

IV. LEGAL FRAMEWORK

A. General legal provisions for housing

Legal developments during 1990-2000

The development of a legal framework for housing was one of the reforms adopted to facilitate the transition to a market economy and was a key component in changes the housing sector. Romania has been relatively successful in providing the housing sector with a logical system through complementary statutory and policy documents.

The Romanian legislative system consists of:

(a) **Laws** in three categories: constitutional, organic and ordinary. Laws can be drafted as bills by the Government or members of Parliament, or as an initiative backed by at least 250,000 citizens. They are debated in the Senate and the Chamber of Deputies. After being adopted by Parliament, they are promulgated by the President within 20 days of their adoption. The Ministries may issue regulations and/or standards, to provide guidance on the implementation and enforcement of laws within their areas of competence;

(b) **Decrees**, issued by the President of Romania, in accordance with his constitutional prerogatives;

(c) **Government resolutions and ordinances**. Resolutions are issued by the Government, to regulate the execution of laws. Ordinances are issued on matters pertaining to statutory laws, through a special enabling law by Parliament. Ordinances come into effect on issue, but are subject to final approval by Parliament. Under special circumstances, the Government may issue Emergency Ordinances, which come into force only after submission to and adoption by Parliament.

All legislation comes into force as published in the "Official Gazette".

Housing is governed by legislation in the areas set out below:

System of legislative acts

Privatization of State-owned dwellings and further construction work on uncompleted blocks:

- Law 61/1990 - the sale to the population of dwellings constructed with state funds;
- Law 85/1992 - the sale of dwellings and building space for other purposes paid for by State funds and other public organizations;
- Government Resolution 441/1991 - further construction work on uncompleted blocks;
- Government Resolution 383/1992 - amendments on Government Resolution 441/1991; and
- Government Resolution 678/1999 - further construction work on uncompleted blocks.

Restitution of nationalized dwellings:

- Law 112/1995 - settling the legal status of dwellings taken over by the State.

Ownership of buildings and dwellings:

- The Housing Act (Dwellings Law) 114/1996;
- Emergency Ordinance 44/1998 - amendment of the Housing Act;
- Law 145/1999 - amendment and extension of the Housing Act; and
- Emergency Ordinance 22/2000 - amendment and extension of the Housing Act.

Social and other rental housing:

- The Housing Act 114/1996; with amendments and extensions in
- Emergency Ordinance 40/1999 – tenants' protection and rent-setting.

Regulation of the development process:

- The Land Fund Law 18/1991;
- Law 169/1997 - amendments and extensions of the Land Fund Law;
- Cadastre Law 7/1996;
- Law 54/1998 - land transactions;
- Law 33/1994 – land expropriation for public use; Law 219/1998 - land leases (concessions);
- Law 1/2000 - restitution of the property rights to agricultural land and forests;
- Law 50/1991 (republished) - authority and measures for housing construction;
- Law 10/1995 - the quality of construction; and
- Government Resolution 525/1996 - approval of general urban planning regulations.

Financial aspects of the housing sector:

- Government Ordinance 19/1994 - the promotion of investment in housing construction;
- Law 82/1995 - approval of Government Ordinances (including Government Ordinance 19/1994);
- Government Resolution 160/1999 – amendments and extensions of procedures for the implementation of Government Ordinance 19/1994 on the promotion of investment in housing construction;
- Law 152/1998 - the creation of the National Housing Agency and procedures for applying Law 152/1998; and
- Law 190/1999 - mortgage credits for investment in property.

Taxation – housing-related coverage is found in several acts:

- Law 32/1991 V3 (revised) – tax on salaries and wages;
- Government Ordinance 73/1999 - income tax;
- Government Resolution 70/1994 - tax on profit; Emergency Ordinance 17/2000 – value-added tax (VAT);
- Ministry of Finance Order 1026/2000 - applying the zero rate of VAT to housing construction, consolidation and rehabilitation; and
- Law 27/1994 - local taxes and tariffs; Emergency Ordinance 15/1999 - revision and completion of Law 27/1994.

Related legislation:

- Law 69/1991 (revised) – the finance of local public administration;
- Law 189/1998 - local public finance;
- Emergency Ordinance 61/1998 – amendment and extension of Law 189/1998 on local public finance;
- Law 213/1998 - public property and its status; Government Ordinance 3/2000 - the organization of real estate agents' activity;
- Government Ordinance 29/2000 - thermal insulation of the existing building stock and the promotion of thermal energy conservation; and
- Law 35/1991 - the status of foreign investments.

