חג'ג' אירופה דיוולופמנט צ.ש. בע"מ
("החברה")

-באמצעות טופס ת-207-

21 במאי 2025

לכבוד
מחלקת תאגידים
רשות ניירות ערך
כנפי נשרים 22
ירושלים

א.ג.נ.,

הנדון: **<u>פנייה מקדמית בדבר מועד ההכרה בהכנסה בגין מכירת דירות ברומניה</u>**

מטרת פנייה מקדמית זאת הינה לקבל את הסכמת סגל הרשות בנוגע לשינוי במועד ההכרה בהכנסה בגין מכירות דירות ברומניה, שינוי שהחברה מתעתדת לנקוט בדוחותיה הכספיים לרבעון השני בעקבות שינויים בנסיבות. ההסברים לביצוע השינוי מפורטים במסמך להלן.

<u>רקע עובדתי:</u>

החברה הינה חברה ישראלית גלובלית הפועלת בייזום והקמה של פרויקטים למגורים ונכסים מניבים למסחר ולמשרדים ברומניה.

עיקר פעילות החברה מבוצעת בעיר בוקרשט, בירת רומניה וסביבתה.

היקף פעילות החברה מתרכז בשבעה עשר פרויקטים שונים בשטח כולל של כ- 100 דונם, כאשר 11 פרויקטים מתוכם הינם מבני מגורים ו-6 הינם פרויקטים להקמת מבני משרדים ומסחר. נכון ליום 31 בדצמבר 2024, לחברה קיימים 2 פרויקטים (כולל פרויקט אובור שלגביו התקשרה החברה לאחרונה) בביצוע או בתחילת ביצוע וכן מספר פרויקטים בתכנון מתקדם ובנוסף מספר עתודות קרקע בהם החברה נמצאת בהליכי השגת אישורים ותכנון.

ברומניה, כאשר צדדים מעוניינים להתקשר בהסכם למכירת דירה טרם השלמת בניית הדירה ורישומה במרשם המקרקעין הרומני כיחידה נפרדת, הצדדים מבצעים את ההתקשרות בשני שלבים. בשלב הראשון חותמים על הסכם מקדמי (Pre Agreement), שהינו הסכם מחייב שבו מופיעים תנאי ההתקשרות בין המוכר לקונה. הסכם זה מהווה למעשה התחייבות לחתום על הסכם המכר המחייב באותם תנאים. לאחר השלמת הבנייה וקבלת אישור העירייה לבניין (מקביל ל"טופס 4") מבוצעת פרצלציה ונרשם הבית המשותף במרשם המקרקעין הרומני. בשלב השני, לאחר השלמת הרישום כאמור ועם השלמת התנאים המופיעים בהסכם המקדמי (כגון השלמת הבניה, השלמת התשלומים וכו') נחתם הסכם מכר סופי מחייב (Final Agreement) שבו חותמים על אישור השלמת התנאים ובהתאם לכך רושמים את העברת הזכויות מהמוכר לרוכש בספרי רשם המקרקעין הרומני.

בעת חתימת ההסכם המקדמי, שהינו הסכם מחייב בפני עצמו, נרשמת במרשם המקרקעין ברומניה הערה לטובת הרוכש לעניין חתימה על ההסכם המקדמי. טרם מסירת הדירה הנרכשת ובסיום בניית הבניין יזומן כמקובל הרוכש לביצוע פרוטוקול מסירה, במסגרתו יבחנו ליקויים שונים בדירה. ככל ולרוכש ישנן הערות לעניין ליקויים לאחר הבדיקה, ייחתם פרוטוקול מקדמי ובו יירשמו ההערות של הרוכש וכן המועד המוסכם לתיקונים כנדרש.

להלן נקודות עיקריות ביחס להסכם המקדמי כפי שנחתם בעסקאות השונות למכירת דירות ללקוחות הרלוונטיים:

1. החל ממועד ההתקשרות בחוזה המקדמי, החברה והלקוח מחויבים לביצוע החוזה ולקיים את מטרת החוזה הסופית שהיא מכירת הנכס. כלומר, החוזה המקדמי הינו חוזה שמייצר התחייבויות ומקנה זכויות לצדדים כך שהוא יוצר מחויבות להשלים את העסקה ולחתום גם על החוזה הסופי וזאת על מנת להשלים את מטרת החוזה המקדמי שהיא מכירת הנכס (ומצד הרוכש, רכישת הנכס).
2. החוזה מגדיר את מחויבות החברה למסור נכס ספציפי ללקוח, בהתאם לכך, ובכפוף לקיום מחויבות הלקוח, החברה אינה רשאית למכור את הנכס ללקוח אחר הן במהלך הבנייה והן לאחריה עד למסירת הנכס ללקוח.
3. במקרה של הפרת החוזה המקדמי מצד הרוכש במהלך הבנייה קיימות לחברה שתי חלופות לאכיפת החוזה:

- אכיפת קיום החוזה לפי מטרתו הסופית שהיא כאמור החתימה על חוזה המכר ומכירת הנכס. כלומר, החברה יכולה לאכוף על הלקוח לקיים את החוזה כך שהיא תעביר לו את הנכס ובתמורה תקבל את התמורה הקבועה בחוזה.
- ביטול ההסכם תוך קבלת פיצויים להם זכאית החברה (הניתנים לקיזוז מן התמורה שהעביר הרוכש).

