

# CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: REAL ESTATE 2021

## MOLDOVA



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## 1. Real estate ownership

### 1.1. Legal framework

Property rights, being one of the fundamental institutions of democratic societies, gained widespread recognition and protection in Moldova upon its independence in 1991. To this day, ownership of movables and immovables, namely rights over real and personal property, is viewed as a pillar principle of prosperity and economic growth, being safeguarded by constitutional norms, private law, and international treaties. The state undertakes the responsibility to protect and guarantee the lawful exercise of property rights held by national citizens as well as foreign investors.

The legal framework that establishes the scope and features of rights *in rem* is contained mainly in the *Moldovan Civil Code*, as well as other special laws (acts) that address, in more detail, aspects of proprietorship and other rights associated with real estate, as well as matters related thereto.

Despite the fact that Moldova is a relatively young state, its foundational legal norms relating to the protection of private property rights have enjoyed an increased degree of stability and are considered inviolable, except for cases of public interest (*utility*).

The last considerable amendment to domestic laws, which affected not only the legal framework of real rights but also other spheres of private law, was in 2019, which addressed several *non liquet* of Moldovan legislation. The legislative amendment introduced novel concepts such as *sale-purchase agreements of real estate under construction and time-sharing ownership*, operating changes on existing concepts, to bring them closer to international and European standards. The instituted developments advanced the predictability and accuracy of Moldovan law, furthering the rule of law and facilitating foreign investment. Noteworthy herein is the fact that Moldovan law does allow foreign entities to acquire real estate in the Republic of Moldova, apart from lands with agricultural purposes and those from the forest reserve.

As a matter of introduction into the technicalities of real rights as they are regulated in Moldova, it shall be mentioned that two categories of such rights are recognized under domestic legislation, namely the right of ownership and limited real rights. The latter include usufruct, servitude (easement), habitation, superficies (which – as a recent trend, is widely used for construction projects where the developer and the landowner are different persons engaged in a joint venture), securities over real estate, and other rights. An owner of real estate is entitled to possess, use or refrain from using and to dispose of their property.

It is possible for several people to acquire ownership over immovable goods, the law distinguishing two types of joint ownership: joint tenancy (co-ownership), where the property is held in “undivided shares” and the owners do not own separate parts of the real estate. Alternatively, several individuals or legal persons may acquire property within a tenancy in common, where each of the proprietors will have a definite share or part in the real estate. More practical details on the manner of acquisition, registration, and disposal of real estate will be broken down in the subsequent paragraphs.

### 1.2. Registration of ownership

As a general rule, real rights over real estate are constituted, transmitted, encumbered with other real rights only by registration in the Real Estate Register, based on a deed (legal act/document) or the factual circumstances that substantiate such registration under the law. The register entries will consist of information pertaining to the real estate, ownership, and other real rights pertaining thereto, the deeds that confirm the existence thereof, as well as transactions with the immovable property and other legal bases for the emergence of the various real rights.

Ownership, being the central real right, is also acquired on the basis of a registration procedure in the Real Estate Register, which is a part of the state information system known as the Cadastre. The territorial cadastral body creates and maintains the Cadastre within its territorial range established by the Public Services Agency. The Register is held in electronic format and the entries therein are confirmed by the electronic signature of the Registrar, as well as the handwritten signature on the deed.

Before the registration can be carried out, cadastral works must be executed after the elaboration of the cadastral plan of the land plot and after drawing up the cadastral file of the real estate in question.

Compulsory registration extends to:

- lands;
- buildings and other fixed constructions and parts thereof; and
- isolated rooms, including the units in the condominium, with the corresponding share of the property or the superficies right over the land and over the common parts of the construction.

Additionally, may be subject to registration real rights encumbering real estate, such as servitudes (easements), usufructs, securities (mortgages), as well as rights of administration, of economic management, rights of use over certain public lands.

Leases of residential property, leases of agricultural land,

and rights of use that exceed a certain period are mandatorily subject to a different record-keeping measure known as notation. This procedure does not constitute one's right over the real estate in question but merely enforces against third parties any existing legal relationship pertaining to immovable goods. More details on the registration of leases can be found in section 6.3.

