



“Romania: the New European Gateway for SEE Manufacturing”

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Unofficial Title Requested by the Audience:

**“At the Front Line: What Clients in the Industrial Sector
are Asking of their Lawyers in Today’s Market
(but please keep the comments short and don’t charge
us)”**





What Clients in the Industrial Sector are Asking of their Lawyers in Today's Market

- 1. Preferences in Today's Market**
 - 2. Infrastructure and Road Access**
 - 3. Title Issues**
 - 4. Tax Issues**
 - 5. Legislative Stability and Contract Enforcement**
 - 6. Tenant Relations**
 - 7. "Green" Aspects**
- Please ask questions (for free!)**



1. What are the Preferences Among Industrial Clients in Today's Market

- For new entrants, still a perception that land prices are too high and infrastructure poor, and government reaction unclear
- But Romania is “too big of a market to ignore”, so industrial market still generating considerable interest
- Wait-and-see approach for general, multi-purpose facilities
- Demand for building of specialized facilities:
 - Possibility of EU-funding
 - Cold-storage/temperature-controlled warehouses
 - Storage of “dangerous goods”



2. Infrastructure and Road Access

- **General state of infrastructure the largest concern, especially utility access and power**
- **Road access poses a particular problem for lawyers**
- **Often no direct road access to a property from a national road, but a local community road**
 - **Modernization of existing roads often requires flexible and innovative solutions with local municipal authorities**
 - **Donations, public-private partnerships, etc.**



3. Title Issues

- **Still generates question marks by industrial clients, particularly new entrants, who have heard “stories” of restitution claims**
- **Special care has to be taken with industrial sites that pose unique due diligence issues**
 - **Because logistics plots are located outside city limits, often the plots were formerly a large number of agricultural plots merged together to form the plot for sale/development**
- **Because of this, a due diligence often reveals a number of theoretical title risks in the transfer of title (e.g., donations, succession/inheritance issues, etc.)**
 - **Most of the issues are NOT uncommon and is just the reality of doing business in Romania**



3. Title Issues Cont'd

- Title risk is often not so great, and quite frankly has improved in recent years, but nevertheless exaggerated by over-caffeinated lawyers who invoke the omnipresent “absolute nullity” (“nulitate absolută”)
 - Annulment of particular contract/title that is not time-barred
- The greater risk is the “smell test” to determine evidence of monkey business on the part of the individual who merged the plots: repeated errors/defects in title suggesting a certain pattern of behavior/complicity that could give rise to problems later
 - e.g., chronic absence of important title documents, title certificates issued to dead people, etc.
 - reinforces the need to have a reputable business partner



3. Title Issues Cont'd

- **“Bankability” of a transaction: strongly consider the use of title insurance for industrial properties**
- **Premiums not overly expensive, and coverage includes most risks associated with title**



4. Tax Issues

- **Property tax on Buildings:**
- **Major differences in tax levels between individual and companies:**
 - individuals – 0.1% of the value of the building ([surface] x [fix value/sqm] x [correction factor determined based on the position of the building]);
 - companies – 1.5% of the book value of the building (or 5% to 10% of the book value for buildings that have not been evaluated in the past 3 years)
- **Property tax on Land:**
 - No differences between individuals and companies
 - The taxes are calculated as a fix amount per sqm depending on the position of the land as determined by local council



4. Tax Issues Cont'd

- **Industrial Parks: Ordinance 65/2001 still alive**
 - **What qualifies? Land that has direct access to a national or European road with connection to public utilities**
 - **Minimum 10 hectares for at least 30 years**
 - **Granted through a governmental order**
 - **Benefits from a number of tax breaks**



4. Tax Issues Cont'd

- **Tax incentives:**
 - **exemption from local taxes for land and buildings located within an industrial park**
 - **no other particular incentives are provided in current tax legislation**
- **Ongoing issues with respect to VAT recovery**