בהתאם לתנאי החוזה במקרה שנגרם עיכוב בתאריך הסופי להעברת בעלות הדירה עקב אירועי "כוח עליון", עיכוב כזה לא ייחשב כהפרה מצד המוכר והקונה לא יהיה זכאי לכל קנס, נזק או פיצוי מכל סוג שהוא למשך 3 תקופות הארכה, שלאחריהן יהיה זכאי הקונה לפיצוי בגין כל יום עיכוב לתקופה מקסימלית של 6 חודשים. במידה ולאחר תקופה זו המוכר אינו מעוניין להאריך את תקופת הפיצוי רשאי הקונה לבחור לסיים את החוזה. כל סיום חוזה על ידי הקונה בנסיבות שונות מהאמור לעיל יחשב כהפרה של החוזה האמור.

יצוין כי בהתאם להוראות הסכם המכר המקדים, הרוכשים מוותרים על האפשרות שלהם להשתמש בחריג ההכבדה הקיים בהוראות הדין ברומניה[1], לרבות את האפשרות שלהם לדרוש את ביטול ההסכם.

[1] בהתאם להוראות חריג ההכבדה, במקרה בו בשל שינוי נסיבות חריג קיום הוראות ההסכם הופכים למכבידים באופן מופרז והופכים את חיובו של צד להסכם (להלן: "**הצד הנפגע**") לקיים את התחייבויותיו לבלתי צודק בצורה ברורה, אזי הצד הנפגע רשאי לפנות לבית משפט ולבקש את שינוי תנאי ההסכם על מנת לאזן את ההתחייבויות בין הצדדים או את ביטולו של ההסכם במקרה בו איזון זה אינו אפשרי.

בעת היישום לראשונה של תקן דיווח כספי בינלאומי 15 בדבר הכנסות מחוזים עם לקוחות (להלן: "**התקן**" או "**IFRS 15**"), החברה בחנה את מועד ההכרה בהכנסה בגין מכירת דירות אשר נמכרות בהתאם למבנה החוזי שתואר לעיל. החברה בחנה האם החוזים כאמור עומדים בקריטריונים המפורטים בסעיף 35 לתקן המאפשרים להכיר בהכנסה על פני זמן עם התקדמות הביצוע. בהתייעצות עם עורכי דין ברומניה, הניתוח המשפטי שבוצע לאותו מועד ניתח את תנאי החוזה המקדמי, תוך בחינת הפרקטיקה והוראות הדין המקומי. לאותה נקודת זמן, מסקנת החברה, בהתבסס על עמדת עורכי הדין ברומניה, הייתה שלמרות שלא היה ספק בכך שהסכמי המכר המקדים מחייבים ומאפשרים לחברה לדרוש את אכיפתם (כלומר חיוב הרוכש להתקשר בהסכם המכר הסופי והעברת הבעלות בממכר), לאור העובדה שהחקיקה בנושא הייתה יחסית חדשה ושלא היו מספיק פסקי דין באותו הזמן ולאור העובדה שהיו מקרים בודדים שבהם בתי המשפט ברומניה בחרו שלא לבצע אכיפה במקרים פרטניים שבהם בית המשפט קבע כי קיימת סיבה מצדקת שלא להתקשר בהסכם המכר הסופי ובהם למשל במקרה בו רוכש ביצע רילוקיישין למדינה אחרת או במקרים שבהם לרוכש היו בעיות במצבו הנפשי או הבריאותי, ובהתאם עורכי הדין של החברה הגיעו למסקנה שהם אינם יכולים להעריך באיזה מקרה בית המשפט יסבור שסירובו של רוכש להתקשר בהסכם המכר הסופי מוצדק. בהתאם לכך, החברה הגיעה למסקנה שלא ניתן לתמוך בעמידה בהוראות סעיף 35 לתקן ולפיכך ההכנסה תוכר בנקודת זמן, במועד החתימה על חוזה מכר סופי עם השלמת הבנייה, בסמוך למסירת הדירה לרוכש.

החל ממועד היישום לראשונה של התקן החברה עוקבת אחר המצב המשפטי ברומניה לצורך בחינה האם הניתוח המשפטי השתנה מאותו מועד. מניתוח משפטי נוסף שבוצע על ידי החברה מול עורכי הדין וכן מול KPMG ברומניה עולה כי בתקופה האחרונה הצטברה פרקטיקה מספקת של החלטות של בתי המשפט, אשר יוצרים כיום וודאות לגבי יכולת האכיפה של הסכמי המכר המקדימים (לרבות החלטות של בתי המשפט לאשר אכיפה במקרים דומים למקרים החריגים שבהם בעבר בתי המשפט החליטו שלא לאשר אכיפה) ולפיכך החברה ביצעה בחינה מעמיקה נוספת לצורך בחינה האם נדרש לשנות את המסקנה המשפטית, ובהתאם לכך החשבונאית, בנוגע למועד ההכרה בהכנסה, כפי שינותח בהמשך מסמך זה.

