

The International Comparative Legal Guide to: **Real Estate 2006**

A practical insight to cross-border Real Estate work



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1 Real Estate Law

1.1 Please briefly describe the main laws that govern real estate in your country. 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 main laws governing real estate matters in Latvia are the Property Law Section and the Obligations Law Section of the Civil Law of the Republic of Latvia of 28 January 1937, which deal with such fundamental issues as definitions of the title and other rights to real estate, types of acquisition of real estate, encumbrances, real estate transactions, etc.

A number of other laws govern specific real estate matters, for example the Land Register Law of 22 December 1937, the Law On Land Reform in Cities of the Republic of Latvia, etc.

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

Latvia does not belong to the ‘common law’ legal system.

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

There are no international laws that would be relevant to real estate in Latvia. However, Latvia has entered into a number of treaties for the promotion and protection of investments which are relevant to restrictions on the acquisition of land (see question 2.1 below).

2 Ownership

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

There are no restrictions on foreign individuals and legal entities transferring title and otherwise engaging in transactions concerning buildings, apartments or commercial space. With regard to the purchase of land, there are various restrictions, which depend on whether the

land is located in a city or rural area.

a) Cities

Currently, land in cities may be freely purchased by citizens of Latvia and citizens of EU countries, companies registered in Latvia and companies registered in EU countries, provided that more than half of the share capital is owned by:

- Latvian citizens, citizens of EU countries and/or Latvian governmental bodies; and/or
- individuals or legal entities from other countries with which Latvia has signed and ratified an international agreement for the promotion and protection of investment by 31 December 1996, or agreements concluded after that date, if the agreement provides for reciprocal rights to land acquisition.

b) Rural Areas

Unlike land in cities, land in rural areas may be purchased by citizens of Latvia and companies registered in Latvia, provided that more than half of the share capital is owned by:

- Latvian citizens, citizens of EU countries and/or Latvian governmental bodies; and/or
- individuals or legal entities from other countries with which Latvia has signed and ratified an international agreement for the promotion and protection of investment by 31 December 1996, or agreements concluded after that date if the agreement provides for reciprocal rights to land acquisition.

Other individuals and legal entities not mentioned in any of the categories above may acquire land if they receive permission from the local authority, except for land, for example, in:

- border zones;
- dune areas of the Baltic Sea and Riga Gulf and other protected areas of public waters, except for cases when construction has been planned in accordance with the municipal master plan; and
- agricultural and forest land designated as such in the municipal master plan, etc.

There is, however, a transition period for citizens of EU countries intending to acquire agricultural land. This transition period is set to last until 1 May 2011, and during this period only persons wishing to engage in farming may obtain agricultural land without restrictions, provided that

they have previously engaged in farming in Latvia for three consecutive years.

3 Real Estate Rights

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

Some main types of rights over land recognised by the Latvian Civil Law are:

- ownership rights (title);
- lease or other use rights;
- pledge (mortgage) rights; and
- easement rights.

As a general rule, any of these rights can be established by agreement, law or court ruling. Where the right is established by agreement, it will constitute a “*contractual right*”, i.e. a binding commitment between the contractual parties, as of the moment the agreement becomes valid, but it will constitute a “*right in rem*”, i.e. a right effective as against any third party, as of the moment it is registered with the Land Register. Mostly, in relation to real estate, a valid right shall be deemed obtained by the transferee only by registration with the Land Register (see also question 4.3 below) because for example title, easements and mortgages are per se “*rights in rem*” according to the law. The lease right, however, shall be fully valid as a “*contractual right*”, even if not registered with the Land Register.

4 System of Registration

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

The basic principle is that all land is required to be registered with the Land Register. Due to the land reform which started in the early 90's, not all of the land in Latvia is already registered with the Land Register; for example, land owned by some State institutions, as well as a small fraction of privately-owned land.

As regards the registration of rights (as indicated in question 3.1 above), only registration of lease rights is optional. All other rights must be registered with the Land Register in order to become valid.

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

By registration of the title with the Land Register, the State guarantees that the person's title has been verified and that it will be enforceable against third parties. As long as the person's title is registered with the Land Register, its title is 'guaranteed'. However, registration with the Land Register does not eliminate the 'internal defects' of the real estate transaction, for example that the seller was not entitled to sell the real estate for some reason.

