



ICLG

The International Comparative Legal Guide to:

Real Estate 2013

8th Edition

A practical cross-border insight into real estate law

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General Chapter:

1	The End of Extend and Pretend: Non-Performing Loans in CEE/SEE - Denise R. Hamer, Schoenherr	1
---	---	---

Country Question and Answer Chapters:

2	Argentina	Marval, O'Farrell & Mairal: Santiago Carregal & Diego A. Chighizola	3
3	Australia	Herbert Smith Freehills: David Sinn	10
4	Austria	Schoenherr: Michael Lagler & Ayla Ilicali	18
5	Brazil	Demarest e Almeida Advogados: Adriana Khalil Daiuto	27
6	Bulgaria	Advokatsko druzhestvo Andreev, Stoyanov & Tsekova in cooperation with Schoenherr: Peter Madl & Mariya Mihaleva	37
7	Canada	Blake, Cassels & Graydon LLP: Thomas von Hahn & Garth Anderson	45
8	Chile	Figueroa, Illanes, Huidobro y Salamanca: Juan Eduardo Figueroa Valdés & Jose Manuel Figueroa Valdés	53
9	Colombia	Gómez-Pinzón Zuleta Abogados S.A.: Paula Samper Salazar & Wilson Camilo Cantor	60
10	Costa Rica	Lang & Asociados: Henry Lang & Juan Carlos Cersosimo	67
11	Croatia	Petres & Cvirm odvjetničko društvo: Jana Cvirm Adamčić & Ksenija Hadžisejdić	75
12	Czech Republic	Schoenherr: Martin Kubánek & Pavla Šlapáková	84
13	Denmark	Gorrissen Federspiel: Hans-Peter Jørgensen & Jesper Avnborg Lentz	92
14	England & Wales	Herbert Smith Freehills LLP: Rachel A. Walker & James Barnes	100
15	Finland	Dittmar & Indrenius: Antti Aaltonen & Raija-Leena Ojanen	110
16	Germany	P+P Pöllath + Partners: Dr. Wolfram Pätzold	118
17	Ghana	Heward-Mills & Co Dantu Chambers: George Addison Heward-Mills & Matthew Eduku Miezah Anyimiah	125
18	Greece	KGDI Law Firm: Gus J. Papamichalopoulos & Elia Iconomidou	133
19	Hungary	Schoenherr: Sándor Habóczy & Tamás Balogh	142
20	India	Law Point, Advocates & Solicitors: Joyita Sabharwal & Sushant Shetty	150
21	Indonesia	Ali Budiardjo, Nugroho, Reksodiputro: Nafis Adwani & Agus Ahadi Deradjat	159
22	Ireland	McCann FitzGerald: Shane Fahy & Denise Dockery	166
23	Israel	Ziv Lev & Co. Law Office: Ziv Lev & Moshe Merdler	177
24	Italy	Legance Studio Legale Associato: Gabriele Capecci	186
25	Japan	Nishimura & Asahi: Hideaki Ozawa & Ryoji Moroi	192
26	Mexico	Portilla Ruy-Diaz y Aguilar, S.C.: Gonzalo Eugenio Ruy-Díaz Benhumea & Ivan Guerrero Sanchez	202
27	Montenegro	Moravčević Vojnović i Partneri in cooperation with Schoenherr: Slaven Moravčević & Ivan Pantović	210
28	Morocco	Hajji & Associés: Amin Hajji & Salma Bedraoui Idrissi	218
29	Peru	Estudio de la Flor, García Montúfar, Arata & Asociados: Guillermo García Montúfar & Moisés Arata Solís	226
30	Poland	Gide Loyrette Nouel: Hugues Moreau & Błażej Czarnok	238
31	Romania	Pachiu & Associates: Ana-Maria Goga & Cecilia Badea	246
32	Russia	ART DE LEX Law Firm: Evgeny Arbuzov & Ivan Korolev	255
33	Serbia	Moravčević Vojnović i Partneri in cooperation with Schoenherr: Slaven Moravčević & Ivan Pantović	264