<u>הסוגייה החשבונאית</u>

בחינת האפשרות להכיר בהכנסה לאורך זמן בהתאם לסעיף 35(ג) ל-IFRS 15 ביחס לחוזי המכר של החברה ברומניה.

<u>ניתוח חשבונאי</u>

סעיף 35 לתקן קובע, כי ישות מדווחת מעבירה שליטה בסחורות או שירותים לאורך זמן, ועל כן מקיימת מחויבות ביצוע ומכירה בהכנסה לאורך זמן, בהתקיים אחד מהקריטריונים הבאים:

35. *"An entity transfers control of a good or service over time and, therefore, satisfies a performance obligation and recognises revenue over time, if one of the following criteria is met:*

(a) the customer simultaneously receives and consumes the benefits provided by the entity's performance as the entity performs (see paragraphs B3–B4);

(b) the entity's performance creates or enhances an asset (for example, work in progress) that the customer controls as the asset is created or enhanced (see paragraph B5); or

(c) the entity's performance does not ***create an asset with an alternative use*** *to the entity (see paragraph 36) and the entity has an* ***enforceable right to payment*** *for performance completed to date (see paragraph 37)."*

[ההדגשות אינן במקור]

<u>שימוש אלטרנטיבי לישות</u>

סעיף 36 לתקן קובע כי לא קיים שימוש אלטרנטיבי לנכס שמיוצר על ידי הישות, כאשר הישות מוגבלת חוזית או פרקטית מלכוון את הנכס לשימוש אחר במהלך יצירתו ולאחר השלמתו:

36. *"An asset created by an entity's performance does not have an alternative use to an entity if the entity is either* ***restricted contractually from readily directing the asset for another use during the creation or enhancement of that asset*** *or limited practically from readily directing the asset in its completed state for another use. The assessment of whether an asset has an alternative use to the entity is made at contract inception. After contract inception, an entity shall not update the assessment of the alternative use of an asset unless the parties to the contract approve a contract modification that substantively changes the performance obligation. Paragraphs B6–B8 provide guidance for assessing whether an asset has an alternative use to an entity"*

[ההדגשה אינה במקור]

בהתאם לחוזה המקדמי, הנכסים הכפופים לחוזה זה מתוארים ומזוהים בבירור בהתבסס על מתווה המצורף לחוזה המקדמי, מיקומו ומפרטיו. חברת הפרויקט מתחייבת לספק את הנכס לקונה בהתאם לתיאור ולזיהוי הספציפי שניתן במסגרת החוזה המקדמי. יתרה מכך, חברת הפרויקט אינה רשאית למכור, להבטיח, או להציע את הנכס לאדם אחר, בהתאם להוראות סעיף 627 (4) לחוק האזרחי של רומניה.

לפיכך, לנכס הנמכר באמצעות החוזה המקדמי אין שימוש חלופי בהתאם לסעיף 35(ג) IFRS 15.

<u>יכולת אכיפה</u>

סעיף 37 לתקן קובע כי כאשר נבחנת יכולת האכיפה לקבלת תשלום בגין ביצוע שהושלם עד כה, יש להביא בחשבון את תנאי החוזה וחוקים כלשהם בהתאם לדין המקומי. לצורך כך, הישות המדווחת נדרשת להיות זכאית לסכום המפצה אותה לפחות בגין ביצוע שהושלם עד כה במקרה של הפרה מצד הרוכש, כאשר זכות זו ניתן להשיג במספר דרכים, כדוגמת זכות לאכיפת קיום החוזה או זכות לקבלת פיצוי בדרכים שונות.

סעיף ב10 מציין כי יש לשקול בעת קביעת יכולת האכיפה האם תהיה לישות המדווחת זכות הניתנת לאכיפה לדרוש תשלום בגין ביצוע שהושלם עד כה, אם החוזה יבוטל לפני השלמתו בגין נסיבות שאינן כשל מצד הישות המדווחת בקשר לביצוע החוזה כפי שהובטח.

סעיף ב11 קובע כי כאשר הלקוח פועל לביטול חוזה מבלי שתהא לו עילה לעשות כן, החוזה עשוי להעניק לישות המדווחת זכות להמשיך ולהעביר ללקוח את הסחורות או השירותים המובטחים בחוזה, ולדרוש את המשך העברת התמורה המובטחת על ידי הלקוח. בנסיבות אלו, לישות המדווחת קיימת זכות לקבלת תשלום בגין ביצוע שהושלם עד כה.

B11. *"In some contracts, a customer may have a right to terminate the contract only at specified times during the life of the contract or the customer might not have any right to terminate the contract. If a customer acts to terminate a contract without having the right to terminate the contract at that time (including when a customer fails to perform its obligations as promised), the contract (or other laws) might entitle the entity to continue to transfer to the customer the goods or services promised in the contract and require the customer to pay the consideration promised in exchange for those goods or services.* ***In those circumstances, an entity has a right to payment for performance completed to date because the entity has a right to continue to perform its obligations in accordance with the contract and to require the customer to perform its obligations*** *(which include paying the promised consideration)."*

[ההדגשה אינה במקור]

סעיף B12 לתקן קובע כי לצורך הערכת קיומה ויכולת אכיפתה של זכות לקבלת תשלום בגין ביצוע שהושלם עד כה יש לשקול את תנאי החוזה וכן כל חקיקה, תקדים משפטי או פרקטיקה מקובלת, שעשויים להשלים או לגבור על תנאים חוזיים אלו.