Constitutional rights

On 8 December 1991 Romania's new Constitution came into force. It confirms the separation of powers and the fact that "Romania is a democratic and social State governed by the rule of law, in which human dignity, citizens' rights and freedoms, the free development of human personality, justice, and political pluralism represent supreme values and shall be guaranteed". Justice is rendered in the name of the law. Judges, appointed by the President of Romania, are independent and subject only to the law. The promotion, transfer and sanctions against judges may be decided only by the Superior Council of the Magistracy.

Romanian citizens are guaranteed the right to establish their domicile or residence anywhere in the country, to emigrate and to return to the country. Domicile and residence are inviolable. The law permits abrogation of this inviolability to execute an arrest warrant or a court sentence; to assure a person's life, physical integrity or assets, national security or public order; and to prevent the spread of epidemics.

The Constitution guarantees the right of property. The law protects private property irrespective of its owner. However, the Constitution also states that private property may be expropriated in the public interest, with compensation paid in advance. The public authorities are entitled to use the subsoil of any real estate but must pay compensation to its owner (compensation should be agreed with owner, in conformity with the law or customs). Assets acquired legally may not be confiscated.

Foreigners and stateless persons may not own land. However, foreign individuals and legal entities may lease property and, inter alia, plots of land. According to Law 35/1991, foreign investments can be used for the purchase and construction of buildings, but not where they are for residential use, except where they are ancillary to non-residential buildings.

The Housing Act

The Housing Act (114/1996 and subsequent) sets out (art. 67) the role of the Government in housing. This Act also lays two major obligations on the Government in the institutional framework for housing:

- The Government is responsible for the creation of housing development policy for the whole country.
- The house construction development programme is to be drawn up by the Ministry of Public Works, Transport and Housing on the basis of evidence submitted by local councils and other interested public administration bodies, and in accordance with the legally approved urban and regional planning documents.
- In addition, the Housing Act (114/1996) lays down the following two principles which are relevant to national housing policy:
 - Free and unrestricted access to dwelling is the right of every citizen; and
 - Housing (construction, use and management) is in the national interest and represents a major long-term goal for the public and for both central and local government.

The Act extends its action over Romanian citizens, in that it:

- Regulates the social, economic, technical and legal aspects of housing construction and utilisation;
- Defines and develops the typology of dwellings;
- Prescribes the development of house construction;

- Determines the rules for renting dwellings;
- Establishes procedures for the management of dwellings, and rules for the organization and functioning of homeowners' associations.

Types of dwelling

The following terminology is used in the Housing Act:

- *Public housing* - dwellings with subsidized rent allocated to individuals or families whose financial position would not otherwise allow them access to market rent dwellings;
- *Official residence* - a dwelling for public officers or the employees of certain institutions or businesses, allocated under the employment contract; it can be financed from State or local authority budgets, or by businesses; it is built in accordance with legal provisions and on land owned by the State, local authority or business; it may be sold with the approval of the Government;
- *Intervention dwelling* - a dwelling for employees of businesses who, by their employment contract, perform activities or jobs requiring their presence permanently or in case of emergency, inside or in close proximity to the business premises; it is built under the same conditions as those stipulated for official dwellings and with the aim of supporting the business; it may not be sold to the tenants;
- *Protocol residence* - a dwelling for persons elected or appointed to certain posts or public positions, exclusively during their term of office; it is property of the State;
- *Emergency dwelling* - a dwelling intended as temporary accommodation following natural disasters or accidents, or where homes have been demolished to permit the construction of public utilities, or rehabilitation work which cannot be undertaken while homes are occupied; it is financed and built under the same conditions as public housing; in extreme emergencies, unoccupied dwellings in the public stock may be declared emergency dwellings by the local council; and
- *Holiday residence* - a dwelling temporarily occupied as a secondary residence, for rest and leisure.

B. Privatization and restitution of housing

Privatization (sale of rental housing owned by public authorities and State enterprises, including unfinished blocks)

Romanian legislation in the 1960s and 1970s allowed the sale of state-owned dwellings to private citizens. However, a massive impetus has been provided by an active privatization policy since 1990. Decree-Law 61/1990 enabled the privatization of housing units built with State funds by selling them to tenants who could make a downpayment and sign the purchase contract backed by a loan. Persons not citizens of Romania wishing to settle in Romania could purchase a housing unit with foreign currency. Legally, repatriated Romanian citizens had priority if they purchased a dwelling with foreign currency.