### 1.3. Publicity of real estate register

The Real Estate Register and entries therein bear a public nature, and any person is entitled, upon written or electronic request to receive information from the Registrar pertaining to all registered rights over any real estate.

The documents based on which the registration was carried out are also for the most part inaccessible, except for state bodies, authorized entities, and the right holders themselves, which ensures the confidentiality of personal data included in the Register.

### 1.4. Protection of ownership

The protection of private property against intruders and unwelcome dwellers is equally, a crucial component of one's exclusive ownership right, being ensured and preserved in any democratic society. Moldovan law recognized two kinds of legal actions against individuals and entities that violate one's fundamental right to own and possess real estate, namely a vindication or recovery action (*rei vindicatio*) and a negatory action (*actio negatoria*), which comes into play when the ownership right is interfered with in other ways than dispossession and seizure of property.

A vindicatory action is available to the property owner against persons that exercise de facto possession over the real estate unless the possessor is entitled to hold property on the basis of a legitimate limited real right, leasehold, or other legal relationship established between the latter and the owner. However, the vindication of property might render unavailable against someone whose rights to own or possess the goods are based on a constitutive registration – such as one in the Real Estate Register.

The other remedy available to landowners is a negatory action, which aims to protect the owner from any arbitrary interferences or violations of their ownership right in manners that did not entail deprivation of possession.

## 2. Real estate Acquisition

### 2.1 Share deal or asset deal?

Considering that in the past years Moldova has become a hub for foreign investment and market entries of abroad corpora-

tions, both share and assets deals are available and widely concluded between local legal entities as well as overseas investors.

The preferred transaction by buyers and sellers depends on the activities which the new owners intend to carry out with the freshly acquired asset. Investors who reckon on taking over a company's ongoing business activities, which requires several assets, including the real estate where operations unfold, tend to opt for share deals. A recent example of a share deal transaction is an acquisition of a Moldovan factory by a foreign group of companies being involved in the same field of business activities. Despite the fact that the purchaser implemented its own branding, production standards, a share deal was a far more convenient acquisition attributable to the existing production facilities and employees involved in the manufacturing operations.

Asset deals, especially involving the purchase of real estate, where the legal entity owning the real estate is not part of the deal, are also common among investing companies, especially when foreign entities enter the Moldovan market aiming to introduce unique business models or new commercial standards that are not met by local enterprises. Asset deals are also more attractive when business continuity is outside the scope of a given transaction. Such deals are still widespread within the Moldovan jurisdiction and continue to be a trend, due to a relative scarcity of competitors and market giants which may be taken over by foreign corporations. Any of the aforementioned acquisition methods will have different legal, administrative, and tax implications, which will be addressed below.

### 2.2 Share deal

Share deals involve a sale-purchase transaction where the buyer acquires the shares of a private company, consequently purchasing a separate legal entity, along with the latter's concluded agreements, liabilities, and assets.

The legal and regulatory framework of the transfer of company shares will vary depending on the form of organization of the legal entity.

Undertakings are usually organized under two kinds of business structures: legal liability companies and joint-stock companies. The functioning as well the sale of each is governed by two different pieces of legislation: *Law on Joint Stock Companies No. 1134/1997* and *Law on Limited Liability Companies No. 135/2007*.

Furthermore, share sales are subject to regulation in light of the capital market laws and resolutions of the National Financial Market Commission, as well as competition legislation and internal documents of the company.

In terms of fees and taxation, the final cost of acquiring real estate together with an independent legal entity will vary depending on the company's form of organization.

The sale of stock of a joint stock company can be carried out on the Moldovan Stock Exchange or outside of it, the latter being known as over-the-counter transactions. The Moldovan Stock exchange charges a commission of circa 0.35% of the transaction value for direct transactions carried on its platform. If the sale is executed outside the stock exchange, the registration of the operation will be performed by the Single Central Depository of Securities, which will charge a commission equal to MDL plus 0.3% of the transaction value, but no more than MDL 3,000 (approximately EUR 150) from each party to the transaction.