B12. *"In assessing the existence and enforceability of a right to payment for performance completed to date, an entity shall consider the contractual terms as well as any legislation or legal precedent that could supplement or override those contractual terms. This would include an assessment of whether:*

(a) legislation, administrative practice or legal precedent confers upon the entity a right to payment for performance to date even though that right is not specified in the contract with the customer;

(b) relevant legal precedent indicates that similar rights to payment for performance completed to date in similar contracts have no binding legal effect; or

(c) an entity's customary business practices of choosing not to enforce a right to payment has resulted in the right being rendered unenforceable in that legal environment. However, notwithstanding that an entity may choose to waive its right to payment in similar contracts, an

entity would continue to have a right to payment to date if, in the contract with the customer, its right to payment for performance to date remains enforceable."

פרשנות KPMG לתקינה הבינלאומית מתייחסת להשפעה של חקיקה או תקדימים משפטיים על מסקנת יכולת האכיפה, כלהלן:

"Legislation or legal precedent

•Even if a right is not specified in the contract, jurisdictional matters such as legislation, administrative practice or legal precedent may confer a right to payment to the entity.

•By contrast, legal precedent may indicate that rights to payment in similar contracts have no binding legal effect, or that an entity's customary business practice not to enforce a right to payment may result in that right being unenforceable in that jurisdiction"

כלומר, על מנת לבחון את יכולת האכיפה של החברה יש לבחון גם פסיקה בבתי משפט וכן את הפרקטיקה ואת ההתנהלות העסקי של החברה.

כמו כן, הפרשנות מתייחסת למקרים בהם יש חוסר וודאות לגבי יכולת האכיפה, לדוגמה בהיעדר תקדימים מספקים. במקרה כזה נראה כי יש לבחון את מכלול העובדות והנסיבות לגבי המשקל שיש לתת לניתוח משפטי של יכולת האכיפה של החברה.

***"4.2.220.120** In some cases, an entity may have an apparent right to payment described in its contract with the customer, or under a relevant law or regulation**, but there may be uncertainty over whether the right is enforceable. This may be the case when there is no legal precedent for the enforceability of the entity's right. In these cases, an entity may need a legal opinion to help it assess whether it has an enforceable right to payment. However, all facts and circumstances need to be considered in assessing how much weight (if any) to place on the legal opinion**. [IFRS 15.B12] "*

כפי שתואר ברקע העובדתי לעיל, במועד היישום לראשונה של התקן החברה בחנה בעזרת עורכי הדין ברומניה את המצב המשפטי ביחס לחוזה המקדמי והגיעה למסקנה שלאור העובדה שהחקיקה בנושא הייתה יחסית חדשה ושלא היו מספיק פסקי דין באותו הזמן ולאור העובדה שהיו מקרים בודדים שבהם בתי המשפט ברומניה בחרו שלא לבצע אכיפה במקרים פרטניים שבהם בית המשפט קבע כי קיימת סיבה מצדקת שלא להתקשר בהסכם המכר הסופי, עורכי הדין של החברה הגיעו למסקנה שהם אינם יכולים להעריך באיזה מקרה בית המשפט יסבור שסירובו של רוכש להתקשר בהסכם המכר הסופי מוצדק ולפיכך לא ניתן להוכיח באופן מבוסס כי קיימת זכות ניתנת לאכיפה. בדומה לאמור בפרשנות שהוזכרה לעיל, למעשה היעדר יכולת האכיפה נבע מהיעדר היכולת לבסס משפטית את האפשרות לעשות שימוש בפועל בזכות האכיפה שיש לחברה, וזאת לאור היעדר פסיקה מספקת, וקיומם של פסקי דין אשר קבעו שבמקרים פרטניים בתי המשפט יצדיקו את סירובו של צד להתקשר בהסכם המכר הסופי, ולפיכך יצרו אי וודאות.

בתקופה האחרונה ביצעה החברה בחינה מחודשת של המצב המשפטי ברומניה. במסגרת זאת ביקשה החברה מעורכי הדין שלה לבצעה בדיקה מחודשת של פסקי הדין האחרונים שניתנו ברומניה.

בנוסף החברה פנתה לקבלת חוות דעת משפטית נוספת מהמחלקה המשפטית של KPMG רומניה אשר מנתחת את זכות האכיפה של החוזה המקדמי, כולל בין היתר השימוש "בחריגים" המתוארים בחוק לצורך מניעת אכיפת קיומו של ההסכם. מחוות הדעת עולה כי לחברה קיימת זכות הניתנת לאכיפה עבור הביצוע שהושלם עד כה, היות ושני הצדדים מחויבים לביצוע החוזה עד תומו. חוות הדעת המשפטית מתבססת בין היתר על תקדימים שאירעו בשנים האחרונות ומהווים בסיס למסקנת יכולת האכיפה כאמור. כמו כן חוות הדעת מתייחסת לכך שבפועל לא בוצע שימוש על ידי בית המשפט ב"חריגים" המאפשרים למנוע את יכולת האכיפה. חוות הדעת האמורה מצורפת כ**<u>נספח א'</u>** לפניה זו.

