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# LEINTERNATIONAL REAL ESTATE NEWSLETTER

Buying real estate in a foreign country can be intimidating: The customs, practices, and of course laws are likely very different than you are accustomed to. With this in mind:

**What steps should you take when purchasing real estate in the following countries?**



# SCHMIDTMAYR | SORGO | WANKE RECHTSANWÄLTE OG

## AUSTRIA

### 1. Hiring Advisors

Once you have made up your mind to invest into or deal with real estate in Austria you should first consult a legal advisor (ie lawyer, notary) and a tax advisor in Austria. Both should be familiar with cross border transactions related to your country.

### 2. Planning, Due Diligence

Once you have identified the real estate you intend to purchase, as a first step, you should the zoning and development plans inspected referring to the respective estate. In a second step, you should access the land register in order to gain information on the legal status of the real estate you are interested in.

Thirdly, it may be advisable to obtain expert opinions on several other aspects that might influence the value of the estate and its usability. In particular, it might be of interest to obtain information on the quality or basic structure of existing buildings, on possible contaminations and the like.

### 3. Negotiations and Purchase Contract

As a next step, you or your real estate broker will enter into negotiations with the seller of the property you are interested in and his broker, respectively, as regards the commercial terms of the transaction (in particular the purchase price). In practice, the usual procedure is that the buyer submits a written purchase offer including the main facts that are crucial for a following purchase contract. In most cases, such purchase offer is prepared by a lawyer. When the offer has been accepted by the seller, a binding agreement has been concluded following Austrian law. In order to effectively get into real estate ownership, registration in the land register is required. Precondition for a registration in the land register is a written contract that shall include certain material clauses and meet several formal requirements. Upon submission of all relevant documents, the district court will register the transfer of ownership in the land register.

After signing the formal written contract, the purchase price (or a part of it) is normally transferred to an escrow account which is established by the lawyer drafting the contract. The seller gets his money after the buyer has expressly agreed for him to be registered in the register as new owner in the agreed legal and financial position.

### 4. Specific Approval Procedures

If foreigners purchase real estate or a right to a property an approval of the competent local authority is mandatorily required.

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# BUYLE LEGAL

## BELGIUM

### Introduction

Belgians are famous for having a “brick in the belly”. In fact, more than 7 out of 10 Belgians are owners. This is not negligible, as the Belgian is above the European average. In general, about six months have passed between the first visit to a property and the handing over of the keys! It is relevant to specify that within this article, we develop the existing steps within the framework of a classic real estate sale. As the sale on plans, for instance, deserves further development, it will not be discussed here.

How does a Belgian who is keen to buy an accommodation proceed to realize his/her project ?

### 1. Budget and meeting at the Bank

The first step is certainly the evaluation of the available budget. In addition to the price of the real estate, the buyer has to face different “extra costs” (taxes, notary fees, etc...). Also, most of the Belgian buyers have very often recourse to financing means such as a mortgage loan, in addition to a personal contribution that usually covers the “extra costs”, insofar the banks usually refuses to loan more money than the value of the real estate the buyer will purchase.

### 2. Housing search and visits

Once the question of the budget is closed, it's time to search for the future real estate. The buyer has the choice: search by him/herself on dedicated websites or contact a real estate agency. The real estate agency can offer a large number of housing possibilities and is able to advise the buyer on the estate itself but also on the financial costs that have to be foreseen.

### 3. Make an offer and apply for credit

Once the accommodation is found, usually an offer must be made by the buyer to the seller. Before the buyer delivers his offer, it is advised that he/she take all the necessary urban planning information in order to check whether the factual situation of the building respects the latest subdivision plans, urban planning and related permits. If the buyer foresees to finance his/her project with a Bank, the offer must include a suspensive clause. The suspensive clause protects the buyer as it implies that if the bank refuses the mortgage loan, the buyer will not have to pay any charge for his/her inability to purchase the accommodation.

Once the offer has been made, the buyer submits a mortgage application to the Bank.