The main risks in concluding a share deal would be, of course, any unexpected costs or liabilities which might arise after the transaction is completed. When purchasing a company as a going concern, certain risks might be overlooked, therefore the due diligence in such transactions must cover a lot more areas of interest for the buyer, becoming a more tedious and costly procedure. The issues detected during a due diligence exercise might be mitigated by means of warranties and indemnities, however undisclosed or omitted matters are a risk the buyer is bound to undertake in both share or assets deals. Nevertheless, share deals might be particularly advantageous for foreign investors as they are able to acquire an operational business, along with its permissive acts, facilities, employment and customer agreements, which minimizes the administrative inconveniences and burdensome regulatory hassle.

### 2.3 Asset deal

As the name suggests, asset deals entail the purchase of separate assets of a company, which are transferred from one legal entity to another. In this scenario, the title of the goods is passed onto the new owner, while the seller company's ownership structure is not affected by the transaction. The attractiveness of such a deal is the buyer's ability to select individual assets and liabilities which are subject to the sale, which might minimize the unexpected risks popping up after the transaction is concluded. In terms of real estate, the sale and purchase of land, with or without constructions attached thereto, is a widespread practice, especially when large foreign corporations implement longstanding standards on the Moldovan market, which are novel to local competitors unable to meet investors' requirements when being sold as going concerns.

Asset deals pertaining to immovable property generally take the form of sale purchase agreements (SPA), governed by the *Moldovan Civil Code*. An essential condition for the validity of a SPA or an agreement encumbering the real estate with limited real rights is notarial authentication, while the right of owner-

ship is duly transmitted upon the registration of the agreement in the Real Estate Register. Under the *Moldovan Civil Code*, the costs pertaining to the drafting, notarization, and registration of the ownership rights acquired on the basis of a SPA are usually borne by the buyer. The expenses of a due diligence that targets the examining of any risks and liabilities attached to the transfer of land will also fall onto the buyer.

If any constructions are integrated or affixed to the land conveyed following the transaction, the buyer will be required to pay a flat tax levied on the building in question, as constructions under the Moldovan tax regime are considered a product of labor, and thus, subject of value-added tax. Generally, assets deal will result in a higher tax burden for buyers, however, both movable and immovable goods will be subject to amortization and tax deductions. Any details on the taxation of real estate will be discussed in section 4.

Within a sale of land, the main risks relate to the legality of the ownership title, the validity of the deed (legal document) transferring the title, and the latent defects of the acquired real estate. Most exposures of the buyer to possible risks may be mitigated by the SPA negotiated and signed by the parties.

The title of the seller as well as of the previous owners is usually verified and confirmed in the course of the due diligence process, which in asset deals is more meticulous in relation to the chain of titles to the land and targets various facets of real estate transactions. The conveyance of the title is conditioned upon the validity of the agreement and the completion of the registration procedure. In order to ensure the legitimacy of this transaction phase, the involvement of the notary in the sale of real estate is compulsory, who is in charge of the authentication of the SPA and frequently carries out the provisional registration. As a safeguard measure, buyers tend to transfer the first installment of the consideration only after the registration of the new owner's title in the Real Estate Register.

Another risk the buyer undertakes when acquiring immovable goods, whether through an asset or share deal, are the latent defects and undetected encumbrances of the land itself. Environmental legal and regulatory non-conformity, underground structures, or faulty constructions are all issues that might emerge when least expected. The coping mechanism in similar situations lies in the agreement concluded with the seller.

It is common practice for acquirers to transfer liability for risks alike onto the sellers by means of contractual clauses. For instance, any disputes arising from pre-existing environmental non-compliance will be dealt with by the seller, in terms of litigation costs and legal representation.

Another mitigation instrument is the inclusion of a retention clause in the SPA, which allows the buyer to retain a part of



the transaction price for several years in case of irregularities come up in a proximate time after the transaction. Penalty and resolution clauses are likewise normally included in the contract as mitigating measures.