חוות הדעת מתייחסת לפרטי ההסכם המקדמי ומנתחת את יכולת האכיפה בשים לב לתנאי ההסכם ולכך שהוא מוגדר למעשה כחוזה מקדמי. מבחינה משפטית, כפי שהוסבר ברקע העובדתי לעיל, ההסכם המקדמי הינו הסכם מחייב לכל דבר ועניין. במקרה של הפרה מצד הרוכש, ניתן לאכוף את קיום ההסכם המקדמי עד תומו ובהתאם למטרתו הסופית שהיא מכירת הדירה. כלומר, ניתן לחייב את הלקוח לקיים את ההסכם המקדמי ולחתום על חוזה המכר ובהתאם לכך לרכוש את הדירה ולשלם עבורה את מלא התמורה בהתאם למחיר הקבוע בחוזה. עוד מוסבר בחוות הדעת כי זכות אכיפה זו אינה צריכה להיכלל בהסכם בכדי שתהיה אפקטיבית, הזכות חלה אוטומטית על פי החוק הרומני (חוות הדעת המצורפת כוללת הפניות וסעיפים רלוונטיים בחוק לעניין זה).

כאמור לעיל, החברה קיבלה חוות דעת עדכנית גם מעורכי הדין של החברה ברומניה אשר בוחנת מחדש את הפרקטיקה המשפטית הקיימת בבתי המשפט ברומניה מאז מועד חוה"ד הראשונה שלהם, ואשר קובעת כי בשנים האחרונות קיימת פסיקה ענפה בנושא אשר מאפשרת את אכיפת ההסכמים, וכי החריגים שהיו בעבר לא חזרו על עצמם בשנים האחרונות. יצוין כי עורכי הדין מציינים כי מרבית הפסיקה הינה בשל סירוב מוכר להשלים את העסקה, וזאת מאחר ופרקטית, לרוב מוכרים יעדיפו להנות מהאפשרות לקבל את הפיצוי המוסכם ולהתקשר מחדש עם רוכש אחר, מאשר להיכנס להליכים משפטים ארוכים, ואולם לדידם עמדת בתי המשפט ביחס למקרים שנידונו משקפים את עמדת בית המשפט לגבי יכולת אכיפה של חוזה הינה דומה בשני המצבים. חוות הדעת מצורפת כ**<u>נספח ב'</u>** לפניה זו.

יצוין כי החוזה כולל גם סעדים נוספים של פיצוי שהחברה רשאית לדרוש במקרה של ביטול ההסכם, אך בהתאם לאמור לעיל, גם בהתעלם מהסעדים הנוספים העומדים לרשות החברה, לחברה קיימת זכות הניתנת לאכיפה עבור ביצועים שהושלמו עד כה בעקבות היכולת שלה לאכוף את קיום ההסכם המקדמי עד לקיום מטרתו הסופית של מכירת הדירה.

בנוסף לאמור לעיל בצעה החברה בחינה של האופן בו חברות אחרות ברומניה, אשר כפופות לדין הרומני, מכירות בהכנסה בגין מכירת דירות. מבחינת דוחות כספיים של חברות עולה כי חברת וילאר אינטרנשיונל בע"מ הנסחרת בישראל ופועלת גם ברומניה וכן חברת ONE UNITED PROPERTIES S.A. הנסחרת ברומניה, מכירות בהכנסה ממכירת דירות ברומניה לאורך זמן תחת

הטענה שמתקיימים הקריטריונים בתקן לאופן ההכרה בהכנסה כאמור. ציטוטים רלוונטיים מצורפים ב**נספח ג'** לפניה זו.

בהתאם לכל האמור לעיל, בבחינה מחודשת של סעיף 35 לתקן, עולה כי יש עמידה בקריטריון לפי 35(ג) ובהתאם, על החברה להכיר בהכנסה לאורך זמן בגין מכירת דירות ברומניה.

בחינת עיתוי השינוי בטיפול החשבונאי

כפי שתואר ברקע העובדתי, החברה בחנה יחד עם עורכי דינה בעת היישום לראשונה של IFRS 15 את יכולתה להכיר בהכנסה לאורך זמן באופן מבוסס אך הגיעה למסקנה כי לאור העובדה שהחקיקה בנושא הייתה יחסית חדשה, שלא היו מספיק פסקי דין באותו הזמן ולאור העובדה שהיו מקרים בודדים שבהם בתי המשפט ברומניה בחרו שלא לבצע אכיפה במקרים פרטניים שבהם בית המשפט קבע כי קיימת סיבה מצדקת שלא להתקשר בהסכם המכר הסופי, על כן החברה הכירה בהכנסה רק בעת חתימת הסכם המכר, בסמוך למסירת הדירות ללקוח הסופי (בנקודת זמן). בהתאם למסקנת הניתוח העדכני שביצעה החברה, בעקבות שינוי בנסיבות וניסיון שנצבר בתחום, ניתן כיום לבסס את קיומה של זכות האכיפה בחוזים אלו, בנוסף לכך שקיים נכס שלא קיים עבורו שימוש אלטרנטיבי לחברה, ולכן יש להכיר בהכנסה על פני זמן.