### 4. Signature of the compromise

If the offer is accepted by the seller and the mortgage application validated by the Bank, the buyer and the seller will most of the time sign a “compromise sale” or “sales agreement”. The “compromise” is a synallagmatic promise of sale between the two parties. If one of the parties gives up the transaction, the other can force him/her to do so through legal proceedings and ask for damages, if they were foreseen in the “compromise”. At the signature of the “compromise”, a deposit will be paid by the buyer.

# BUYLE LEGAL

## BELGIUM

The amount is freely fixed by the parties but it represents, most of the time, 10 % of the final price. The “compromise” also will have to contain a suspensive clause so the possible refusal of the mortgage by the Bank will not have a financial consequence on the buyer and allows him/her to withdraw.

At this point, before the signing of the “compromise”, the buyer should consult his/her notary for advices. In fact, the notary advises his clients on their rights and duties, as well as the legal, financial and fiscal consequences of their projects.

The buyer will indeed have to ask information about the urban planning and environment state of the real estate, and all technical inspection such as electricity, fuel tank, ... The notary draws up the deeds and authenticates them and accompanies his clients throughout the real estate purchase procedure.

### 5. Signature of the authentic deed at the notary's office

Once the buyer and the seller have signed the “compromise”, and the bank and the buyer have signed the mortgage contract, the notary ensures that the transaction does not present any irregularities. If the transaction can be completed, the notary prepares the relevant documents within a legal period of 4 months after the signing of the “compromise” A date is then agreed by the parties to go to the notary's office to sign the deed. In the case of public sale of real estate (online or not), the potential buyers will bid on the real estate they have chosen, and the real estate is usually attributed to the highest bidder. In this case, the authentic deed is directly signed without the previous steps. At the notary's office, the keys of the bought accommodation are finally given to the buyer, except if they agree to give them sooner or later.

### Conclusion

In conclusion, the steps in purchasing a property in Belgium are very well orchestrated. Different actors take the stage: the buyer, the seller, the banker, the real estate agent and the notary. The formalities developed above are essential to acquire a property in Belgium, it is better to be advised!



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# DALAN Advokatfirma DA

## NORWAY

Commercial properties in Norway are usually owned by a legal person as opposed to housing that is usually owned by natural persons. Norwegian legislation is in general neutral to if the investment is done by a Norwegian or foreign natural or legal person.

A commercial property in Norway will in most cases be advertised through a short teaser with information about the property that it is for sale made by a broker on behalf of the seller. The process will then proceed as a structured sale / auction (if the parties have not found each other already) where both parties will engage an attorney, and often a financial advisor. A non-disclosure agreement will be expected, indicative offers and letters of intent / terms sheet are widely used, before a subsequent due diligence is performed before the negotiations on the contract will start. When purchasing a commercial property there are standard real estate agreements that are used in most cases (Meglerstandarden). That this contract shall be used will usually be included in the information provided in the preliminary period. This standard is known to all attorneys and financial advisor and enjoy wide acceptance as the best starting point for further negotiations. Even though this is a standard agreement, there is always the need to tailor it to the specific transaction. The standard comes in Norwegian and English.

The use of limited liability companies as the owner of commercial properties is common. The shares can then be transferred in stead of the title deed. Since there is no registration of a new deed and owner in the Norwegian Mapping Authority a stamp duty on 2,5% of the property's marked value is saved. For housing to private persons the house will usually be advertised through a real estate agent. The real estate agent has a legal duty to care for both the seller and buyers interests in a private transaction. There is also a background law with many invariable rules so there is little room for negotiation. It is therefore uncommon that private natural persons engage their own attorneys to review the contract.

The purchase of real estates is also be subject to a license obligation (konesjon). usually this is just a formality. For large estates and agricultural, forest and hunting estates it will be useful to engage an attorney to write the application. For smaller housing properties it will often be enough to sign a form of exemption from the license obligation that will be filled out by the real estate agent.



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# KIJEWSKI GRAŚ KANCELARIA

## POLAND

Poland is an attractive country for investing in real estate, but a conscious investor should hire a professional lawyer before any purchase. Usually the legal offices specialized in real estates' transaction are able to provide accounting and tax services, too. There is no obligation to hire a real estate agent. Also, to conclude the transaction the agreement has to be made and signed in front of the notary and he/ she files an appropriate motion to the land and mortgage register courts.