## 2.4 Disposal process

As previously mentioned, the legality of the disposal process is conditioned upon rigorous prerequisites in connection to the form of the sale-purchase agreement, which demands the involvement of a notary and record-keeper.

Apart from the sale contract, the seller will submit to the notary the ownership deed, the excerpt from the Real Estate Register which lists the surface, destination, burdening rights pertaining to the real estate, the certificate confirming the value of the immovable, and the identification documents.

The notary's role consists in an extensive verification of the compliance of the document transferring the right of ownership with legal provisions, the conformity of contractual clauses, the empowerments of the parties' representatives, the will of the parties, and the existence of any encumbrances burdening the real estate. Moreover, the notary informs the parties about the consequences and legal effects of the conclusion of the transaction.

The fees paid to the notary range from 0.1%-1.3% of the transaction, depending on its value, and the state fee equals 0.5% of the value of the agreements.

The notary is liable for damages caused when performing a deed, carrying out notarial activities, or disclosing a professional secret and must repair the damage of the injured party.

## 2.5 Registration of change of ownership

The registration of the ownership right in the Real Estate Register is a mandatory condition for the validity of the transferred title. One of the parties to the sale-purchase agreement is required to submit a request for registration to the Public Services Agency, along with all the documents proving the legitimate nature of the transaction. The Registrar is responsible for examining the received documents and issuing a decision for approving or refusing the registration request. The process generally lasts 10 days from the date of submission of the documents, however, the term may be extended up to 80 days if the Registrar encounters issues.

## 2.6 Risks to be considered

The sale of real estate, within a share or asset deal, might be imperiled by preemptive rights held by third parties in relation to the land or the shares which are the object of the transaction.

Other than contractual preemptive rights contained in agreements between the seller and third parties, Moldovan law provides for situations where the right of preemption or of the first refusal is binding for the parties. Such cases include cases of sale of shares in jointly owned real estate, the other owner having the right to purchase, in the first place, the share put up for sale. A similar situation applies in leases of agricultural land or goods, where the lessor that intends to sell the leased assets is required initially to make a sale offer for the goods to the lessee.

The right of first refusal is also granted to the landowner in relation to buildings constructed under a superficies agreement, under which one party becomes the owner of an erected construction on the land owned by the other party.

Furthermore, in respect to the sale of shares, existing shareholders holding voting rights in a company, benefit from a preemptive right of purchase of shares offered for sale in a public offering.

Although from practice unlikely, purchasers of real estate may discover certain defects of the acquired land and seek remedies in relation to them. There are two kinds of latent defects covered by Moldovan legislation, namely legal and material defects.

The former refers to the existence of any third-party rights burdening the immovable property. However, due to the statutory obligation of any real right holders to register encumbrances into public registers, the risk of the emergence of legal defects in connection with the land is generally remote.

Material defects transpire when the buyer comes to understand that the transferred land does not correspond either to the description provided by the seller or to the special purpose based on which the buyer committed to the transaction.

The availability of any remedies to the buyer that discovered the defects is conditioned upon the actual knowledge of the acquirer about the issues, as well as their duty to be aware of the possibility of the defects before the transaction is concluded. In this assessment, the professional diligence and background of the buyer will be taken into consideration for determining whether they "ought to have known" about any problematic aspects that may crop up.

In order to redress the effects of an unsuccessful transaction, the buyer may resort to several remedies under Moldovan contractual legislation. The most straightforward option is the termination of the contract, in line with the fundamental principle of *restitutio ad integrum*, which would take the form of the repayment of the consideration and the de-registration of the new real estate owner from the Register. If the parties

wish to maintain the contract, the buyer can benefit from other countermeasures, in particular, to decrease the pecuniary obligation in relation to the acquired good, to seek damages for the substandard performance, or to take advantage of any other available legal remedies.