Ownership is guaranteed by the purchase contract and covers both the apartment and the right to use the adjoining land. Credits were expected to be guaranteed through a legally secured mortgage on the property. One important issue is that dwellings purchased under this Law are exempt from real-estate tax for 10 years. The Law imposes some renting or resale restrictions on the new owners, but establishes no mechanism to monitor or enforce these, and also provides that the dwelling can be repossessed when loans are not repaid.

The sale of dwellings goes through real estate agents and/or specialized agencies. Annexes to the Law determine different sales prices depending on whether the dwelling was

constructed before 1 January 1977, between 1 January 1977 and 1 January 1989 or after 1 January 1989. The Law stipulates a standard 25-year loan with a 4% annual interest rate from the Savings and Deposits Bank for the purchase. Young married couples benefit from a 30-year loan with a 2% annual interest rate.

The privatization of dwellings unfinished or not yet allocated to tenants is governed by Law 85/1992. The Law has subsequently been clarified through Government Resolutions 441/1991, 383/1992 and 678/1999. Local authorities are required to identify and monitor the stock of unfinished buildings. They also have to organize public auctions for the sale of these dwellings, in which the starting price must cover the costs incurred up to each dwelling's stage of development. The purchasers also receive the right to use adjoining land or are allowed to lease it. The amounts received from the sale of dwelling units should be used for priorities, such as reimbursing credits taken to do the work. Creditors under development contracts receive compensation directly according to the value of work executed. The resources remaining after credit reimbursement should be used for the financing of further housing construction.

The Law allows the purchase of unfinished dwellings only by physical persons - citizens of Romania or others with legal residence in Romania. It excludes the sale of luxury dwellings or diplomatic residences. Families already owning another dwelling are excluded from benefiting from these provisions.

Dwellings can be sold by instalments, the first payment being 10% of the agreed purchase price. The sales agency is expected to guarantee payment by mortgaging the dwelling. Monthly payments for the total amount are planned over a maximum of 25 years, with an annual interest rate of 4% (2% for people under 30 years of age). In the case arrears of the agreed instalments, the customer is to pay an annual interest rate of 8%. The dwelling cannot be resold or altered, without the prior agreement of the sales agency until the mortgage has been repaid. As with the purchase of properties by tenants, default in loan repayments leads to eviction; in neither case, however, are there statistics available on how often this occurs.

Construction is to be completed within a maximum of 12 months following the date of receiving legal title to the new property. However, the number of uncompleted blocks is still high - see data on uncompleted blocks in chapter II.

Restitution of nationalized housing

Law 112/1995, adopted before the Housing Act, covers property which was formerly in private ownership and then nationalized. The law covered restitution to the former owners (physical persons) or their heirs of such assets nationalized after 6 March 1945. Persons eligible for restitution had to make a written request (documents confirming their status as owner or heir) within six months from the date of the Law entering into force. The restitution procedure should take no more than 95 days, and the claimant may appeal a decision within 30 days.

Six months after the Law came into force, tenants of dwellings which had not been restituted to ex-owners or their heirs could opt to purchase them according to the provisions of the Housing Act. There are no data available on the number of restituted housing units, nor on how many dwellings have been needed for tenants evicted from restituted properties. (See also chapter I)

Restitution can be made in kind if the beneficiaries already live in the restituted property as tenants, or in cash (compensation) where the dwelling is occupied by another household. Together with property received in kind, the ex-owners or their heirs also receive the right to adjoining land. Where the housing property is in a multi-floor apartment building, the ex-owners or their heirs receive the appropriate share of common property. Ownership shares are proportional to the constructed space.

The maximum level of compensation is set according to the average salary, reported by the National Commission of Statistics, for a period of 20 years, calculated at the date of compensation. The compensation (by the Ministry of Finance from extra-budgetary funds) is to be paid within 24 months of the valuation. If the value of the restituted dwelling is higher than the amount calculated, the owner does not pay the difference.

Tenants living in the same apartment as the former owners or their heirs benefit from State protection. Where the former owners or their heirs lived with other tenants until 22 December 1989, they become the owners of the whole of their restituted property. The rental contract is extended for a period of five years from the date of the definitive decision to reconstitute. Tenants can be evicted during this period only on condition that they are offering suitable alternative housing: e.g. receiving a new dwelling from the landlord or local authority.