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

Of the rights to land listed under question 3.1 above, only registration of lease rights is optional. The title, mortgage and easement rights must be registered with the Land Register. The transfer of title, or the establishment of a mortgage or easement, becomes effective only after registration with the Land Register. Until the rights are registered they may not be exercised.

If lease rights are not registered with the Land Register, the lease rights are effective and binding between the contracting parties. However, the lease would not be binding on third parties.

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

Lease rights (see the answer to question 4.3 above).

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.

There is no probationary period and there are no different qualities on first registration under Latvian law.

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

The transfer of title (ownership) becomes effective only after it is registered with the Land Register. After signing the sale-purchase agreement, the purchaser is not entitled to exercise its title (ownership rights); it may only claim from the seller registration of the title transfer with the Land Register.

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

In respect of real estate, the basic principle is that the rights registered with the Land Register have priority over those which are not registered. If two sale-purchase agreements in respect of the same land plot are submitted to the Land Register at the same time, the agreement that was signed earlier will have priority.

5 The Registry / Registries

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

The main registry of real estate in Latvia is the Land Register (Land Books), kept by the respective Land Register Departments established for each administrative territory. All real estate and all rights pertaining to real estate must be

registered in the respective Land Register.

There is also another registry kept by the State Land Service, which serves mostly for tax purposes (to determine the cadastral value of land for real estate tax and other purposes, etc.), but where the real estate is not yet registered with the Land Register (see also question 4.1), it also serves as a reliable source of information regarding the identity of the real estate, its owner, encumbrances, etc.

5.2 Can information on real estate ownership be accessed from the registry online (electronically)?

Information regarding details of the particular real estate (including the owner, encumbrances, etc.) can be accessed from the State Unified Computerised Land Register database via the internet (the service is fee-based).

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

In the case where the Land Register Department makes a mistake, it is possible to claim damages within one year from the moment that the person found out or should have found out such a mistake.

5.4 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?

All entries in the Land Registry are available to the public and the records possess public reliability.

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 your country? Please briefly describe their roles and/or duties.

- a) Selling and purchasing agents (or realtors)
- In commercial real estate purchase transactions, the agent's role will be mostly limited to finding the buyer/object of the sale and negotiating principal terms and conditions of sale. Most real estate agencies offer a wide spectrum of services for the settlement of the formalities of purchase transactions, assisting with the financing, etc. However, in commercial transactions the parties normally will entrust the documentation of the purchase and the settlement of formalities to professional legal advisers.
- b) Lawyers
- Lawyers will mostly be involved in commercial real estate purchase transactions in Latvia throughout the transaction process, for example in the verification of the seller's title to the real estate; performing legal due diligence work; advising on transaction schemes; drafting and negotiating the sale-purchase agreement and financing related documentation; arranging for settlement of the necessary formalities; and procuring for the registration with the Land Register, etc.

c) Notaries

Notaries are involved in each and every real estate purchase transaction because the application to the Land Register must be signed by the seller and purchaser in front of the notary. The notary verifies the identity of the signatories, and, in the case of legal entities, also the right of the person to sign for the respective legal entity.

d) Others

Except in the case of sale of industrial objects, apartments and ideal parts (undivided interest) of the real estate, the local self-government has a right of first refusal to purchase the real estate at the same price as indicated in the sale-purchase agreement.

6.2 How and on what basis are these persons remunerated?

- a) Real estate agents would normally receive commission from the purchase price of the real estate, which would usually be in the range of 2-10%.
- b) The lawyers' fees will be as agreed (based either on a fixed fee for the particular transaction or on hourly rates for legal work involved).
- c) The notary fees for certification of signatures on Land Register applications, as well as other services, are fixed by Regulations of the Cabinet of Ministers. The usual practice is that notary fees are covered by the buyer or both parties in equal parts.

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?

In order to transfer a real estate title to another party, the minimum formalities are as follows:

- The buyer and the seller must sign three copies of the sale-purchase agreement.
- The buyer and the seller must sign in front of notary application to the Land Register.
- A State duty and chancellery duty must be paid.
- Where applicable, the sale-purchase agreement must be submitted to the local self-government to offer first refusal rights.
- Documents must be submitted to the respective Land Register Department.