Continued Overleaf

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Country Question and Answer Chapters:

34	Slovakia	Schoenherr: Juraj Steinecker & Marcel Tuhý	272
35	Slovenia	Filipov o.p. d.o.o. in cooperation with Schoenherr: Ana Filipov	282
36	Spain	Pérez-Llorca: Sergio Agüera & Adriana Martín	288
37	Switzerland	LHA: Delphine Zarb	297
38	Ukraine	Schoenherr: Denys Sytnyk & Peter Madl	304
39	USA	McKenna Long & Aldridge LLP: Christina Braisted Rogers	313
40	Vietnam	Gide Loyrette Nouel A.A.R.P.I.: Ha Dang Quang	322

EDITORIAL

Welcome to the eighth edition of *The International Comparative Legal Guide to: Real Estate*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of real estate.

It is divided into two main sections:

One general chapter. This chapter looks at non-performing loans in the CEE/SEE region.

Country question and answer chapters. These provide a broad overview of common issues in real estate laws and regulations in 39 jurisdictions.

All chapters are written by leading real estate lawyers and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Michael Lagler of Schoenherr, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk

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1 Real Estate Law

1.1 Please briefly describe the main laws that govern real estate in Montenegro. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 11.1.

The principal laws governing real estate in Montenegro are: (i) the Law on Obligations [*Zakon o obligacionim odnosima*], which defines general rules concerning agreements; (ii) the Property Relations Act [*Zakon o svojinsko-pravnim odnosima*], which defines ownership and other property rights, possession, and the acquisition, transfer, protection and cessation of these rights; (iii) the State-Owned Property Act [*Zakon o državnoj imovini*], which regulates the use, maintenance and transfer of real estate owned by the State and local self-governments; (iv) the State Land Survey and Land Registry Act [*Zakon o državnom premjeru i katastru nepokretnosti*], which regulates the organisation and registration of information on real estate, and the organisation of the land registry; (v) the Restitution and Compensation Act [*Zakon o povraćaju oduzetih imovinskih prava i obeštećenju*], which regulates matters related to denationalisation, property rights, and compensation; and (vi) the Housing and Maintenance of Residential Buildings Act [*Zakon o stanovanju i održavanju stambenih zgrada*], which regulates condominium ownership.

1.2 What is the impact (if any) on real estate of local common law in Montenegro?

Given that Montenegrin law follows a civil law system, court precedent has no significant impact on real estate law. However, Montenegrin case law (i.e. non-binding court precedent) will be taken into consideration by judges when deciding new cases.

1.3 Are international laws relevant to real estate in Montenegro? Please ignore EU legislation enacted locally in EU countries.

International law, such as international treaties and conventions regarding real estate, are applicable if ratified by the Montenegrin Parliament. Verified international treaties have supremacy over national legislation.

2 Ownership

2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?

Foreign individuals and companies cannot acquire ownership of natural resources, public goods, agricultural land, woods and woodland, cultural monuments, real estate within one kilometre of the state border, islands, and real estate in areas designated as non-acquirable by foreign persons on defence and security grounds.

3 Real Estate Rights

3.1 What are the types of rights over land recognised in Montenegro? Are any of them purely contractual between the parties?

Montenegrin law recognises the following land rights: (i) ownership (individual ownership, co-ownership, and condominium); (ii) easements; (iii) mortgages; (iv) pre-emption rights; (v) rights of use; (vi) long term leases; and (vii) financial leasing.

In order to be effective *vis-à-vis* third parties, a right in the real estate must be properly registered with the Land Registry.

3.2 Are there any scenarios where the right to a real estate diverges from the right to a building constructed thereon?

If the State, in accordance with the State-Owned Property Act, leases state-owned construction land to private investors for construction purposes, it shall retain ownership of the land, while the private investor shall acquire ownership of the structures erected thereon.

