Necessary steps to be observed when acquiring land in view of developing real estate projects

By Valentin Berea, Senior Associate

Before acquiring land in view of developing a real estate project (e.g. retail, logistics, residential projects) it is advisable that an investor ensures that the legal, technical and regulatory status of the relevant property is to its full satisfaction and suitable for the envisaged future use. For such purpose, certain steps are to be observed.

PERFORMING A LEGAL AND TECHNICAL DUE DILIGENCE

Such analysis is useful for a complete evaluation of the legal risks pertaining to the acquisition of a real estate property and for the assessment of the value of such property.

The legal due-diligence normally includes the examination of the ownership title of the seller, searches with the land registry as well as the review of the applicable urban planning regime of the property (in order to determine what kind of constructions (if any) can be built on the land and under what conditions).

Technical due-diligence includes various surveys (e.g. utilities surveys, infrastructure surveys, geo-technical surveys) depending on the intended use for which the property is acquired.

EXECUTING A PROMISE TO SELL

The execution of a promise to sell (i.e. a pre-contract) is not a validity condition under Romanian law for the acquisition of real estate assets.

However, such an agreement is frequently used in practice and is recommended where the value of the property is substantial as it gives the purchaser time to evaluate the risks of the investment while prohibiting the vendor from transferring ownership to another potential purchaser until the beneficiary of the promise exercises its option (usually within a time limit and in exchange for a certain advance payment, preferably deposited in an escrow account).

The promise to sell should provide that the completion of the acquisition is conditional upon the fulfilment of certain conditions precedent (such as satisfactory results to the legal and technical due diligence).

The execution of such an agreement should be shortly followed by the registration of the interdiction to sell with the land registry, as the promise to sell does not transfer title itself, but only creates an obligation for the seller to execute a sale-purchase agreement in the future, upon the request of the purchaser.

EXECUTING THE SALE CONTRACT

Sale-purchase contracts for the acquisition of land must be notarised. There is no notarisation requirement for the sale of buildings.

However, as buildings are always physically located on a plot of land, a notarised contract should be executed even when the main object of the agreement is a building, if transfer of ownership of the land is also involved.

ADVERTORIAL