C. The legal framework for owner-occupied dwellings

Ownership of buildings and dwellings

Real estate can be legally owned by: Romanian citizens, repatriated Romanians, persons wishing to settle in Romania but who are not citizens, economic entities, and local authorities.

Real estate registration

The registration of property rights in Romania has a long tradition, dating back to the Civil Code of 1864 and other normative acts, but it was applied only in the Ardeal part of Romania. Law 7/1996 on Cadastre superseded the relevant acts and cancelled some provisions of the Civil Code. It established a new unitary system – with complementary technical, legal and economic elements - to ensure the identification, registration and monitoring of all land and other real estate assets, regardless of their use and ownership status. As such, the Law meets general European requirements.

The legal aspect of the cadastral system is achieved through owner identification based on ownership right and publication. The right of ownership to a building or dwelling is registered in the land book, together with any legal facts relevant to the real estate in the area, as stipulated in the Law. The complementary registration of all legal real estate facts in the land book is not legally obligatory. Land book offices effect registration under the law for each settlement.

The land book has a title indicating the settlement number and name, and is formed of three parts:

- i. Description of the building (housing unit);
- ii. Registration of ownership rights; and

iii. Registrations of any divisions of rights, etc. (mortgage, and real estate privileges and income assignment for a period longer than three years, sequester, etc.).

Management and maintenance of owner-occupied housing

Before the Housing Act of 1996, responsibility for housing stock management was stipulated in Law 5/1973 on the status, organization and functioning of tenants' associations. Concurrently with the enforcement of the Law, the State enterprises providing housing stock management were also reorganized.

The Act stipulates that the management of dwelling houses is the responsibility of the owner, and it states that the owner may delegate management to physical or legal persons, associations, public agencies or specialized businesses. The responsibilities of the housing managers are described in chapter III. Nothing is said about the maintenance of individual houses in rural areas.

In multi-apartment houses the owners should establish homeowners' associations (HOA) having the capacity of a legal person, with the main purpose of ensuring effective housing management. Initially the law stipulated the forming of associations within 12 months of its coming into force, but later this provision was excluded by amendments in 1998 and 1999. The Law makes detailed proposals regarding these associations: setting-up and registration; constitution; responsibilities of owners; activities; executive board; control of income and expenditures. However, there are no restrictions on the organization of an association (for example, they could be constituted over a group of buildings to assist efficient management; or services could be contracted independently from suppliers by each homeowner).

The typical organizational structure of an association is:

- The general assembly of homeowners;
- The president of the association (represents the association and assumes certain obligations in the name of the association, represents the association against third persons including actions against a tenant or homeowner);
- The executive committee (represents the association in building management and use);
- The auditing committee (this function may be delegated to another legal or physical person).

Following amendments, the Law allows an association to be constituted on the decision of at least half plus one of all homeowners. The association can be constituted for the whole building or for only one part of it. The subsequent membership of other owners, who were not present at the constitutive assembly, can be achieved by simple written request.

A general meeting of an association is to be organized once each year, at least. In special cases a meeting can be convened by the executive committee or a group of HOA members holding at least 20 per cent of the real estate. Decisions require a simple majority of the members voting personally or through a representative.

The association must have a bank account. All homeowners have to pay in advance their share of the budget for common expenses. With the approval of two thirds of members, a special amount for miscellaneous common expenses can be collected. The association imposes a penalty on each homeowner if payment of common expenses is over 30 days in arrears. The association can sue any homeowner who has not settled within 90 days (See also chapter III).

By law the association:

- Approves and amends the income and expenditure budget as well as any sinking fund and collects regular and special contributions from homeowners for common expenditure;
- Imposes penalties in the case of late payment of maintenance contributions;
- Hires and discharges employees to ensure the good administration and functioning of the building;
- Acts in law on behalf of the associated owners, to protect their interests in the building;
- Concludes contracts and assumes obligations in its own name or on behalf of the associated owners;
- Manages, maintains, repairs, replaces and modifies the common parts of the building;
- Approves or amends decisions on rules and regulations;
- Monitors the condition and performance of the building;
- Keeps the building's technical logbook up to date;
- Exercises other functions conferred through association agreement or a homeowners' vote, etc.