בהתאם לאמור, עולה השאלה מהו המועד שבו יבוצע השינוי בטיפול החשבונאי, ולמעשה, מהו המועד שבו ניתן לזהות את הסיבות לשינוי המתואר.

כפי שתואר לעיל, במהלך השנים החברה הייתה בקשר עם עורכי הדין ועקבה אחר המצב המשפטי ברומניה ובפרט האם יש התפתחות של פסקי דין ונוהג של בית המשפט בנושא. בשנים 2023-2024 נצפתה מגמה חדשה קוהרנטית וברורה יותר בפרקטיקה בבתי המשפט בנוגע ליכולת אכיפת ההסכמים, בעקבות כך שהיקף התיקים בהם נדרשה התערבות של בית המשפט גדל באופן משמעותי.

כפי שהורחב בסוגיה הקודמת, לצורך ביסוס יכולת האכיפה כאמור לא מספיק להסתמך רק על הוראות החוק אלא נדרש להוכיח שבהתאם לחוק והפסיקה, אכן ניתן לאכוף את החוזים במקרים כאמור. כפי שתואר, במועד היישום לראשונה של התקן, הוראות החוק אמנם היו קיימות, אך הביסוס מהפסיקה לא היה מספק ולכן לא היה ניתן להגיע למסקנה מבוססת של יכולת אכיפה.

רק לאחר ההתפתחות המשמעותית בפסיקה בשנים האחרונות באופן שיוצר בסיס מספק לטענת יכולת האכיפה, ניתן לתמוך מבחינה משפטית ביכולת האכיפה בחוזים בהם מתקשרת החברה. כלומר, רק לאחר שהשתנו הנסיבות ונצבר ניסיון מספק בכך שנוצרו התקדימים הנדרשים לצורך ביסוס יכולת האכיפה ניתן להגיע למסקנה שונה לצורך הטיפול החשבונאי.

במקרה הנידון, לא מדובר בשינוי בנסיבות שנובע מאירוע ספציפי מוגדר, אלא מצבירת ניסיון ושינוי משפטי שמאפשרת לבסס את המסקנה המשפטית לגבי יכולת האכיפה. אין נקודת זמן מוגדרת וספציפית שהחל ממנה ניתן לתמוך בזכות האכיפה, אלא מדובר בתובנה משפטית אשר התהוותה במשך תקופה מסוימת במקביל להצטברות הפסיקות כפי שתואר לעיל, ועד שהתגבשה למסקנה סופית התומכת ביכולת האכיפה וזאת בעקבות היווצרות מאסה מספקת של החלטות של בתי המשפט אשר אפשרו וודאות משפטית מספקת. לעניין זה יצוין כי בניגוד למשפט המקובל, במשפט הקונטיננטלי (לרבות ברומניה) החלטות בתי המשפט מבוססות על הוראות הדין בלבד ולא על

תקדים מחייב של בתי המשפט העליונים ולפיכך הוודאות המשפטית לא יכלה להיווצר בתאריך ספציפי, אלא רק בעקבות היווצרות מאסה מספקת של פרקטיקה משפטית. במסגרת חוות הדעת, עורכי הדין מנתחים ומתייחסים לפסיקה שהתרחשה בעיקר בשנים 2023 ו-2024, בהתאם, החברה בדעה כי ניתן להגדיר את ה-1 בינואר 2025 כמועד סביר לביצוע השינוי כאמור. לעניין זה, נוסיף ונציין כי בשנתיים האחרונות לחברה לא הייתה פעילות רבה של מכירות ובהתאם לכך, במידה והשינוי בטיפול החשבונאי היה מיושם קודם לכן במהלך השנתיים האחרונות לא הייתה לכך השפעה כמותית מהותית על הדוחות הכספיים של החברה.

החברה מתחייבת להודיע מראש לרשות ניירות ערך, על אימוץ עמדה השונה מזו שתבוא לידי ביטוי בתשובת סגל רשות ניירות ערך לפנייה זו.

החברה מודעת לכך שפנייתה ותשובת סגל הרשות עשויים להתפרסם בנוסחם המלא באתר רשות ניירות ערך.

האמור בפנייה זו מקובל גם על רואי החשבון המבקרים של החברה, עמית חלפון וקדרון ושות רואי חשבון.

נשמח לעמוד לרשותכם במתן הסברים, ככל שידרשו.

בכבוד רב,

חג'ג' אירופה דיוולופמנט צ.ש. בע"מ

נחתם ע"י:
שחר מחט, מנכ"ל משותף ודירקטור
אלכס יוסים, סמנכ"ל כספים

נספח א' - חוות דעת KPMG רומניה

LEGAL OPINION CONCERNING ENFORCEABILITY OF THE PRE-SPA AS PER IFRS 15

To	**Hagag Europe Development Z.F. Ltd**
Atten.	Mr. Shahar Mahat, CEO and Alex Yusim, CFO
From	**Toncescu și Asociații S.P.R.L.** (“**KPMG Legal**”) through Alexandru Mocanescu, as Partner and **KPMG Advisory S.R.L.** (“**KPMG Advisory**”) Through Angela Manolache, as Partner
Subject	Legal opinion concerning enforceability rights under the Pre-SPA
Date	**12 May 2025**

Dear Shahar, Dear Alex,

Please see below our legal opinion, provided in accordance with the agreed scope of works.