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

The seller is under a duty of disclosure but the Civil Law does not contain any specific list of information to be disclosed. The basic principle is that the seller is liable towards the buyer if the real estate property has any hidden defects or if it does not have all of the good qualities expressly stated or implied. The seller is liable not only for those defects that he was aware of and did not disclose, but also for hidden defects that he was not aware of.

The seller is not liable for insignificant defects which do not prevent the overall use of the real estate property, nor for such defects that were known to the buyer or that should have been reasonably discovered by the buyer by paying a usual amount of attention. The seller is liable only for those defects that occurred before entering into the sale-purchase agreement.

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

The Civil Law expressly states that the seller is liable for those defects which he has indicated are non-existent.

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 practice, at least some basic warranties are given. The scope of the warranties would largely depend on the type of real estate purchased. For example, in the case of a land sale, it would be usual to give warranties in respect of the possibility of performing specific construction works.

The main function of warranties is to give the buyer an instrument for reduction of price or recovery of damages in the case that the warranties turn out to be inaccurate. Warranties also eliminate the possibility of the seller claiming that the buyer should have been aware of certain defects. Nevertheless, warranties normally are not considered a substitute for the buyer's due diligence.

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

If a person has been registered with the Land Register as the owner of a particular real estate property, any third party may rely on the fact that the person is actually the owner, subject to a condition that the third party acts in good faith. Bad faith would be, for example, that the third party was aware that the sale-purchase agreement entered into by the registered owner of the real estate was not valid.

Notwithstanding the above, it is customary to include in the sale-purchase agreement a specific warranty by the seller that he is the sole owner of the real estate and that the real estate has not been sold to any other third party.

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

There are no major statutory liabilities. The contract may provide for the buyer's obligation to finalise the transaction by submission of the documents to the Land Register, as well as for the obligation to accept the real estate from the seller, usually by the signing of a transfer-acceptance deed, etc.

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?

The general rules regarding loan agreements and the security thereof are contained in the Civil Law. Perfection of mortgages is subject to the provisions of the Land Registry Law. The rendering of financial services by credit institutions, including the granting of loans, is regulated by the Credit Institutions Law. For the most part, the rules regarding the lending of money to finance real estate are the same for resident and non-resident persons and for individual persons and corporate entities.

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

The method which is typically employed by real estate lenders to protect themselves from default by the borrower is securing the loan with a mortgage over the real estate. The mortgage creates a security interest in favour of the lender by virtue of which the lender may sell the real estate in the case of the borrower's default and apply the proceeds of sale to discharge the secured obligations. An additional security, where necessary, can be commercial pledges (over the assets/shares of the borrower (if a company), and/or third party guarantees/sureties.

8.3 What minimum formalities are required for real estate lending?

A mortgage over a real estate property takes effect upon registration thereof with the Land Registry. The registration of a mortgage requires submission to the Land Registry of a notarised application signed by both the mortgagor and the mortgagee, accompanied by the loan and the mortgage agreements.

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

By virtue of the mortgage, the mortgagee becomes a priority creditor of the mortgagor against the mortgagor's non-secured creditors. The general rule is that the proceeds of the sale of the real estate are first used to discharge the obligations secured by the mortgage, and only then distributed to the non-secured creditors.

9 Tax

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

There is no transfer tax as such in Latvia; however, in the case that real estate is transferred, there is a State duty to be paid in order to register the transfer with the Land Register.

The amount of State duty depends on the legal relationship between the transferor and transferee, as well as on the type of transaction. For example, in the case of a real estate business purchase, the State duty will be 2% of the purchase price expressed in Lats, but not exceeding 30,000 Lats (~EUR 42,700). The parties can agree as to who will pay the State duty; however, in practice usually the buyer or both parties cover the payment in equal parts.

9.2 When is the transfer tax paid?

The State duty has to be paid as a pre-condition for the registration of the transfer with the Land Register, and the receipt confirming payment of State duty shall be enclosed with the application for registration.

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

In general, transfers of real estate are not subject to VAT, with the exception of the first sale of unused real estate which is subject to VAT at the rate of 18%. Unused real estate is deemed to include:

- newly-erected buildings or constructions if they are not used, leased or rented after being put into operation;
- newly-erected buildings or constructions if they are sold within one year after being put into operation, regardless of their use before the sale;
- buildings or constructions if they are sold within one year after renovation, reconstruction or restoration works have been commissioned; and
- unfinished construction objects.

