity of each instalment. If the interest is variable, the lender is obliged to explain to the investor the manner of calculating the interest when charging it.

Repayment

The lender is entitled to demand repayment of the loan when the investor does not fulfil the contractual obligations as per the terms and conditions defined in the loan contract.



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