### 3. Real estate financing

#### 3.1. Key sources of financing

Real estate investments require vast initial capital outlay which can be obtained from various sources. In Moldova, frequently, the investors borrow from banks or other lending companies a substantial portion of the real estate value, and the debt is being secured by a mortgage which creates a lien against the property.

In the first instance, the most common source of real estate financing is mortgage lending. This conventional financing is usually performed through the commercial banks of Moldova which secure purchased property in exchange for the granted amount. The security in the real estate loan can also be another immovable good or the purchased property itself. In the latter case, the real estate loan is also called a mortgage loan. Thus, the financial institution that grants the loan is, actually, the owner of the property until the full repayment of the loaned amount. In terms of validity, the mortgage is registered in the Real Estate Register.

Another potential source of financing in Moldova is real estate leasing. The leasing represents a contractual financing operation, through which the lessee can use the immovable property in exchange for the promise to pay the related rent and, consequently, to purchase the property. Leasing is a form of lending in which the amount required for the acquisition of the property is obtained during its exploitation or use, and its repayment is made in the form of leasing rates and, finally, the residual value.

Nowadays, real estate leasing is not the most widely used financing instrument in Moldova, especially, by legal entities. The difficulties of this system lie in, firstly, the tax implications, the acquisition price of the real estate being subject to amortization in a long period of time. Therefore, most of the leasing rate is borne from the net profit of the legal entity, deductible being the interest, the monthly amortization rate, to which insurance costs and related taxes are added.

#### 3.2. Protection of creditors

Typically, a lender, lending to an investor intending to acquire or develop real estate, will insist on the full package of security instruments available under the Moldovan law, such as a mortgage on immovable property, pledge over movable

property, personal guarantees. The most common and effective types of security for real estate financing are the pledge on the movable property and the pledge over real estate, also known as mortgage.

The latter is created by means of a mortgage agreement, the conclusion of which requires the involvement of a notary in order to be considered validly executed, and the agreements itself must expressly list the mortgage assets, the parties, the nature of the obligation secured by the mortgage and the market value and the replacement value of the mortgaged property. Furthermore, in order to be enforceable against third parties and to rank higher than security interests of other creditors, mortgages shall be registered in the Real Estate Register.

A pledge over movable assets may also be set up in order to gain financing for real estate acquisition, provided the value of the movable is able to cover the real estate value. Unlike a real estate mortgage, a pledge agreement does not need to be notarized in order to be valid. A pledge may be granted over any type of movable asset belonging to the debtor, such as any tangible or intangible property, present or future, determined individually or generically, any ownership right, including the right of claim of the pledge debtor towards the pledge creditor, funds in national currency or foreign currency in bank accounts. Enforceability of the pledge against third parties is secured by registration in the Register of Real Movable Securities.

### 4. Real estate taxes

#### 4.1. Transfer taxes

A real estate transfer tax, also called a “deed transfer tax,” is a one-time state tax or fee imposed upon the transfer of real property. Usually, this is an *ad valorem* tax, meaning the cost is based on the price of the property transferred to the new owner. Transfer taxes are applied to a change of ownership for any type of property that requires a title.

In Moldova, a special taxation regime is applicable in connection with real estate disposal. So, following the transaction of alienation of real estate property, the seller shall pay an income tax, also known as a tax on capital increase. The amount of capital increase is equal to the difference between the amount received (income obtained) following the alienation of the immovable property and its value base.

Under Moldovan tax law, individuals benefit from exemptions from income tax obtained from the alienation of the property. Therefore, individuals are exempt from paying tax on their main residence, under conditions that the property is held for at least three years and it has been the residence of the seller for three years before the sale.

The value added tax (VAT) is another form of taxation on the territory of Moldova in relation to the transfer of ownership of the property through its sale, exchange, or other means of disposal. Its value constitutes 20% of the taxable value of the real estate transaction by the legal entities or individuals who carry out entrepreneurial activities if, within 12 consecutive months, they executed transactions of ownership transfer in an amount exceeding MDL 1.2 million (approximately EUR 60,000).