4 System of Registration

4.1 Is all land in Montenegro required to be registered? What land (or rights) are unregistered?

The general rule under Montenegrin law provided in the State Land Survey and Land Registry Act prescribes that all rights *in rem*, e.g. ownership (sole ownership, co-ownership, joint and undivided co-ownership and condominium), rights of lease, rights of use, servitudes, mortgages, etc. must be registered in order to be effective *vis-à-vis* third parties.

4.2 Is there a state guarantee of title? What does it guarantee?

The right of ownership is guaranteed by Article 58 of the Montenegrin Constitution. Furthermore, pursuant to the principle of reliability, entries in the Land Registry are considered to be correct and accurate. Accordingly, any person who relies on the information in the Land Registry is protected against third party claims, even if it transpires that the registered information is inaccurate or incomplete.

4.3 What rights in land are compulsory registrable? What (if any) is the consequence of non-registration?

The registration of title to land, and other real estate, is compulsory. Pursuant to the State Land Survey and Land Registry Act, every grant, transfer or limitation of rights pertaining to the real estate must be registered with the relevant land register in order to be effective *vis-à-vis* third parties. Furthermore, the State Land Survey and Land Registry Act requires that every person who acquires a right in real estate (including the person alienating such right) to provide the competent administrative authority (Real Estate Administration/*Uprava za nekretnine*) with a copy of the respective sale and purchase contract. Failure to do so may result in a fine.

4.4 What rights in land are not required to be registered?

A lease for a term of up to five years does not need to be registered.

4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

Montenegrin law does not recognise a probationary period following first registration. However, registration may be appealed to a higher administrative authority within 8 days of delivery of the decision on registration. In cases where an appeal is dismissed or an appeal is not applicable, registration may be challenged before the court within 30 days of delivery of the decision on registration.

4.6 On a land sale, when is title (or ownership) transferred to the buyer?

Under Montenegrin law, title to real estate may only be acquired from the registered predecessor by way of a sale and purchase agreement which represents the legal title (*iustus titulus*) for the transfer of title to the real estate, while registration with the land registry is a condition for establishing ownership (*modus acquirendi*). Ownership is considered to be transferred following registration of the title with the land registry.

4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

The general principle prior *in tempore potior in iure* is applicable to registration of rights in real estate. This means that the time of filing the application with the competent authority shall be decisive for rights to the real estate, provided that all requirements for successful registration have been met. The holder of a right (i.e.

acquirer) who first registers shall have priority over subsequently asserted rights (i.e. acquirers).

5 The Registry / Registries

5.1 How many real estate registries operate in Montenegro? If more than one please specify their differing rules and requirements.

Presently, there is an on-going process of unifying the existing land registries in the Republic of Montenegro. Pursuant to the State Land Survey and Land Registry Act, one unified registry (i.e. the Land Registry) will be formed. The respective Land Registry contains all relevant information about a piece of land. Namely, it contains: (i) data on the land, based on surveying and other measurements; and (ii) data on respective rights to the land and any structures on it (i.e. ownership title, servitudes, mortgages, long-term leases, pre-emption rights, etc.).

5.2 Does the Land Registry issue a physical title document to the owners of registered real estate?

There is no physical title document. The Land Registry will issue a property sheet at the request of any interested party.

5.3 Can any transactions relating to registered real estate be completed electronically? What documents need to be provided to the land registry for the registration of ownership right? Can information on ownership of registered real estate be accessed electronically?