The executive committee prepares and presents to the homeowners' annual meeting the annual budget to cover all expenditures for the maintenance and proper functioning of common property, according to law. This requires a majority of the homeowners' votes. If homeowners agree, the committee calculates the necessary amount for the creation of a sinking fund for special repairs and improvements.

D. The rental housing sector

The legal framework for rental housing is provided by the Housing Act 114/1996. This law provides for all types of rented dwellings: including official and intervention housing, emergency dwellings, and social housing.

The renting of dwellings is based on a written contract between the landlord (public or private) and the tenant, which has to be registered with the local fiscal body. The law prescribes how rent levels are determined: "The rent paid for a dwelling shall cover the expenses relative to management, maintenance and repairs, land and building taxes, the cost of investment according to the period established in compliance with the legal provisions, and the profit, which is negotiated by the parties". The law also stipulates conditions for the contract's cancellation. However, the tenant may be evicted only on the basis of court order. Until an eviction comes into effect, the tenant is required to pay the rent provided for in the contract.

Tenants may sublet dwellings with the approval of the owner. Tenants have the right to form and join tenants' associations, which will represent them in their relationships with the landlord and with any other natural or legal persons.

Government Emergency Ordinance 40/1999

This was brought in as a consequence of an increasing number of problems associated with the restitution of dwellings. It established protection for tenants and determined rent levels. Thus, rent contracts for housing units are valid for five years - a provision which applies in cases where dwellings are subject to restitution to former owners or their heirs. A tenant's non-observance of the Emergency Ordinance allows the owner to apply to the court for non-conditional eviction of the tenant and payment of damages and interest. Similarly, the owner's non-observance of the Ordinance's provisions can result in the prolongation of the rent contract prior to the signing of a new contract, and the owner is not able to evict the tenant for non-payment of the rent. The two parties can also agree freely to extend the contract for a longer period.

A contract is not extended:

- For tenants who themselves have become owners;
- If tenants refuse to take another housing unit offered by the former owners, their heirs or the local authority;
- If a tenant has sublet or modified - partially or totally - the use or internal structure of the dwelling, without the owner's prior approval.

Owners may also refuse to extend the contract if:

- The dwelling is needed to accommodate family members (only if they are Romanian citizens or persons resident in Romania);
- The dwelling is to be sold as a result of legal action;
- The tenant has not paid the rent for at least three months.

Local councils are obliged to offer suitable accommodation within one year to tenants who lose their homes in this way - as to anyone with a right to social housing - when the average monthly gross income per family member is lower than the national average. The landlord is required to request an alternative dwelling in the same settlement or elsewhere, so ensuring, with the tenant's approval, a minimum living space of 15 m²/person. The tenant need not accept if the conditions offered by the owner do not correspond with those stipulated in the Ordinance.

Rent levels are determined by this Governmental Ordinance, giving a monthly tariff by category - settlement, zone, etc. - and calculated in accordance with the criteria for local taxes and fees, applying a coefficient to the basic rent. The basic monthly rent is updated on 31 January each year, depending on the annual inflation rate. The maximum rent for public or private housing units (including office dwellings and hostels for the employees of commercial and State organizations) cannot exceed 25 per cent of the family's monthly gross income, or of the national average, whichever is the lower. Tenants are required to inform the owner of income changes (conditions where the landlord can request additional information on a tenant's family income are not foreseen in the legislation). Where a tenant is recognized as eligible for social housing, the maximum rent equals 10 per cent of the family's monthly gross income, calculated over the past 12 months: the difference with the property's nominal rent is then subsidized by the local authority.

New rental contracts are registered with the local authority. Contract termination and evictions due to disagreements over rent increases are prohibited: any disputes between the

parties are submitted to the courts. Homeowners whose property is occupied by tenants paying a smaller rent than the one calculated by the Emergency Ordinance are exempt from real estate and land taxes for that property during the period of the rental contract.

Public housing

The Housing Act created a new concept of “public housing”, owned by the local authorities, but not subject to sale to the tenants. It can be created by new construction (zoned accordingly in town plans) or by the purchase and rehabilitation of existing buildings. The present tendency is for local authorities to simply purchase dwellings on the market and let them at social rents.

The law stipulates minimum norms for floorspace and facilities. It also specifies renting to families with low disposable income and who benefit from social security. The tenant’s contract is for five years, with the possibility of renewal on the basis of written proof of income. The law also specifies the contract’s provisions and conditions of cancellation.