This is structured as follows:

We trust that the aspects that we have identified in this Legal Opinion will be of interest to you and we remain available for any further requests or clarifications you require.

KPMG LEGAL	**KPMG ADVISORY**
Through: Alexandru Mocănescu	Through: Angela Manolache
As: Partner	As: Partner
Signature:	Signature:

1 OVERVIEW

In accordance with the scope of work agreed with Hagag Europe Development Z.F. Ltd ("**Client**"), as per the engagement letter dated 11 July 2024 and the provisions of Annex 1 (*Assumptions and Qualifications*), we, KPMG Legal and KPMG Advisory (hereinafter, collectively referred to as "**KPMG**"), have prepared this legal opinion ("**Legal Opinion**") comprising the following:

1.1 Legal review of the template pre-sale-purchase agreement ("**Pre-SPA**") provided by the Client for review, in order to identify, properly flag and provide mitigating actions for:

1.1.1 enforcement rights of the parties (i.e. the right to request the in-kind transfer of the asset and claim the purchase price);

1.1.2 termination rights (including break option) of the prospective promissory buyer ("**Buyer**" or **"Promissory Buyer");**

1.1.3 provisions according to which the liability of H&S WEST PROPERTIES S.R.L, project company ultimately controlled by the Client ("**Project Company**" or **"Promissory Seller")** is aggravated; and

1.1.4 provisions according to which the liability of the Buyer is waived / limited;

In assessing the existence and enforceability of a right to payment for performance completed to date, we shall consider the contractual terms as well as any legislation or legal precedent that could supplement or override those contractual terms. This would include an assessment of whether:

1.1.1 legislation, administrative practice or legal precedent confers upon the entity a right to payment for performance to date even though that right is not specified in the contract with the customer;

1.1.2 relevant legal precedent indicates that similar rights to payment for performance completed to date in similar contracts have no binding legal effect; or

1.1.3 an entity's customary business practices of choosing not to enforce a right to payment has resulted in the right being rendered unenforceable in that legal environment. However, notwithstanding that an entity may choose to waive its right to payment in similar contracts, an entity would continue to have a right to payment to date if, in the contract with the customer, its right to payment for performance to date remains enforceable.

(hereinafter, collectively referred to as "**Legal Analysis**");

1.2 A high-level assessment of whether the Pre-SPA contains enforceable rights to payment for performance completed to date that allow recognition of revenue in accordance with the provisions of IFRS 15 "*Revenue from Contract with Customers*".

This assessment will include a review of the Pre-SPA considering the principles for recognition of revenue from selling the real estate properties and the provisions of IFRS 15 relevant for the Project Company's business with focus on enforceable right to payment for performance completed to date.

Our analysis is based on the assumptions that the Promissory Seller will have fulfilled its obligations against the Promissory Buyer. Within the analysis, we have considered the terms of the contract, as well as conclusion of the legal analysis regarding the enforceable rights of the parties.

Based on these, we have considered whether the Project Company would have an enforceable right to demand or retain payment for performance completed to date if the contract were to be terminated before completion for reasons other than the Project Company's failure to perform as promised. In this regard, the completion of our analysis relied also on the review of the Pre-SPA and of the comments on the enforceability rights of the Promissory Seller as provided under the Legal Analysis.

(hereinafter, collectively referred to as "**Accounting Analysis**").

2 EXECUTIVE SUMMARY

Following the analysis of the Pre-SPA and the relevant legislation (including court practice), we conclude that, in case the Buyer does not comply with the Pre-SPA, the Project Company is entitled to (*2.1*) directly conclude the sale-purchase agreement as per the Pre-SPA and claim the purchase price, through the courts of law or (*2.2*) terminate the Pre-SPA and claim all the incurred damages (including the purchase price).

2.1 Right *to conclude the sale-purchase agreement through the courts of law*: According to Clause 9.2 of the Pre-SPA, the applicable legislation (i.e. art. 1669 of the Romanian Civil Code) and the practice of the Romanian courts of law, the Project Company is entitled to enforce the Pre-SPA and claim in court the compulsory performance of the sale-purchase agreement.

This means that the Project Company is entitled, through the court ruling, to transfer the ownership title over the real estate to the Buyer and claim the purchase price from the Buyer (including through foreclosure, in case not voluntarily paid).

The enforcement right of the Project Company is subject to:

2.1.1 the compliance of the Project Company with the provisions of the Pre-SPA;

2.1.2 the validity conditions of the sale-purchase agreement being met, namely:

(a) the real estate being available to be sold; and

(b) the Project Company and the Buyer having capacity to contract/stand in court (i.e. are not liquidated/deceased);

2.1.3 an implicit or explicit refusal of the Buyer to conclude the sale-purchase agreement after the contractual deadline.

