



Selected Legal Aspects of Real Estate Investment in Austria

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How high is the degree of legal certainty? (1)

- **The Austrian legal system for the acquisition of land is a safe and mature set of rules.**
- **Reasons for this are: a reliable and safe, 200 years old civil code, and a highly developed, proven system of recordation of real property rights.**
- **The Austrian land register system was developed in the 19th century, has been essentially unchanged since, and is the still valid basis for the respective legal systems not only of the former „crown colonies“ of the Austrian-Hungarian empire, but for several other CEE states (e.g Romania, ...)**
- **All real property in Austria is fully cartographed and reflected in the computerised and central system of the Austrian land register**
- **The electronic land register can be accessed by courts, notaries public, and by attorneys.**

How high is the degree of legal certainty? (2)

- Title searches can be easily conducted in Austria; no need to determine chains of legal title and to perform complex title searches.
- Entries in the land register enjoy „full faith and credit“.
(„*Vertrauensgrundsatz*“) (cf Romania!)
- However: not all legal titles for the use of real estate are registered in the land register.
- Ownership rights (also joint ownership and condominium ownership [„*Wohnungseigentum*“]) and other *in rem* rights are registered
- However, e.g. lease rights, so-called superstructure rights („*Superädifikate*“), or other *merely obligatory* rights are not registered as a principle.
- Further, not all encumbrances are registered, even though registration of most customary encumbrances (mortgages, servitudes, etc) is foreseen and possible.

How is legal title in real estate obtained?

- **2 requirements to obtain title in real estate:**
 - **Entering into of contract**
 - **Registration of title in land register**
- **Only upon registration, land ownership is (in principle) obtained**
(exceptions: inheritance; acquisition in court auction).
- **Formal requirements regarding contract to be registrable:**
 - Contract has to fulfil minimum requirements of purchase contracts in general, i.e. there has to be consent regarding the object of purchase and the purchase price
 - Signatures have to be notarised, and formal consent by owner to registration is necessary.
 - The other covenants of the contract do not have to be contained in the document that is submitted to the land register, and that will thus be subject to inspection by the general public.

Are there statutory warranties for the acquisition of real estate?

- **The seller is liable that the land has**
 - **A) the qualities that can customarily be expected from the object of purchase**
 - **B) the qualities that are expressly stipulated in the parties' agreement**
- **A) is often difficult to determine, and uncertain in its operation, wherefore it is customary that certain qualities of the land are expressly agreed upon.**
- **The statutory warranty period is 3 years from handover. In case of hidden defects, the 3 years period starts at the date the defect can be detected by the purchaser.**
- **The statutory period can be extended, or also shortened by parties' agreement. In commercial real estate transactions, an extension will hardly ever occur.**

What other important statutory remedies are there under Austrian law?

- **In case of fault by the seller, the purchaser can claim damages. In case of transactions between business people, loss of profit can be sought even when there is only light negligence.**
- **In case of error or civil law fraud, a rescission of the contract can be sought**
- **When the land is worth only half of what was paid, rescission or adjustment of the contract can be sought.**

Is approval necessary for the acquisition of land by foreigners?

- **In case of EU nationals, the right to acquire land on the same conditions as nationals is safeguarded by the free movement of capital. Therefore, no approval is necessary. A decree that no approval is necessary is, however, recommended, in order to prevent problems upon registration.**
- **In case of non-EU nationals, and in case of acquisition of agricultural land and of forests, specific approval by the 9 provincial land transfer authorities is necessary.**
- **This applies to acquisition of land not only by means of asset transfer, but also in case of land acquisition by means of share transfer, i.e. in case of acquisition of companies owning land.**

Other important legal aspects of land acquisition

- **Thorough due diligence advisable of 3 particular areas**
 - **Rights and contracts due diligence: registered and non-registered encumbrances of land (easements, rights of way, pre-purchase rights, re-purchase rights, lease and tenancy agreements in force, etc)**
 - **Zoning due diligence: what are the zoning restrictions in force – complex matter on grounds of fact that zoning is matter of Provincial law, wherefore 9 different legal systems**
 - **Permits due diligence: For the construction and operation of real estate, several permits can be required:**
 - Construction law (9 different Provincial legal codes!)
 - Trade Code (Federal Law, specific requirements e.g. regarding shopping centres)
 - Environmental law (Environmental Assessment Act)
 - Aviation Act, and other specific legal provisions