

Five typical mistakes when acquiring forest land in Romania *by Oana Someșan, Avocat (Attorney at law RO)*

Recently, we have noticed an increased interest from investors in acquiring land areas with forest vegetation for the purpose of exploitation and management.

Despite the high value of the contract, parties to these investments often fail to examine essential aspects in detail. Since this can have considerable legal and economic consequences, typical errors in the acquisition of forest land are presented below.

Failure to comply with the statutory pre-emption procedure

When selling forest land in Romania, the Forest Code (hereinafter referred to as the "**Forest Code**") provides for a pre-emption procedure in favor of co-owners and neighbors, for which a certain procedure must be carried out prior to the sale/acquisition of forest land.

Therefore, before concluding purchase contracts for forest land, it is necessary for the buyer to have his lawyers check the correct implementation of the pre-emption procedure.

If the seller does not comply with the legal obligation to notify the pre-emption right holders or if the land plot is sold at a lower price or on more favorable terms than those included in the offer of sale in the pre-emption right proceedings, the purchase agreement may be contested. The sanction provided for by the law is relative nullity of the concluded sale and purchase agreement.

Purchase without due diligence procedure

Prior to acquiring forest land, any potential acquirer is strongly advised to perform due diligence.

The due diligence serves to identify serious risks concerning the examined land plots. Its purpose is to determine the legal and technical situation of the land plots to be acquired and, in practice, it may reveal surprises such as significant surface differences, up to the threat of loss of ownership of the acquired land plots.

In addition, a technical due diligence process is particularly important when acquiring forest land (forest inventory review, etc.).

Failure to survey the land plots and update the cadastral documentation

In order to avoid surprises concerning the surface of the land to be purchased, it is absolutely recommended for the buyer to carry out new surveys and update the cadastral documentation before concluding the purchase contract. However, very often purchase contracts are concluded on the basis of very old cadastral documentation. In the meantime, technology has advanced and the land plots are registered in the E-Terra electronic cadastral system, so the cadastral data are more accurate.

No security of the property by sale and purchase pre-agreement

During the due diligence process, which may already take some time due to the procurement of documents, the future acquirer should secure himself with the help of a binding sale and purchase pre-agreement (Rom. *antecontract*).

The purpose of a pre-agreement is for the parties to irrevocably commit to the purchase/ sale of the land at the price and under the conditions set forth in the pre-agreement. Naturally, a pre-agreement contains certain conditions under which the final purchase contract is concluded. Typically, these are a satisfactory result of the due diligence procedure and/ or fulfillment of additional preparatory obligations by the future seller based on the results of the due diligence procedure, depending on the specifics of the project. However, the pre-agreement can only be concluded on the condition that the above-mentioned beneficiaries of the pre-emption right do not exercise their rights of first refusal.

In order to have third-party effect (i.e. in particular, to prevent acquisition by third parties during due diligence procedure), the pre-agreements shall be registered in the land register of the properties.

No check for the existence of protected areas

When acquiring forest land, it is particularly important to check whether the land is located in protected areas and what influence this may have on the subsequent exploitation/ management of the forests. Unfortunately, these aspects are often neglected before the acquisition, which leads to unexpected problems in the later management.

Conclusion

Due to the value of the contract, purchase contracts for forest land are of high importance. The legal and technical situation of forest land, as well as the pre-emption procedure, but also other aspects, must be examined from the very beginning in order to create the conditions for the effective conclusion of the contract. Of course, the contract must also be adapted to the individual case by means of precise guarantees, rights and obligations of the parties, etc. Experienced legal support is required at all stages of the transaction.

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