It shall be mentioned that the VAT is paid only on the real estate not intended for residential purposes, more precisely, commercial real estates, garages, industrial buildings, *etc.*

In addition to state taxes, there are also fees incurred at the stage of concluding the transfer of ownership, such as notary and state fees. The costs of the authentication are calculated based on the value of the transaction, as follows:

For individuals, the notary's fee is equal to 0,1% of the value of the transaction.

In the case of legal entities, the notary's fees are determined according to expressly provided legal coefficients, the minimum being 0.1% from the value of the transaction (if it exceeds MDL 1,000,001).

The minimum amount of payment for the authentication of evaluable transactions with real estate is MDL 120 (approximately EUR 6).

At the same time, for the transfer of ownership over immovables a state fee of 0,5% of the transaction price is incurred, which cannot be lower than the value indicated in the Real Estate Register.

Another fee to be paid for the transfer of ownership is the fee for operating changes in the Real Estate Register. The cost of the service depends on the number of days in which the document is issued and the location of the real property, ranging between MDL 260 (approximately EUR 13) and MDL1300 (approximately EUR 65).

#### 4.2. Specific real estate taxes

Each individual or legal entity who owns real property is required to pay a tax on real estate. Its amount is annually established by the local public administration and is calculated from the estimated value of the property.

Under Moldovan law, resident and non-resident individuals and legal entities who own any real estate are obliged to pay the real estate tax.

For residential real estate (apartments, houses, lands related

thereto, garages, and the lands thereof), the tax rates range between 0.05% and 0.4% of the taxable base of the real estate. For real estate with a destination other than residential, the tax rate represents 0.3% of the tax base of real estate.

Generally, in the case of real estate owned by legal entities and individuals registered as entrepreneurs, the real estate tax is paid no later than September 25 of the current year. By exemption, if the real estate is acquired after September 25 of the fiscal period, the real estate tax is paid no later than March 25 of the fiscal period following the management period.

In the case of real estate of individuals who do not carry out entrepreneurial activity existing and/or acquired until and including May 31 of the current fiscal year, the real estate tax is paid by the subjects of taxation no later than June 30 of this year.

If the real estate of individuals who do not carry out entrepreneurial activities that exists and/or was acquired after and including May 31 of the current fiscal year, the real estate tax is paid by the taxable subjects no later than March 25 of the year following accounting year.

## 5. Condominiums

### 5.1. Legal framework for condominiums

The legal framework of condominiums was introduced into the Moldovan law to ensure an efficient mechanism of co-proprietorship among apartment owners, in the view of ensuring proper maintenance of common spaces, accountability of co-owners for damage caused to shared areas, and protecting potential acquirers of property within a condominium from a double sale of the household.

From a legal perspective, a condominium consists of **1)** the shares of the ownership right over the land and buildings, and **2)** the common units and parts used by all dwellers. The common property in the condominium cannot be alienated separately from the ownership right over the dwellings (spaces) in the condominium.

### 5.2. Rights and duties of co-owners

Co-owners have the right to possess, use and dispose of the dwellings within a condominium in the manner regulated by law, namely to rent or lease the individual property, improve or modify it in any way, as long as the structural integrity of the building or other dwellings is not affected by the adjustments. In case of spaces not intended for dwelling purposes, the owners are entitled to carry out entrepreneurial activities within the commercial spaces, provided the business is carried out in compliance with all safety, sanitary regulations and is not infringing the rights and liberties of the other owners. Re-

strictions may be imposed on the use of residential spaces for purposes other than dwelling only if such limitations relate to safeguarding the rights and interests of other co-owners.

The duties of co-owners include the obligation to maintain in good condition and to repair in time their dwelling spaces (apartments) at their own expense. Moreover, upon a preliminary notice, the flat owners must grant access to members of the condominium association for inspections, repairs, or replacement of common property, which can be accessed only from the individual dwelling area. The maintenance and reparation costs of shared property are split between the co-owners proportionally to their share in the condominium. If the owner is not using the purchased property or waives the right to use the common spaces, they are not exempted from pecuniary contributions for any executed works.