The possibility of completing a transaction in relation to registered real estate electronically is not provided for under Montenegrin law. Pursuant to the State Land Survey and Land Registry Act, the registration procedure commences with an ownership registration application. The application must be accompanied by a document demonstrating that the real estate is suitable for registration (a sale and purchase agreement is an example of an acceptable private document, while a decision from the official authorities is an example of an acceptable public document). To be eligible for registration, the relevant documents (either private or public) must be in a specific format, originals or certified copies, and contain all mandatory elements required by law. In the case of private documents, they must be in writing and contain the authenticated signatures of both parties, accompanied by the *clausula intabulandi*, an explicit unconditional statement of consent to the registration by the predecessor (seller), either as a part of a private document (sale and purchase agreement) or as a separate court-authenticated document.

Information on ownership is accessible through the website of the Government of Montenegro - Real Estate Administration: <http://www.nekretnine.co.me>.

5.4 Can compensation be claimed from the registry/registries if it/they makes a mistake?

The laws regulating registration of rights in real estate do not expressly provide for the right of an aggrieved party to claim compensation. However, under the general principals of Montenegrin law, damages may be claimed from any party found liable for such.

5.5 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate?

Registers are open to the public. Thus, any natural or legal person may obtain all relevant information on the respective real estate (i.e. ownership title, encumbrances, etc.).

6 Real Estate Market

6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in Montenegro? Please briefly describe their roles and/or duties.

a) Real estate agents

Agents bring the buyer and seller into contact, enabling them to enter into a sale and purchase agreement. Real estate agents act as intermediaries in exchange for a fee (usually established as a percentage of the purchase price, e.g. 3%).

b) Lawyers

Lawyers prepare sale and purchase agreements and other transaction documents concerning the sale of the real estate.

c) Notaries

Due to formal requirements, sale and purchase agreements must be notarised before the court/notary. Please note that although the Notaries Act and supplementary by-laws have been adopted and came into effect in 2005. Notary practice is not yet as developed as in other jurisdictions.

d) Others – Banks

In some cases, banks may act as escrow agents.

6.2 How and on what basis are these persons remunerated?

Real estate agents charge a commission for their services, which is usually a certain percentage of the purchase price. Lawyers' fees differ from case-to-case; they may be charged at an hourly rate, or a lump sum for the entire transaction may be agreed upon. Court notarisation fees are set out under the Court Fees Act. When acting as escrow agents, banks charge their established standard fees.

6.3 How has the real estate market in Montenegro recovered or reacted following the global credit crunch and worldwide recession in 2008/2010? What were the most important real estate transactions in Montenegro in the past year? Please include both local and international investors in your answer.

The consequences of the global credit crunch and worldwide recession in 2008/10 are very perceptible in the real estate market. Namely, the crisis resulted in a reduction in both sales and construction. Local investors have suffered more than foreign investors and only a few of them continued with their projects. The lease of the Kumbor coast was the most important real estate transaction in 2012.

6.4 Is there a trend in Serbia towards the investment in retirement homes / nursing homes due to the increased ageing of the population?

There has been no significant trend regarding this kind of investment.

7 Liabilities of Buyers and Sellers in Real Estate Transactions

7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?

A sale and purchase agreement is concluded where both parties mutually express their consent to the agreement. The agreement must recite the parties (i.e. seller and purchaser), the real estate, the purchase price and the consent to registration (*clausula intabulandi*). The agreement must be made in writing, and the parties' signatures must be authenticated by a competent court/notary.

7.2 Is the seller under a duty of disclosure? What matters must be disclosed?

Under Montenegrin law, the seller is under no express duty of disclosure. However, the seller must act in accordance with the principle of good faith, which may indirectly include a duty to disclose the real estate's legal and material defects.

7.3 Can the seller be liable to the buyer for misrepresentation?

The seller is liable to the buyer for misrepresentation. Where the seller makes any misrepresentation for the purpose of misleading the buyer into entering into the agreement, the buyer may request annulment of the agreement. Furthermore, an aggrieved buyer may claim damages, as well as lost profit suffered in connection with the execution of such agreement.

7.4 Do sellers usually give contractual warranties to the buyer? What would be the scope of these? What is the function of warranties (e.g. to apportion risk, to give information)? Are warranties a substitute for the buyer carrying out his own diligence?