In allocating public housing, the local authorities have to give priority to specific groups: young married couples (each < 35 years of age), young people leaving social care establishments (after 18 years of age), first and second-degree disabled persons, other people with handicaps, pensioners, veterans, war widows and others. At present, overall priority is given to persons losing their homes through restitution. The law stipulates the kinds of family and person who cannot benefit from public housing.

Public housing is financed from local budgets in accordance with Law 189/1998. The State assists in the construction of public housing by transfers from the national budget. Individuals or businesses may also assist in the construction of public housing through donations or financial aid.

E. Legislation regulating the development process

Land ownership

Romanian legal entities and individuals are eligible for land ownership through Law 18/1991, amended in 1997, and Law 54/1998 guarantees their title to the property. Foreign or stateless persons are not eligible. Romanian citizens who live abroad are eligible to obtain any kind of land plot in Romania.

Transactions in land within built-up areas is relatively free of restrictions, subject to agreement between seller and buyer. Outside built-up areas, transactions are subject to the pre-emption rights of co-owners, neighbours and tenants. If someone with a pre-emption right has not manifested a willingness to exercise it, the plot can be put up for sale. Local councils are responsible for handling requests land purchase requests.

The establishment of land ownership rights in agricultural production cooperatives is based, under Law 18/1991, on a minimal contribution of 0.5 ha of land per person, and approximately 10 ha per family, in arable equivalent. The restitution of land ownership rights in these areas is made under the Land Fund Law 1/2000. The former owner receives the residual, a

minimum of 10 ha, but not more than 50#ha. In cases where the restitution cannot be made in full, the owner receives compensation for the difference (the Law does not stipulate a limit). The Law makes various provisions for particular circumstances, such as where cooperative members that received land in ownership did not contribute more than 0.5 ha, where land has buildings on it, or where members had moved to other settlements. Plots for the construction of individual houses can be included in the new private property at the owner's request. The Law provides exemption from land tax for three years for individuals whose land ownership right has been constituted or restituted.

Land lease

The leasing of land plots in public ownership for under 49 years is possible under Law 219/1998. This addresses the problem of land ownership for non-citizens of Romania; and the status of lessee is open to any Romanian or foreign private individual or legal entity. Land plots are leased through public auctions (open or by pre-selection) or through direct negotiations. The lessee is required to deposit a fixed amount settled in the contract within 90 days of its signing.

The contract shall be ended:

- At the end of the lease period;
- In the national or local interest, in which case the lessor shall pay advance and fair compensation;
- In the case of infringement of contract obligations by either party, including compensation payments;
- At loss of the good leased due to *force majeure* or in the case of a real impossibility on the part of the lessee to use it;
- In the case of termination by one of the parties, when compensation is paid.

Lease contracts are registered in the land registers. The Law does not stipulate the specific conditions of use of leased land plots.

The Law stipulates the size of plots for housing. For example, in urban settlements the plot must be 150-300 m² for buildings with one to six apartments, and in accordance with the urban plan for buildings with more than six apartments. In rural settlements, the plot must be up to 1000 m² for a detached house, but for a holiday house it can be as small as 250 m².

Building regulations and development control

Law 50/1991 laid down that constructions must be authorized by county councils or the General Council of Bucharest. The local administration must provide documentation covering the design, execution and functioning of construction, with respect to urban and regional development plans. The authorization is issued for construction, reconstruction, modification, extension and renovation work of any type. The Law imposes penalties on those developing without authorization (in specific cases imprisonment from three months to three years, and fines from 2 million lei to 20 million lei).

Law 10/1995 stipulates the duties and responsibilities of all actors in the development process (investors, designers, manufacturers, construction owners, public inspectors, planners and so on) and the sanctions for infringement. The provisions of this Law are applied to every

category of construction – new, modernization, consolidation and repair - but it foresees (art. 2) some exceptions including one or two storey tenements, villages and temporary constructions. Therefore, a large number of individual houses are excluded from quality construction control.

The Housing Act stipulates standards for public housing construction, such as minimum floorspace, and requirements for kitchens, bathrooms, etc.

It is unclear to what extent new construction costs are increased by statutory controls, but, as in most countries, developers in Romania quote excessive bureaucracy as a problem. Though intended to protect public interests, the procedures for obtaining a building permit are much too complicated, redundant and time-consuming.