### 5.3. Liability of co-owners

Any co-owner or persons dwelling with them that caused damage to the property of other co-owners or to common spaces are liable to compensate the incurred damages in accordance with the principles of tort law. Moreover, the destruction or damage to shared goods is sanctioned in line with the *Contra-vention Code*, with a fine or community works.

### 5.4. Rights and duties of condominium associations

Condominium associations or associations of co-owners are set up in order to ensure efficient management of the commonly owned property of the dwellers.

The association is set up by at least two owners for the maintenance, operation, and repair of both, individual and shared property of the condominium, to provide the members of the association with communal services and other services, to represent and defend their interests.

In exercising their duties, the associations may perform various activities for the benefit of all property owners, including but not limited to entering into contractual relations with parties for services relating to maintaining the good condition and safety of the condominium, establishing for each owner the amount of mandatory payments according to the share of ownership, performing works and providing services to the members of the association, drawing up the annual estimate of revenue and expenditure, as well as undertaking other responsibilities, without infringing or limiting the rights of other co-owners.

In the course of their activities, the associations must act to the benefit of the dwellers of the condominium and safeguard their interests and welfare. Consequently, among their duties, the associations have to ensure the execution of the

obligations of all members of the association, to maintain the proper technical-sanitary condition of the common goods in the condominium, to represent the interests of the members of the association in the relations with the individuals and legal persons, to observe the interests of the other co-owners in the distribution of the expenses for the maintenance and repair of the common goods in the condominium.

## 6. Commercial leases

### 6.1. Form and contents of a lease agreement

Under Moldovan law, the lease agreement concerning real estate shall be drawn up in writing form.

Considering that the Moldovan legal framework does not distinguish between different types of leases, such as commercial or residential, the content of the lease agreement takes on a standard form. Therefore, a lease agreement shall include certain elements and key information to be valid and enforceable. The key clauses of any lease agreement are:

- the object of the contract, in particular, the description of the real estate property, its destination, and location;
- the term of the lease, either fixed or indefinite, up to 99 years;
- the rent and other fees, namely, the term of payment and the specific conditions for rent adjusting;
- the rights and obligations of the parties;
- the termination of the lease agreement, including the circumstances that may trigger the termination of the agreement.

### 6.2. Regulation of leases

The legal framework of lease agreements applies identically to any agreements relating to leaseholds and is set out in the *Civil Code of Moldova*.

However, the Moldovan law provides certain interdictions and limitations.

For example, neither the landlord nor the tenant is permitted to change the form and destination of the property during the lease.

In case of termination of the lease for unjustified non-performance of the obligations by the tenant, the landlord may not claim the rent missed due to the premature termination of the lease but may request compensation for the damage caused.

### 6.3. Registration of leases

As previously mentioned, the lease agreement of real estate for a term exceeding three years is subject to mandatory notation



in the Real Estate Register. The non-compliance with this provision does not affect the validity of the contract, but the enforceability against third parties.

The tax law provides another mandatory form of registration. So, the lease agreement shall be registered within three days from the date of concluding the agreement, with the State Tax Service. This represents a fiscal obligation, considering that the landlord shall pay a monthly tax in the amount of 7% of the value of the contract.

#### 6.4. Termination of leases and renewals

Generally, the landlord may terminate a lease without reason at the expiration of the lease term.

In case of an indefinite lease, either party has the right to terminate the lease with a three-month notice.

Additionally, the Moldovan law provides other situations which may lead to the termination of the lease agreement that do not depend on the parties, such as the destruction of the leased property, its expropriation, or in other cases established by law or the agreement.

The landlord may terminate the lease agreement if the tenant:

- does not use the rented property according to its destination or to the contractual provisions;
- intentionally or involuntarily, allows the deterioration of the property;
- fails to pay the rent price during three months after the expiration of the payment term (unless otherwise provided in the agreement);
- concluded a sublease contract without the consent of the landlord.