If a newly-erected building forms a joint property with the land, the value of the land shall be included in the value of unused real estate and is subject to 18% VAT. Furthermore, transfers of newly-built apartments together with individual parts of the land sold as one real estate property are subject to VAT.

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

In the case where real estate is sold by a legal entity (entity subject to corporate income tax), the difference between income gained from the sale and the remaining book value of the real estate (for buildings, constructions and other real estate, which can be depreciated), and the difference between purchase value and sales value for land, are added to the taxable income of the entity and are subject to corporate income tax at the rate of 15%.

In the case where real estate is sold by a natural person, the difference between the purchase value and sales value of the real estate is subject to personal income tax at the rate of 25%, if the person owns the real estate for less than 12 months.

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

In the case where there is a transfer of ownership of the company owning real estate, there is no VAT applicable

(transfer of shares) or State duty (because the owner of the real estate does not change).

10 Leases of Business Premises

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

Latvian law does not specifically regulate leases of business premises. Such leases will be governed by the relevant Civil Law provisions setting forth the legal framework for leases in general.

10.2 What types of business lease exist?

No types of business leases are distinguished by the law. In practice the leases will vary depending on the type of leased premises, for example lease of office space, lease of warehouses, etc. In relation to the land, private land lease and public land lease can be distinguished, where the public land lease will be subject to certain limitations (minimum threshold of rent, maximum term of lease, etc.) and procedures.

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

a) Length of term

As a general rule, the maximum term of the lease is not limited by law (there are exceptions in relation to real estate which is not registered with the Land Register, public land in ports, etc.). Generally, in business leases the parties will stipulate a particular term of lease, termination options prior to the expiry of the term (if agreed) and lease extension options (if agreed).

b) Rent increases

Unless the parties expressly agree on certain rent increase mechanisms, the rent will stay fixed for the whole lease term; therefore, the landlord will normally request that the respective provisions are included in the lease agreement. It is customary to agree between the parties that the amount of rent payments be revised annually (or quarterly/semi-annually) on the basis of respective changes in the consumer price index.

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

The tenant may not sub-lease or otherwise transfer its right to use the lease object to a third party without the express approval of the landlord, unless the parties have agreed otherwise in the lease agreement. Failure to obtain approval for a sub-lease will trigger the landlord's right to terminate the lease.

d) i) Change of control of the tenant

According to the law, the change of control of the tenant will not affect the lease. The parties may, however, agree otherwise.

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

By law the lease will remain valid and binding for legal successors with respect to the rights and obligations of the parties. It can be agreed, however, that such a transfer of lease/ corporate restructuring may entitle the other party to withdraw from the lease.

e) Repairs

According to the Civil Law, there are three types of expenses that can be incurred by the tenant in relation to repairs of the premises:

- necessary expenses;
- useful expenses; and
- luxury expenses.

The necessary expenses should be compensated to the tenant in all cases. The useful expenses should be compensated to the extent to which the value of the property has been increased.

Unless otherwise agreed, the lessor is not obliged to compensate the luxury expenses of the tenant, but improvements to the property may be removed by the tenant to the extent that the property is not harmed in so doing.

As a general rule, in business leases it shall either be provided that the tenant is not entitled to any compensation for inseparable investments made into the premises, or, where extensive repair works are envisaged by the tenant, it shall be specifically agreed what the amount of reimbursable expenses will be, or how the amount will be determined, in which case it will be payable to the tenant.

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

A business lease is subject to VAT at the rate of 18%. It is the duty of the landlord to add VAT to the amount of the lease in the invoices issued to the tenant, and it is also the landlord who pays the collected VAT into the State budget.

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?

According to the Civil Law, the landlord may terminate the lease agreement unilaterally in the following cases:

- a) if the rent payments are delayed;
- b) if the landlord has an unpredicted necessity to use the premises by itself;
- c) if the tenant damages the property;
- d) if the property requires immediate and large expenses which make it impossible to leave the agreement in force; or
- e) if the property is sub-leased without the consent of the landlord.