The lawyer is needed not only to prepare and negotiate the purchase agreement, but also, before any binding agreements are made, to check the property legal status. Due diligence analysis is highly recommended, as there are still some unresolved disputes arising from the unlawful acquisition of the real estate under communist regime. Depending on the type of the real estate the investigation could be more or less detailed. There are two titles under which the real estate could be bought: ownership or perpetual usufruct to the land with ownership of the buildings built on it. In practice the scope of the rights is very similar, especially if the real estate is built-up. In case the investment include construction works, then buying a perpetual usufruct may pose more risks.

What is more, there are some restrictions which needs to be taken into consideration when planning to buy a real estate n Poland. For example, if the potential buyer is from outside the EU, EEA or Switzerland, such person or entity need the permission of the Minister of the Internal Affairs to buy the land. It means that the timetable of the investment needs to be extended to obtain the decision. Also, there are special laws concerning the purchase of the agricultural land.



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# BBM SOLICITORS

## SCOTLAND

### Find a property and note interest

Properties will be advertised online, in newspapers or by estate agents. Commercial agents can also be instructed to locate a property. Once a property is selected a solicitor will note interest with the selling agents.

### Obtain Surveys or Home Reports

Sellers of residential properties must provide a home report for purchasers. These include a single survey, energy report and property questionnaire. In the purchase of a Commercial property the purchasers will tend to instruct their own survey over the property.

### Arranging the loan/ or confirming alternative source of funds

Some offers will be submitted subject to finance but ideally potential purchasers should have an offer in principal from a lender in place when submitting an offer. If there is to be no bank lending the evidence for source of the funds being used to pay for the property will need to be given to the purchasing solicitor at an early stage.

### Make an offer

The solicitor will submit an offer. For residential properties offers are short and made on the basis of the Scottish Standard Clauses for Commercial property full commercial long form written offers are used. Offers may be submitted at any time though if there is a set a closing date they are unlikely to be considered before this date and should ideally be submitted on the closing date.

### Having the offer accepted

Usually the highest offer is accepted although occasionally the seller accepts an offer on the basis of some other factor such as an earlier or more convenient date of entry or the because there is no chain involved and the purchaser has not offered subject to finance. The offer will be accepted verbally normally within 24 hours and then a formal the written acceptance will follow setting out any proposed changes to the offer terms.

### Agreeing the contract

Further negotiations are likely after an offer has been accepted, for instance, the date of entry, details of additional items included in the sale and issues such as permits for alterations. Once all points have been agreed in writing, a binding contract will have been formed.

# BBM SOLICITORS

## SCOTLAND

### Checking the documents of ownership

The purchasers' solicitor will examine the title for the property and raise a series of observations on title with the sellers' solicitors dealing with any rights relating to it and any conditions that will have to be observed. A new plan may need to be prepared and agreed.

### Preparing the transfer documents

A deed, called a disposition, is required to transfer the title of the property. This is prepared by a solicitor, checked by the seller's solicitors and signed by the seller. If there is lending a standard security which gives a lender certain rights over the property will be signed by the Purchaser.

### Transferring the funds

As well as the purchase price, there are other costs involved in buying are LBTT a tax payable to Revenue Scotland and Additional Dwelling Supplement when it applies. There are also a registration dues charged by the Registers of Scotland.

### Completing the purchase

The transaction is completed on the date of entry. The price is paid to the seller's solicitor and keys exchanged. The purchasers' solicitor will then deal with the LBTT and registration requirements.



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# HAVRILLA & CO. S.R.O.

## Slovak Republic

Steps to be taken when buying real estate in the Slovak Republic:

### (1) REGISTRY OF THE REAL ESTATE OWNERS

1.2 The Cadastre (also known as a Land Registry) is a public register and information system in Slovakia, which contains the geometric determination, real estate listing and characterization of real estate and property rights data. Property rights data include ownership data (all real estate property rights), property liens, easements/burdens, tenancy rights, rights arising from the State's, municipality's and higher territorial unit's asset management.