The General Urban Planning Regulations (GUPR) approved by Government Resolution 525/1996 govern urban planning. The Regulations are an integrated system of technical and legal norms governing land use. They establish the procedure for planning and executing development on land within and outside built-up areas, and impose restrictions on subsoil resources, water, landscape value, protected natural areas, and natural and technological risks. Regulations exclude housing in the close vicinity of pollution from emissions, loud noises and vibration (airports, industrial zones, busy roads, etc.). Norms are established for the positioning of rooms, access, parking, and open space. The Governmental Resolution approving GUPR stipulated the formulation of general urban plans for the whole country within 18 months, and local councils are supposed to allocate funds for preparing them.

All settlements must have a development plan. This consists of a map-based plan that classifies land uses into zones and includes a set of planning and development control policies. The development plan provides a foundation for urban and regional planning, and many local authorities are currently drawing it up. However, neither in law nor in planning practice is there any direct or obvious link between regional, or strategic economic development and the supply of land for housing. Land is allocated for housing development according to the current population structure, the volume of applications for land registered at the town hall, or simply to land characteristics. Sites for housing development are prioritized depending on their location in the context of the development plan. No special provisions are made in the planning process for public or social housing for special needs.

F. Legislation regulating the financial aspects of the housing sector

State support for housing (new construction, renovation and house purchase)

Government Ordinance 19/1994 with its amendments prescribed State support (from State and local budgets) for housing construction. Seven groups of the population are entitled to a single subsidy varying between 500,000 lei and 30 per cent of the dwelling's contract purchase price. Under the 1999 amendments the main support has to come from local budgets. Unfortunately, there are no data on the number of dwellings built under this Ordinance.

The same mechanism is provided in the Housing Act. It stipulates that four population groups should benefit from State subsidies:

- Young married couples, each aged up to 35 on the date of purchasing the dwelling;

- Participants in the 1989 Romanian revolution and their families;
- Persons skilled in agriculture, education, health, public administration, as well as clergymen and others supported by local councils, who settle in a rural area

The subsidy - within the limits of budgetary provisions, and depending on household income – can amount to 30 per cent of the purchase price at the time the dwelling is contracted. The remainder, after the initial minimum compulsory downpayment of 10 per cent, can be paid in monthly instalments over 20 years. These conditions are available to a purchaser once and only if he does not already own a dwelling. The owners of new dwellings are exempt from building tax for 10 years after the dwelling is purchased.

A key feature of State support in the housing sector should be the thermal insulation of apartment buildings and district heating systems (see chapter II). **Government Ordinance 29/2000 on the Rehabilitation of the existing stock and the promotion of energy conservation**, provides for responsible public institutions, a national energy saving programme, a system for the issue of thermal certificates for buildings, and funding and tax incentives for homeowners.

It offers a State support to legal entities and individuals undertaking energy-related rehabilitation and the technical upgrading of buildings and associated installations. This support will involve free information for consumers, fiscal facilities for certain categories of users, and recourse to specialist agencies. Those willing to work on their own apartment buildings will benefit from tax exemption on presentation of the energy certificate for the building issued after approved improvements in thermal insulation. Moreover, five years after the Ordinance's coming into force, the sale and purchase of dwellings without an energy certificate will be prohibited. Unfortunately, the Ordinance is vague about the provision of funding for the work, although it does declare that funds may come from the following sources:

- Allocations from the budgets of municipal and county councils;
- Homeowners' own funds (e.g. associations' sinking funds);
- Funds from energy-supply companies;
- Funds from companies providing heat and hot water to upgrade distribution systems in apartment buildings and to install meters;
- Direct funding from public bodies to upgrade their own properties.

Legislation on mortgage loans and financial institutions

Banking law applies in cases of foreclosure, which means in practice that the lender would have to go to court to foreclose, and, if the court decision is favourable, supply the evicted borrower with alternative housing. Although this is a socially supportive measure, it is proving an impediment to institutions which might otherwise be willing to lend money for housing. However, it is a good argument for more social housing to be built for those evicted.

Several government resolutions from 1990, 1991 and 1992 provided the mechanism for housing loans. The traditional source for a construction loan is the Savings and Deposits Bank. The Romanian Government channelled resources through this Bank specifically to facilitate housing construction or purchase. Now, some of these resolutions have been rescinded.