In most cases, a sale and purchase agreement includes the seller's representations and warranties relating to encumbrances and third-party rights, the real estate's compliance with zoning ordinances and building regulations, environmental issues, administrative and corporate approvals, taxes, etc. The main function of the warranties is to transfer liability to the seller. Generally, the seller cannot be held responsible for facts that existed at the time of the agreement's conclusion which the buyer knew or ought to have known about.

7.5 Does the seller warrant its ownership in any way? Please give details.

Generally, the seller warrants sole and unencumbered ownership title to the real estate. Furthermore, the seller shall be liable for any existing third party rights to the real estate that exclude, diminish or limit the buyer's rights, where the buyer was not notified or had not agreed to take the property despite the encumbrance. The parties can limit or totally exclude the seller's liability for defects of title. Nevertheless, the clause excluding the seller's liability shall be null and void if the seller knew or ought to have known about the existence of a defect with regard to his ownership. A buyer must inform the seller about defects in the title within one year of discovering the existence of a third party's right, otherwise it forfeits its warranty right.

7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?

In addition to payment of a purchase price, a buyer is generally obliged to take possession of the real estate. Where a lease exists on purchased real estate, the buyer shall be bound by the terms of the existing lease agreement. For further details please see question 10.3, part e) below.

8 Finance and Banking

8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?

Generally, Montenegrin law neither differentiates between residents and non-residents, nor between individuals and companies when stipulating the conditions for lending money. The Central Bank of Montenegro must be notified of cross-border transactions; however, this is the duty of the bank making the payment.

8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?

In most cases, the lender can protect itself by: (i) establishing a pledge on company shares (i.e. an SPV which develops the project); (ii) establishing a mortgage on the building under construction; (iii) bank guarantee; or (iv) bill of exchange.

8.3 What are the common proceedings for realisation of mortgaged properties? Are there any options for a mortgagee to realise a mortgaged property without involving court proceedings or the contribution of the mortgagor?

According to the Property Relations Act, there are two types of mortgage enforcement procedures: (i) court proceeding – mortgage enforcement through a sale of the mortgaged properties under the Enforcement Procedure Act; and (ii) out-of-court enforcement conducted under the Property Relations Act, which does not involve a court. The mortgagee can file for an out-of-court sale of a mortgaged property after the expiry of 15 days of sending a foreclosure notice to the mortgagor, by registering the notice with the Land Registry.

8.4 What minimum formalities are required for real estate lending?

Aside from the general requirements relating to the loan agreement, there are no duties or formalities in terms of loan agreements used as a finance instrument. However, the general practice is that loan agreements must be in writing. Furthermore, the loan amount, its purpose, interest rate, and its redemption must be determined, as well.

8.5 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

The best way for a lender to protect itself from claims against the borrower is to establish a first rank mortgage.

9 Tax

9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

Real estate transfers are subject to a transfer tax (i.e. real estate transfer tax), i.e. 3% of the market value of the real estate at the moment of the acquisition (buildings that are covered by VAT are not subject to the 3% transfer tax). The transfer tax is paid by the acquirer. Tax exemptions exist for the transfer of real estate through mergers and acquisitions or separations of a company, where the real estate is introduced as a contribution in-kind or in the event of a share capital increase. Where real estate is exchanged, both acquirers are subject to the transfer tax of 3%.

9.2 When is the transfer tax paid?

The tax authorities must be notified of a sale and purchase agreement within 15 days of its signing, whereas the tax must be paid within 15 days from the day the respective decision is delivered by the tax authorities.

9.3 Are transfers of real estate by individuals subject to income tax?

No, they are not.

9.4 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

The first-time transfer of newly-constructed buildings (e.g. business premises and residential units) is subject to 17% VAT (the VAT base is the purchase price), provided that the seller is registered for VAT. Generally, the seller is liable for VAT. However, the tax representative shall be nominated and liable for VAT if the taxpayer does not have its residence or seat in Montenegro. If a tax representative is not appointed, the payment of VAT shall be the buyer's responsibility.

