European Real Estate Finance: Recent developments

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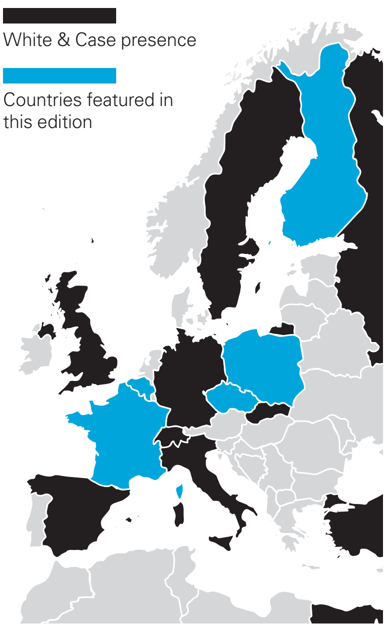
As part of our periodic updates, we will provide you with an overview of recent developments of relevance to participants in the real estate finance market and who may have an interest in the jurisdictions in which we have offices. For further details on any of the below, please feel free to contact the relevant country partner or your usual White & Case contact.



Belgium

Belgium has recently introduced the framework for an attractive new real estate investment vehicle, the specialized real estate investment fund (SREIF). SREIFs target qualifying professional investors only and are subject to "light touch" supervision with an expedited registration procedure.

Additionally, SREIFs and their investors are the subject of a favourable tax regime whereby operational and investment income received by the SREIF will be exempt from corporate income tax and SREIFs are exempt from WHT with respect to distributions to foreign investors (insofar as these distributions stem from foreign real estate).

Czech Republic

Effective as of 28 February 2017, there has been an amendment to the laws regarding the requirements for certain powers of attorney to take the form of a public deed and be recorded before a Czech notary public.

Previously, where Czech law has required that a transaction be recorded in the form of a Czech notarial deed and a party wished to utilize a proxy for such transaction, the requisite power of attorney granted to that proxy had to be drawn up by a Czech notary public. Failure to do so entailed the risk that the power of attorney would be found invalid and unenforceable and that any acts executed under such power of attorney would be voided.

This requirement proved rather cumbersome in practice and complicated matters, particularly for companies incorporated, or directs residing, outside of the Czech Republic who required the assistance of Czech notaries if they wished to grant powers of attorney in specific transactions (e.g., certain collateral agreements or certain decisions by a general meeting of shareholders).

€3.7bn

BELGIUM

2016 posted impressive investment figures totalling €3.70 billion.

Source:
CBRE – Belgium Major Report - Market Outlook 2017

€1.41bn

CZECH REPUBLIC

The total investment volume in Q1 2017 amounted to €1.41bn in 23 transactions and stood more than €980m above the 10Y Q1 average. Q1 2017 was, after Q4 2016, the second strongest quarter in terms of investment volume in history.

Source:
CBRE Marketview Czech Republic Property Investment, Q1 2017

Going forward, a power of attorney with signatures certified in accordance with the law of the place of execution will be sufficient event for those legal transactions which themselves need to be recorded in a Czech notarial deed.

Finland

A particular feature of the Finnish real estate market is to organize ownership of a multi-occupant property through a limited company established for the sole purpose of owning such property. In these cases, the legal owner of the real estate is the limited company, which may have one or several shareholders. These types of companies are called mutual real estate companies ("MRECs").

Each shareholding may be connected to a specific apartment/amount of space on the property, entitling the shareholder to physical control and occupancy of these premises. This form of ownership is commonly used in both residential and commercial properties and also provides certain tax benefits as the transfer tax for share sales is significantly lower than the transfer tax for direct property sales. With MRECs, lease agreements are concluded between the tenant and the shareholder and the rent is paid by the tenant directly to the shareholder (and not to the MREC).

The other type of real estate company utilized in Finland is a standard limited company, founded for the purpose of owning a certain property or properties. In these companies, the shares are not connected to any specific premises. Rental agreements are made between the tenant and the company, and the company is responsible for maintenance and operating costs, which it covers through rental income.

Shareholders can use their shares in the company as collateral for financing. As the property itself is owned by the real estate company, real estate mortgages are granted by the relevant real estate company rather than its shareholder which is typically the borrower in a real estate financing structure. As upstream guarantees and granting of security is subject to financial assistance and corporate benefit rules, the appropriate ownership and financing structure should to be carefully analysed on a case-by-case basis.

France

Under French law, guarantees and security granted by a French société civile to secure the debt of its shareholders can be held null and void where such guarantee and security is granted in breach of the relevant French société civile's corporate purpose (objet social) or without the relevant French société civile deriving corporate benefit (intérêt social).