5. Legislative Stability and Contract Enforcement

- **General concern among clients as to legislative stability – unclear what legislation will be affected by the new austerity drive**
- **While court practice has generally improved, ability to get fast, favorable judgment is difficult:**
 - **general heavy caseload of courts**
 - **general procedural delays available to parties**
 - **the past court strike and possible future strikes**



6. Tenant Relations

- **Falling rents, increased competition for tenants**
- **“2007 leases” no longer accepted at face-value; requests by clients to make their contracts “more friendly”**
- **General trend, not specific to industrial/logistics, that tenants are challenging their leases (regardless of strength of wording) and exploiting delays in court system, etc.**



6. Tenant Relations Cont'd

- **Lawyer Mantra: Increased diligence required by landlords:**
 - **Be on the lookout for tenant payment problems**
 - **Be aware of key deadlines, expiry dates of bank letters of guarantee, etc.**
 - **Respond quickly and categorically to tenant allegations of landlord breach**
 - **Follow notice provisions, cure periods, etc. provided by the lease**
 - **Register landlord pledge over tenant goods with the Electronic Archive**



7. Green Aspects

- **EU legislation in the field of “green” buildings will (or should) spur the bulk of new legislation affecting industrial policy**
- **Buildings account for 40% of EU’s total energy consumption and CO₂ emissions**





7. Green Aspects Cont'd

- **The Energy Performance of Buildings Directive (Directive 2002/91/EC), or “EPBD” was transposed into Romanian legislation in Law 372/2005 and its methodological norms of 2007**
 - **Variety of minimum measures imposed**
 - **Compulsory system of energy certificates**
- **20-20-20 EU Policy by 2020 (greenhouse gas, energy consumption, renewables)**



7. Green Aspects Cont'd

- **Recast EPBD was passed by the European Parliament on 18 May 2010 and Member States have until year-end 2010 to transpose the legislation and implement by 2012**
 - **Minimum standards when building or renovating: benchmarking method to achieve at least cost-optimal performance levels**
 - **As of 2014, no incentives for construction or renovation of buildings that do not comply with minimum energy performance**
 - **“Nearly-zero energy buildings” as of 2020: Member States must establish guidelines**
 - **Imposes energy obligations on the owners, and not the users**
 - **Energy certificate required for all sales and leases**



7. Green Aspects Cont'd

Recast of Directive 2002/91/EC of the European Parliament and of the Council

Article 11 - "Issuing of energy performance certificates"

1. Member States shall ensure that an energy performance certificate is issued for buildings or parts thereof which are constructed, sold or rented out and for buildings where a total useful floor area over 250 m² is occupied by a public authority.
2. Member States shall ensure require that, when buildings or parts thereof are constructed, sold or rented out, an energy performance certificate is made available handed over to the owner by the independent expert issuing the certificate and referred to in Article 16 or by the vendor.



7. Green Aspects Cont'd

Recast of Directive 2002/91/EC of the European Parliament and of the Council – Cont'd

3. Member States shall require that, when buildings or parts thereof are offered for sale, the numeric energy performance indicator of the energy performance certificate is stated in all advertisements for sale of the building or parts thereof, and that the energy performance certificate is shown to the prospective buyer.

The energy performance certificate shall be handed over by the vendor to the buyer at the moment of conclusion of the sales contract at the latest.

4. Member States shall require that, when buildings or parts thereof are offered for rent, the numeric energy performance indicator of the energy performance certificate is stated in all advertisements for rent of the building or parts thereof, and that the energy performance certificate is shown to the prospective tenant.

The energy performance certificate shall be handed over by the owner to the tenant at the moment of conclusion of the lease at the latest.



7. Green Aspects Cont'd

- **Developers also need to be on the lookout for future developments in EU legislation**
 - **Directive on soil protection under discussion**
 - **Directives having impact on disposal of waste**
 - **Commission working on Eco-label for Buildings, including a voluntary label for green buildings**
 - **Water preservation**



APPLAUSE!

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