Usually the parties would expressly exclude in their agreement the grounds under items b) and d) above. It is also customary to set a grace period during which the lease

may not be terminated due to delayed payments. The parties would also normally agree on unilateral termination in some other cases, for example if the tenant is in breach of any provision of the agreement and such breach is not eliminated within 30 days.

The lease extension and renewal and compensation for termination issues, are not specifically regulated by law. Normally, the parties will stipulate these issues in their agreement.

10.6 Do 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 replacement of either of the parties under the lease agreement shall normally be procured by a trilateral renewal agreement to the effect that the respective party is replaced with another, assuming all rights and obligations of the former except if agreed otherwise. Thus, after the renewal, the former tenant/landlord will not be liable to the other party to the lease but will remain liable to the new tenant/landlord having recourse against it.

11 Zoning and Environmental Issues

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

Territorial planning (zoning) and construction in Latvia is governed primarily by the Territorial Planning Law of 22 May 2002, the Construction Law of 10 August 1995, and the General Construction Regulations of 1 April 1997 (all setting forth the overall legal framework, the competence of governmental and self-governmental bodies, and the rights and obligations of persons involved in the construction), as well as several regulations of the Cabinet of Ministers dealing with local territorial planning and construction standards. The key environmental law adopted and effective as of 6 August 1991 is the Law On Environmental Protection, containing general framework provisions in the field of environmental protection and setting forth the competence of the authorities. Some other important environmental laws to note are the Law On Pollution of 15 March 2001, the Law On Evaluation of the Effect on the Environment of 14 October 1998, and the Shelter Belt Law of 5 February 1997.

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

The use of land/buildings (territorial planning/zoning matters) and construction matters are primarily controlled and monitored by the local self-government bodies; for example, construction works are monitored by the local construction board. Environmental supervision and control, to the extent this relates to local zoning/construction matters, are also primarily executed by self-governments and their bodies.

Information regarding the permissible use of a particular land plot can be obtained from the local self-government (it is part of the general plan of the particular territory, and detailed plans - where the use has been elaborated and approved, etc.). Information regarding public and private encumbrances and other third party rights on the particular land plot can be obtained from the local self-government, the local department of the State Land Service and the local Land Register Department. Where the buyer purchases real estate comprising some finished building/construction or building/construction in progress, it will normally require that the seller present sufficient proof of the construction being legal (for example, a construction permit, an act on putting the building/construction into operation, etc.).

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

The Construction Law sets out a general requirement that any construction work may be performed only subject to receipt of a construction permit.

In order to finalise the construction process, the building must be operational. The building is inspected by a number of authorities in order to verify whether it complies with fire security, general safety, environmental and other requirements. If the result of these inspections is positive, the owner of the building receives a verification document - an act on putting the building into operation.

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

Obtaining the respective permits/approvals is mandatory under Latvian law except for some types of constructions, e.g. temporary/seasonal constructions, where there is an express exemption. The law does not provide for any cases when such permits/approvals would be deemed "implied".

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

The obtaining and coordination of the various documentation involved in the construction process will depend on the construction object, the location and size of

the project, and other factors. As a general rule the process tends to be rather complicated and lengthy, with the terms and costs depending on the particular circumstances. The laws do not set forth any general terms, nor specify any mandatory taxes/duties; these are all left to the competence of the particular self-government. For example, in Riga, according to municipality regulations, the term set forth for the granting of a construction permit is 10 business days (in practice it may take up to 1 month or more) from the date of application, provided that all other formalities have been settled and pre-conditions met.

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

According to the Law On Pollution, the owner of the land is not subject to a mandatory clean up requirement, nor to a requirement to cover the costs of testing pollution levels and/or clean up, except where the owner of land is the person who caused the pollution, or a person having decisive control in the enterprise which has caused the pollution.

The owner of the land will, however, be obliged to fully or partially cover the costs of tests and clean up if it has approved such a clean up and, as a result of the clean up, the value of the land has increased, provided that the persons who are primarily obliged to cover such costs (i.e., the persons having caused the pollution) are not able to cover full amount of the relevant costs. Such an obligation, however, is limited to the difference in value of the land before and after the clean up.

12 General

12.1 Are there any current proposals for significant reform of real estate law in your country? Please give details.

Currently there are no proposals regarding any significant reform of real estate law in Latvia.

12.2 Date at which law is stated

The law is stated as at January 2006.

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