1.3 Data from the Cadastre are publicly available on the websites: [www.katasterportal.sk](http://www.katasterportal.sk) and <https://zbgis.skgeodesy.sk/>.

1.4 In case of Real Estate transfer, the Cadastre is also important because of the fact that only by the registration of the ownership transfer in the Cadastre creates the ownership right of the transferee (acquirer).

### (2) ASSIGNMENT AND TRANSFER OF THE OWNERSHIP OF THE REAL ESTATE

2.1 There are two methods how to acquire the ownership to the real estate under the Slovak legislation, and that is the assignment and the transfer of the ownership.

2.2 The transfer of ownership of the Real Estate always takes place on the basis of a contract type modified by the Slovak legislation.

2.3 The assignment of ownership to real estate occurs in case of construction a new real estate, inheritance, knock down in execution or bankruptcy auctions, court decisions on the determination of ownership, or other decisions of a state authority. In such cases, the registration procedure is a recording procedure which has declaratory effects. Because the assignment of ownership arises by the mere factum juridicum (death of the benefactor = inheritance, knock down in auction, etc.), or by a decision of the state authority.

2.4 However, in spite of the foregoing, the entry in the Cadastre does not equate to a confirmation of the property right.

### (3) ALIENATION CONTRACTS

3.1 The alienation contracts include a purchase contract, a donation contract, a real estate exchange contract, which is regulated only by the Civil Code, or a contract on the transfer of ownership rights to an apartment or non-residential premises pursuant to the Act on the Ownership of Apartments and Non-Residential Premises.

# HAVRILLA & CO. S.R.O.

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3.2 Formally, a written contract is required, the essential formalities of which, in addition to a precise description of the property transferred and the identification of the contractual parties, is a certified signature of the transferring contractual party to the contract, whereby the expressing wishes of the contractual parties have to be on the same document. In order to acquire ownership by contractual transfer, it is necessary write enable of the Land Register with constitutive effects.

3.3 The transfer of real estate is governed by the roman plus iuris principle, which states that no one can transfer more rights than he actually has. It should also be borne in mind that in the Slovak Republic the Roman law principle of super ficies solo cedit does not apply, which means that the building may be owned by a different owner than the land on which it is built.

#### (4) LIMITATIONS OF OWNERSHIP TO REAL ESTATE FOR FOREIGNERS

4.1. Under the conditions of legislation of the Slovak Republic, the right to own real estate for EU citizens is in principle unlimited, with some exceptions where the law limits the ownership of some foreign persons.

4.2. Foreign person cannot own agricultural or forest land situated outside the built-up area of the municipality. This does not apply if the property passes to the inheritor who is a foreigner.

4.3. The same exemption does not apply in the case of a foreign person who is a citizen of an EU Member State, who has registered residence in Slovakia and has been farming on the land for at least three years.

4.4. Limitations on the acquisition of real estate are limited by the Mining Act, the Water Act, the Act on Protection the Nature and Landscape, etc.

4.5. In practice, the above described limitations can be partially resolved by establishing a legal entity with its registered office in the Slovak Republic (for example a limited liability company) by a foreigner outside the EU, which already acquires as a Slovak entity through property ownership in Slovakia. However, the method described above has certain specifics and exceptions for the acquisition of agricultural and forest land, which is not described in detail because of the vastness of its subject.



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# DMH STALLARD

## United Kingdom

The United Kingdom's commercial real estate market is a highly attractive investment destination. We benefit from a respected legal infrastructure, high levels of transparency and liquidity and a robust occupational market. 79% of all Central London real estate acquisitions were made by international investors in 2018 but foreign investment cooled in 2019. Whilst Brexit presents challenges, the UK is predicted to continue to be an attractive investment option, particularly if exchange rates remain weighted in overseas investors' favour.