9.5 What other tax or taxes (if any) are payable by the seller on the disposal of a property?

VAT at 17% is payable by the seller on the first-time disposal of newly-constructed buildings. Furthermore, legal entities that qualify as Montenegrin residents or carry on business in Montenegro must pay capital gains tax, i.e. 50% of capital gains acquired in the present year will be calculated into the legal entity's yearly income. The capital gain is the difference between the contracted purchase price of the real estate and the price for which the seller originally acquired the real estate that is the object of the sale. Capital gains are taxed at 9%.

9.6 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

The transfer of a share in a company is not subject to any tax in Montenegro. However, if a legal entity has gained a profit from the difference between the contracted purchase price of the share and the price for which the seller originally acquired the share, it represents a capital gain and may be subject to taxation as part of a legal entity's yearly profits.

10 Leases of Business Premises

10.1 Please briefly describe the main laws that regulate leases of business premises.

The Law on Obligations contains a specific provision on the lease and sub-lease of business premises.

10.2 What types of business lease exist?

There is no common classification of the types of business lease.

10.3 What are the typical provisions for leases of business premises in Montenegro regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

a) Length of term

A lease may be concluded either as a fixed-term lease or as an open-ended lease.

b) Rent increase

In the absence of rules or legislative guidelines on rent, the amount to be paid entirely depends on the agreement between the parties. However, under a provision protecting tenants, landlords are restricted from charging an extortionate amount of rent.

c) Tenant's right to sell or sub-let

The tenant has no right to sub-let the premises unless otherwise agreed.

d) Insurance

There are no mandatory insurance rules for leased property. This issue is solely at the discretion of the parties. However, it is common practice for the provisions of a lease to stipulate that the landlord has a duty to insure the leased property.

e) (i) Change of control of the tenant

e) (ii) Transfer of a lease as a result of corporate restructuring (e.g. merger)

If a leased property is sold/transferred during the lease term, the lease remains effective and the new acquirer of the leased property assumes the rights and obligations of the landlord, unless otherwise stipulated. The new acquirer may not terminate the lease before the fixed-term lease expires. In case of a sale/transfer of the real estate, the tenant is entitled to terminate the lease due to the change of landlord.

f) Repairs

Unless otherwise agreed, the landlord must keep the leased premises in good condition, while the costs of minor repairs caused due to normal wear and tear shall be borne by the tenant. The landlord's approval is required before any substantial changes are made to the leased property.

10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

VAT at 17% is payable on a business lease between companies/entrepreneurs, provided the landlord is VAT registered. However, if a legal entity acting as a landlord is not VAT registered, it will be liable for profit tax at 9%.

If a resident legal entity is acting as a tenant to a non-resident legal entity, the income from the lease will be subject to a withholding tax

on gross income at 9%. The same shall be applied to a business unit of a non-resident legal entity when acting as a tenant, save where the income from the lease is ascribed as the business unit's income.

Where a natural person is acting as a landlord, the income from the lease will be subject to a property income tax at a rate of 9%, whereas the base for the taxation is decreased by 40% as a standard expense.

10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

A fixed-term lease expires at the end of the specified term. Unless otherwise provided in the lease, a fixed-term lease can be terminated only where one of the parties is in default and such default cannot be remedied. The parties can also terminate the lease under the provisions laid down therein. The Law on Obligations provides for a 3-month notice period for business leases. Regardless of its duration, a lease can also be terminated unilaterally by the landlord for the following reasons: non-payment of rent for a period of 15 days following a warning by the landlord; use of the property in violation of its stated purpose or the lease; or where the landlord cannot use the property leased by it for its business through no fault of its own.

10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non compliance?