The tenant may also terminate the lease agreement, for multiple reasons established by law and the lease agreement itself, among which are:

- loss of earning capacity and inability to use the rented property; and
- deprivation of liberty and inability to perform the contractual obligations.

The lease agreement is considered to be renewed and, consequently, extended for an indefinite period, if the contractual relationship continues tacitly after the expiration of the lease term.

Considering that the tenant is a vulnerable party in relation to the landlord, upon the expiration of the lease term, the tenant has a priority right for concluding the agreement for a new

term, if possible, provided the latter has previously fulfilled the contractual obligations and agrees with the new contractual conditions established by the landlord.

#### 6.5. Rent regulations and rent reviews

The payment of the rent may be fully performed at the end of the lease term. However, if the rent is set for certain periods, it shall be paid upon their expiration. Generally, the amount of the rent may be modified by the agreement of the parties. However, there are certain situations when the rent amount can be amended at the initiative of both, the landlord and the tenant.

The landlord may ask the court to change the rent by court decision only once a year and only if the economic conditions make the non-adjustment unfair unless the landlord has undertaken the risk of changing economic conditions.

The tenant has the right to request the reduction of the rent if the conditions, stipulated in the contract, for the use of the property or the condition of the property itself have worsened.

#### 6.6. Services to be provided together with the lease

Moldovan law does not regulate the types of services provided by either, the tenant or the landlord during the lease. However, such services may be addressed in the lease agreement, as long as they are duly described.

The services provided together with the lease may refer to:

- utilities - the services necessary for normal operation of the building throughout the lease term, specifically: electricity supply, heating, hot and cold water supply, sewerage, air conditioning and ventilation, *etc.*;
- operating expenses - costs associated with operating and maintaining the property, including, but not limited to security services, cleaning, removal of garbage and cleaning the territory from snow, technical maintenance of engineering systems (including elevator equipment).

Apart from the current costs of normal use and maintenance of the property paid by the lessor, the payment of additional costs is mandatory only if there is an agreement between the parties.

#### 6.7. Fit-out works and their regulation

The tenant may interfere with the leased property in terms of current repairs which involve the necessary interventions resulting from the normal use of the property, according to its purpose, and that can be attributed to the tenant, taking into account the nature of the property, the destination for which it

is used and the term of the lease.

The tax considerations for leasehold improvements primarily are borne by the party paying for them and by the party retaining the ownership of the renovations. If the tenant, upon the end of the lease owns the improvements, made with the permission of the landlord, without damaging the property, the landlord will not have taxable income. If the improvements are left behind when the lease terminates, the tenant is entitled to demand their reimbursement from the landlord.

In this case, the tenant is entitled to deduce all the expenses related to investments made in the fixed assets within the limit of 15% of the rent amount.

If the improvements were made without the permission of the landlord and the latter refused to compensate their value, the tenant must separate the enhancements from the real estate, provided no damages are caused to the property. If these improvements cannot be separated without damaging the property, the landlord becomes their owner.

#### 6.8. Transfer of leases and leased assets

The Moldovan law regulates under specific conditions the transfer of leases from the original tenant to the future tenant. Such a transaction involves major changes, especially, in rela-

tion to the rights and duties of the parties.

Basically, a lease transfer is a legal operation by which the current tenant, with the consent of the landlord, may transfer to another person (potential tenant) all the rights and obligations arising from the lease.

For performing this transaction, the tenant must inform the landlord of their intention and disclose the name and address of the person taking over the lease.

Generally, the landlord may not oppose the lease transfer, if after concluding the lease agreement, the legitimate interest of the tenant to transfer the real property to another person arises. However, if the landlord has identified an impediment to consent to the lease transfer, they must communicate, within 15 days, to the tenant, the reasons for this decision. Otherwise, they are considered to have consented.

In terms of the rights of the parties, the landlord has the right to compensation for reasonable expenses (*e.g.* costs for preparing the new lease).

The previous tenant, following the lease transfer, is released from any obligations. So, the new tenant would take the place of the original tenant, paying rent directly to the landlord, and having all the rights and responsibilities of the original tenant.



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