A chartered surveyor should be instructed to advise on investment options. The UK market is shifting and new challenges and opportunities arise:

- Environmental considerations are increasing, flood risk has always been a consideration, but air quality will start to be considered, being socially aware is important, focus is increasing on responsible investment and JLL suggest there is a strong case for investment decisions being more impact-oriented.
- The retail market is under strain, high streets are suffering, does that present opportunities or should the sector be avoided?
- Is the city in which the investment is being considered suffering from a shortage or surplus of office space?
- Occupiers' demands are changing - is your client prepared to take an active management role, shifting the use of the property as differing uses ebb and flow taking a more customer-centric approach, or are they looking for a long term investment with minimal involvement? The former will give much greater opportunity for value than the latter.

In common with most other countries, there are some critical initial steps to consider before bidding for a property. These will greatly increase your client's chances of being successful:

- Taking structuring (UK or overseas investment vehicle for example) and tax advice – the tax treatment of property investment, and overseas investment in particular, is under scrutiny and advice must be taken at an early stage;
- An initial review of the property by UK solicitors will add credibility to the offer and flag any material issues to be addressed in the heads of terms;
- Ensuring that your clients / their investors / owners are able and willing to clear anti-money laundering and (where applicable) ultimate beneficial owner requirements;
- Ensuring your client has funds available or a credible lender on board;
- A chartered surveyor has been retained to advise on your offer and the bidding strategy;
- Collating evidence of your credibility, ideally evidence of your track record in making similar investments;

# DMH STALLARD

## United Kingdom

If the offer is successful heads of terms will be agreed and signed. These are usually non-binding and a surveyor should be retained to negotiate the heads of terms on your behalf, often with legal input from your solicitors. Exclusivity (lock-out) periods may be agreed, confidentiality obligations imposed or more formal non-disclosure agreements entered into.

Once heads of terms are agreed your legal advisors will investigate the property, reporting to you on the property and any leases the property is subject to. The solicitors will negotiate the transactional documents and any funding documents and move to completion.



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# VOGT, RESNICK & SHERAK, LLP

## United States

In general, there are no restrictions that apply to foreigners who want to buy real estate in the USA. However, the process can be daunting and if not done carefully, the risk and tax ramifications for how you purchase the property can quickly turn an dream investment into a nightmare. For that reason, it is important to obtain qualified legal advice before you purchase property in the USA. The lawyers at the law firm of Vogt, Resnick & Sherak, LLP can assist you with all of your real estate needs.

### 1. What type of Property?

The first decision any investor needs to make when purchasing property in the USA is the purpose of the purchase: Are you buying for a vacation home or an investment property? There are essentially three types of properties by zoning in the USA, although each state and municipality may have different names for each, and slightly different designations. They are residential, commercial, and industrial. Depending on how the underlying property is zoned, this will determine what you can do with the property, which may differ from the type of building that is currently on the property. Making sure your investment is in a desirable “zone” is an important consideration, and should be part of your investigation process.

### 2. Obtaining Representation

Of course, it is recommended that you hire a qualified real estate attorney to assist in the process. Your attorney will be able to assist with contacting a licensed real estate broker (if necessary), and obtaining title insurance and information relating to applicable zoning and building information.

### 3. Arrange for Financing and Plan for Taxes

Foreign buyers are able to obtain financing in the USA. However, foreign buyers must structure the real estate transaction so as to avoid, as much as possible, the tax ramifications of the purchase. For this reason, it is important to select a lawyer that understand the tax issues and can advise you as to the best way to purchase the property, and how to structure the transaction to minimize your possible tax liability. For foreign investors, the Foreign Investment in Real Property Tax Act (FIRPTA) is a law that imposes income tax on foreign owners of property when you sell it. Getting the proper advice on how to plan for, and minimize, your tax liability is critical. In addition to federal tax issues, it is important to consider the fact that each state and municipality in the USA has its own tax rates and rules, which makes obtaining experienced legal representation a must.

### 4. How Do I Manage the Property?

If the real estate is an investment property, there are many companies in the USA which can assist in the day-to-day management of the property. The rates charged vary greatly, as does the service. Your lawyer can assist you in finding the right fit for your needs, and can act as your local representative if necessary.



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