The transferor (i.e. former landlord) remains jointly and severally liable to the tenant for the obligations of the acquirer arising out of the lease. The acquirer is entitled to receive the rent after it has acquired the property, while the transferor must handover all advance rent payments, if any were received.

10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the "environmental footprint" of a building. Please briefly describe any "green obligations" commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).

The State of Montenegro in 2001 adopted the "Declaration of the Ecological State of Montenegro" [*Deklaracija o ekološkoj državi Crnoj Gori*] and the "Programme Development of the Ecological State of Montenegro" [*Pravci razvoja ekološke države Crne Gore*]; so far the regulation on construction of "green buildings" has not been enacted. Regarding green leases, there is no applicable regulation or developed practice yet.

11 Public Law Permits and Obligations

11.1 What are the main laws which govern zoning and related matters concerning the use and occupation of land? Please briefly describe them and include environmental laws.

The main law governing zoning and related matters is the Spatial

Planning and Building Construction Act. In addition, other relevant laws are: (i) the Environment Act; (ii) the Environmental Protection Act, which regulates environmental issues; (iii) the Environmental Impact Assessment Act; (iv) the Environmental Impact (Strategic Evaluation) Act, which regulates the procedure for evaluating the impact of a project (e.g. construction and exploitation of minerals) on the environment, as well as the procedure for obtaining permission from the competent authority; (v) the Noise Prevention (Natural Environment) Act, which regulates noise prevention in the natural environment and stipulates a set of different measures for mitigating the detrimental effects of noise; and (vi) the Environmental Pollution (Integrated Prevention and Control) Act [*Zakon o integrisanom sprječavanju i kontroli zagađivanja životne sredine*], which regulates conditions and procedure for issuing permits to plants and factories that may adversely affect the environment and human health. In addition, local land use is subject to local zoning plans (e.g. municipality regulations).

11.2 Can the state force land owners to sell land to it? If so please briefly describe including price mechanism.

The Expropriation Act regulates conditions under which the State can deprive owners of the real estate from their property. Namely, provided that the public interest is determined (by a particular provision of law or by a decision of the Government of the Republic of Montenegro), owners of the land, buildings and other structures under construction will be forced to sell the property. The ownership of the expropriated real estate can be transferred to the State, a municipality, a State fund or a public company. The owner of the respective real estate will receive appropriate compensation for the expropriated real estate. The amount and the kind of compensation will be determined based on the type of real estate expropriated. The compensation for the construction land or the city building land will be a cash amount for the market value of the respective property. However, compensation for agricultural land, residential buildings, and apartments or business premises may take the form of another adequate real estate or cash compensation amounting to the market value of the real estate expropriated.

11.3 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?

Land and building use is controlled on two levels. Regional administrative bodies responsible for spatial planning and construction of buildings control the construction of complex or large structures, or if a special concern exists for such structures due to their importance or the possibility of accidents connected to their construction or use (e.g. bridges, motorways, hydro-electric and thermo-electric power stations, etc.). In all other cases, control is exercised by a local administrative body. The competent authority for issuing building permits is also competent for issuing operational permits.

11.4 What main permits or licences are required for building works and/or the use of real estate?

Generally, the following permits/licences in connection to the building and/or the use of real estate under Montenegrin law are required:

- Building permit.
- Technical acceptance of the building.
- Operational permit.

11.5 Are building/use permits and licences commonly obtained in Montenegro? Can implied permission be obtained in any way (e.g. by long use)?

Building and operational permits are obtained exclusively through proceedings before the competent authority. In order to obtain a building permit and/or operational permit, the investor must file all statutory documentation. There are no implied permissions.

11.6 What is the appropriate cost of building/use permits and the time involved in obtaining them?

Costs include administrative fees to be paid to the competent authority issuing the permit. The fees are regulated by law and amended from time-to-time. The statutory term for the issuance of building permits is 15 days from the submission of complete documentation, while the operational permit shall be issued within seven days of receipt of the technical inspection report confirming that the building is fit for use. However, please note that statutory terms are often exceeded, meaning that obtaining the respective permits may take longer in practice.