However, in an unpublished decision dated 2 November 2016, the French Cour de cassation held that the granting of a guarantee secured by a mortgage by a French société civile to guarantee and secure the bank debt incurred by its majority shareholder (which was an individual and also the manager of such French société civile) for the purposes of financing a share capital increase of the French société civile is not contrary to the corporate benefit (intérêt social) of the French société civile, even if the enforcement of the guarantee and mortgage would result in the French société civile losing its sole asset, given that (i) the guarantee and mortgage have been granted with the unanimous consent of the French société civile's shareholders and (ii) the granting of such guarantee and mortgage by the French société civile has allowed it to acquire a real estate property and to perceive rental income under the lease granted by the French société civile over such acquired real estate property.

Given that this decision has not been published in the Bulletin des Arrêts de la Cour de Cassation, it is not possible to confirm so far whether the decision should be interpreted as a general rule applicable to any guarantee and mortgage granted by a French société civile to secure the debt of its shareholders (whether majority or minority shareholder, whether a company or an individual, whether a manager or not). Further case law will be needed on this issue.

€7.4bn

FINLAND

Finland Property transactions volume reached a new record level of €7.4 billion in 2016. Compared to the previous year, this represents a growth of some 35%. It is also some 18% higher than the previous record of 2007. In every quarter of the year, transactions volume exceeded €1.5 billion.

Source:
The Finnish Property Market 2017- KTI Finland

FRANCE

French investors still dominate their market (64% of total investments), however, some landmark deals in 2016 clearly highlighted the presence and interest being shown by foreign investors. One such deal was the debut of the Koreans who completed three deals worth over €100 million each, and the Norwegians, with the acquisition of 9 Place Vendôme in Paris' 1st arrondissement for €1 billion.

Source:
Savills – France Market in Minutes Q4 2016

Poland

New laws now significantly limit who can acquire agricultural real estate and these limitations also extend to enforcement proceedings related to agricultural real estate (regardless of whether a mortgage or loan agreement was established prior to these laws coming into effect). This is of significance as, from a practical perspective, agricultural land might be included as a part of a bigger parcel of real estate (including developed, commercial real estate) and in such cases, the sale of the entire real estate would be subject to these limitations.

Financing banks that are beneficiaries of mortgages encumbering agricultural real estate should be aware of these issues as the limited range of eligible purchasers can cause delays in enforcement proceedings and this may devalue the land.

Additionally, tax authorities have recently begun to classify sales of real estate as the sale of an organized part of a seller's enterprise (subject to the civil transaction tax) rather than as an asset sale (subject to VAT) as well as challenging previous tax rulings which stated that a sale of real estate constituted an asset sale. Sales of an organized part of the seller's enterprise are subject to the civil transaction tax of 1 – 2% which, unlike VAT, is not refundable to the buyer after completion of the sale.

€4.5bn

POLAND

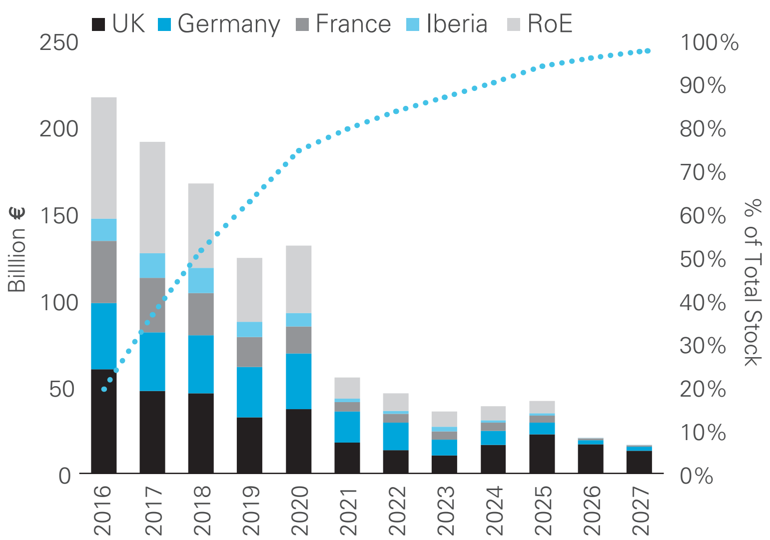
The Polish investment market remains the stand out performer across the CEE Region with over €4.5 billion transacted in 2016

Source:
CBRE Marketview – Poland Investment H2 2016

Banks should be aware of this as loans in Poland typically include a tranche for the acquisition price as well as an additional tranche for VAT costs which has a shorter repayment period (corresponding to the period needed by the buyer to receive a VAT refund) and which may no longer be able to be repaid as quickly. From a more general perspective, this uncertainty in respect of the tax classification of real estate sales may lead to parties seeking alternative structures such as share deals and enterprise disposals and may lead to a downturn in the real estate market until a new market standard is established.

CRE Debt Maturity in Europe (At end of 2015)

The majority of debt maturing in the next three years will be legacy loans



Source: CBRE Research

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