The Law 190/1999 on Mortgage Credit for Investment in Property enabled the introduction of a conventional mortgage loan. According to this Law, the credit banks, the

National Housing Agency, the Savings and Deposits Bank, and other financial institutions (including any special mortgage funds) are authorized to grant mortgage credits. Romania has no special law on mortgages, but some valid provisions can be found in the Civil Code, and these, following traditional mortgage practice, are reflected in the present Law. (For more details on this, see chapter V.)

National Housing Agency (NHA)

The National Housing Agency is a public interest institution, established by the National Housing Agency Act 152/1998 for the coordination of financial resources in housing construction. "The aim of the National Housing Agency is to create financial packages and attract management resources for the construction, purchase, rehabilitation, consolidation and extension of dwellings, including for rent".

It is important to note that the Agency is not a financial institution: it is a 'manager-mediator' between bank, developer and individuals. The Agency concludes five types of contract, between:

- Client (applicant) and NHA (2 contracts),
- NHA and developer,
- Client (applicant) and developer, and
- Bank, client (applicant) and NHA.

(See also chapters III and V for further details.)

Taxation

Romania does not yet have a tax code, although such a code is mentioned in the National Medium-term Development Strategy for the Romanian Economy. This stipulates *inter alia*: "to ensure the effective and efficient implementation of the tax system, a code of tax procedure and a tax code (including the integration of all the tax regulations dispersed throughout Romanian legislation) will be introduced".

There are several legislative acts at general fiscal level: Law 32/1991 V3 (revised) on salary tax; Government Ordinance 73/1999 on income tax; and Government Resolution 70/1994 on profit tax. In accordance with Resolution 70/1994, the tax on profits - including those of construction companies - was 38 per cent; but it has since been reduced to 25 per cent. It should be noted that under Law 35/1991 foreign investments in construction are exempt from profit tax for a period of five years from the starting of construction. This provision applies to legal entities entered in the Trade Register before 1 January 1995, and no longer applies to other persons since that date. Romanian businesses which invest in the construction of official, public and emergency dwellings benefit from a 75 per cent profit tax reduction for the relevant fiscal year.

Taxes on real estate and built-up land are determined by Law 27/1994 on Local Taxes and Fees and in Emergency Ordinance 15/1999. Local authorities administer these taxes, paid every year by the owners of buildings. For public housing stock, the tax is paid by those

managing the buildings. The real-estate tax for buildings owned by individuals is calculated at 1 per cent of the market value per year. The tax on built-up land is recalculated each year as a rate per square metre, according to category (areas A,B,C,D). It varies currently from 2,400 lei in

area A (municipalities) to 150 lei in area D (villages). The land tax is paid also by the owners, save where the land is needed for certain authorized activities. Borrowers, according to Law 152/1998 are exempt from land and real-estate taxes until the loan is repaid. Law 27/1994 also levies taxes on the issue of certificates, notifications and authorizations required in the construction process, and these taxes differ according to location and land use (e.g. housing construction enjoys a 50 per cent discount on authorizations).

Value-added tax (VAT) is regulated by Law 145/1999 and Government Emergency Ordinance 17/2000. These set a zero rate on the construction, upgrading and rehabilitation of dwellings. More detailed procedure is presented in Ministry of Finance Order 1026/2000.

Conclusions

Romania possesses a legislative framework that regulates activity in most housing sectors. The mechanisms and instruments are strongly market-economy oriented and were created within a short period of time. There are certain defects which need to be rectified.

The great number of legislative documents relating to land are not clear on how to obtain land for construction, its ownership and cost. A new law on public property is being drafted. It will address the problems of public action in acquiring land for development which are at present an obstacle to the development of new housing. However, the implementation of the new system of property registration is slow and the proposed legislation does not include an enforcement mechanism.

Despite legal provision, uncompleted housing blocks are still a major problem after 10 years.

Although the legal framework for homeowners' associations (HOAs) was approved in 1996, there appears to be a general ignorance of their advantages among new owners. In spite of several modifications and simplification of the law, the universal creation of properly functioning HOAs is far from complete. A remaining problem is that the Housing Act does not cover relations between co-owners (individuals and legal entities) in a building.

The housing services' supply sector is neither covered by legislation nor regulated.

Although the legislative framework establishing the National Housing Agency and mortgage credit mechanism is in place, the instruments themselves are not developed.

Improvements in taxation, with the granting of tax benefits over several years, created favourable conditions just when local authorities found themselves without resources to build housing.

In short, the success in passing legislation which empowers action is not matched by legislative or other measures which ensure its implementation.