11.7 Are there any regulations on the protection of historic monuments in Montenegro? If any, when and how are they likely to affect the transfer of rights in real estate?

Pursuant to the Cultural Property Act, all immovable cultural property (including historical monuments) must be registered as such in the Land Registry based on a decision determining the status of the cultural property. Immovable state-owned cultural property cannot be alienated or encumbered. Privately owned cultural property may be transferred by private treaty or sold at auction, subject to the pre-emption right of the state. Privately owned immovable cultural property may be expropriated in accordance with the Expropriation Act, solely to ensure more efficient protection, or archaeological exploration. Furthermore, pursuant to the Cultural Property Act, a concession to state-owned immovable cultural property can be granted in accordance with the law regulating concessions.

11.8 How can e.g. a potential buyer obtain reliable information on contamination and pollution of real estate? Is there a public register of contaminated land in Montenegro?

There is no such register publicly available. For reliable information, a potential buyer should contact the competent authorities, such as the Environmental Protection Agency of Montenegro and local self-governments, or engage a third party, such as an independent expert, to determine the presence of pollution; the latter is the usual practice.

11.9 In what circumstances (if any) is environmental clean up ever mandatory?

Pursuant to the Environment Act, a polluter causing environmental pollution, through its actions or inaction, must without any delay, take measures to mitigate damage to the environment or eliminate further risks, or provide for the rehabilitation of the damage to the environment.

11.10 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in Montenegro.

On 22 April 2010, the Government of Montenegro adopted the Energy Efficiency Act. The Energy Efficiency Act, *inter alia*, regulates in detail the obligation for improving energy efficiency in buildings: (i) in the public sector; and (ii) of heavy energy consumers. Public authority buildings are subject to mandatory inspection, as are those buildings determined by the Ministry of the Environment.

12 Climate Change

12.1 Please briefly explain the nature and extent of any regulatory measures for reducing carbon dioxide emissions (including any mandatory emissions trading scheme).

Montenegro has fulfilled both conditions for participation in the Clean Development Mechanism established by the Kyoto Protocol (the “CDM”), i.e. ratification of the Kyoto Protocol and establishment of a Designated National Authority for verification and approval of CDM projects at national level (the “DNA”). The CDM is applied pursuant to the national plan for climate change reduction, which was passed by the Government of Montenegro in accordance with the Environment Act.

Bearing in mind that carbon dioxide emissions caused by human activities (e.g. the burning of oil, coal and gas, and deforestation) have increased atmospheric concentrations by 40% worldwide, the Environment Act defines protection of the ozone layer and mitigation of climate changes as one of its main goals.

Further to this, limits on carbon dioxide emissions in Montenegro are regulated by the Regulation on the Establishment of Pollutant Types, Threshold Values and Other Air Quality Standards.

12.2 Are there any national greenhouse gas emissions reduction targets?

According to the First National Report on Climate Change (adopted by the Government of Montenegro on 17 June 2010), carbon dioxide emissions in the energy and industry sectors increased only slightly between 1990 and 2003. This is due to the fact that production in the aforementioned sectors was not developed significantly. According to the evaluation of potential reduction in the increase in GHG emissions, the Montenegrin authorities aim to reduce these emissions between 2010 and 2025 by 25-40% of their increase in 1990.

12.3 Are there any other regulatory measures (not already mentioned) which aim to improve the sustainability of both newly constructed and existing buildings?

The Energy Efficiency Act stipulates that buildings, depending on their type and purpose, must be designed, built, renovated and maintained in such a manner as to preserve the prescribed energy ratings when in use. The energy rating of a building is the actual or estimated amount of energy consumed to meet the different needs of the building depending on its type and purpose, and it includes heating, hot water, cooling, ventilation and lighting.



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