2.2 *Right to enforce the payment obligation of the price and any other damages*: According to Clause 9.1, letter (c), point (ii) of the Pre-SPA, the applicable legislation (i.e. art. 1530 and 1531 of the Romanian Civil Code) and the courts of law practice, the Project Company is entitled to enforce the Pre-SPA and claim the full amount of the purchase price and any other incurred damages.

This means that the Project Company is entitled, through a notice delivered to the Buyer, to terminate the Pre-SPA and claim the purchase price from the Buyer. In case not voluntarily paid, the Project Company can keep any advance payment amounts already paid by the Buyer and can request in court the purchase price and any other incurred damages (e.g. court fees, attorney fees, agent fees).

The enforcement right of the Project Company to request the above-mentioned amounts is subject to:

2.2.1 the compliance of the Project Company with the provisions of the Pre-SPA;

2.2.2 the Buyer is in breach of the Pre-SPA, as per the provisions of Clause 9.1;

2.2.3 the Project Company delivers a termination notice to the Buyer.

2.3 We confirm that the real estate subject to the Pre-SPA is clearly described based on a layout attached to the Pre-SPA, its location and its specifications (finishings attached to the Pre-SPA) and the Project Company undertakes to provide the real estate to the Buyer in accordance with the description provided under the Pre-SPA. Moreover, the Project

Company is not entitled to sell the real estate to another person, as per the provisions of article 627, paragraph (4) of the Romanian Civil Code.

Thus, we confirm that the real estate has no alternative use, in the acceptance of IFRS15, paragraph 35 (c).

2.4 We have not identified any break option of the Buyer or limitations of liability of the Buyer or aggravations of liability of the Project Company, which could directly or indirectly lead to an elusion of the enforcement right of the Project Company. Moreover, hardship is expressly waived by the Buyer, in accordance with the provisions of Clause 15.1 of the Pre-SPA and force majeure is not applicable to the Buyer's obligation to pay any amounts due under the Pre-SPA.

2.5 We have concluded that both conditions imposed by IFRS 15 paragraph 35 (c) regarding the alternative use of the asset and enforceable right to payment for performance completed to date are met for the current version of the Pre-SPA:

2.5.1 Based on the contractual clauses of the Template Pre-SPA which provide details of the apartment (floor, building, entrance of the building, built surface, number of rooms, kitchen, hall, bathrooms) together with the agreed plans included in the Annexes and clause 8.5 of the Template Pre-SPA by which the Promissory Seller undertakes not to sell, promise or offer for sale the Apartment to a third party, we have concluded that the asset created by the entity's performance does not have an alternative use to the entity.

2.5.2 Clause 9.3, letter (c), point (ii) of the Pre-SPA, the Buyer owes minimum damages to the Promissory Seller, along with the obligation to indemnify the Promissory Seller against any and all losses, damages, litigation, costs and attorney fees incurred and suffered by the Promissory Seller, as a direct result of a breach of the Agreement by the Promissory Buyer.

Consequently, both conditions imposed by paragraph 35(c) of IFRS 15 are met and the entity has a performance obligation that it satisfies over time.

3 DETAILED LEGAL ANALYSIS

For the purpose of this Legal Analysis, the following legislation is applicable:

Law no. 287/2009, as further amended concerning the Civil Code of 2009 ("**Romanian Civil Code**"); and

Law no. 134/2010, as further amended concerning the Civil Procedure Code of 2010 ("**Romanian Civil Procedure Code**").

For the purpose of drafting the Legal Analysis, we have reviewed the court practice with reference to the provisions of the Romanian Civil Code and Romanian Civil Procedure Code quoted herein and we consider the practice consistent with our remarks.

However, considering that in Romania the continental doctrine is applicable and, in contrast with the common law, the courts are independent and not bound by the practice of other courts (except for same cases when the supreme court issues interpretation rulings, without covering the merits of a case), the outcome of a litigation cannot be anticipated.

3.1 *Remedies for Breach of the Agreement*

According to article 1516 of the Romanian Civil Code, in case one party is in breach of an agreement, the other party is entitled to:

3.1.1 Enforce the provisions of the agreement in court

According to article 1669 of the Romanian Civil Code, when one party to the pre-sale-purchase agreement refuses, unjustifiably, to conclude the sale-purchase agreement, the other party may request in court the compulsory conclusion of the sale-purchase agreement, if all other validity conditions are met ("**Court Enforcement Right**").

According to paragraph 2 of the article 1669 of the Romanian Civil Code, the Court Enforcement Right is subject to a 6-month statute of limitation term, which commences on the date when the sale-purchase agreement should have been concluded.

As a result of exercising the Court Enforcement Right and the conclusion of the sale-purchase agreement through a court ruling, which according to the Romanian Civil Procedure Code, is considered an authentic deed:

(a) The ownership right is transferred through the court ruling from the seller to the buyer;

(b) The buyer owes the purchase price (i.e. the purchase price becomes certain, liquid and due), as per the court ruling;

(c) In case not paid, the purchase price can be requested through foreclosure.

From a contractual point of view, there is no requirement to include the Court Enforcement Right in an agreement, in order to be effective – the Court Enforcement Right is automatically applicable by law (and, according to a conservative interpretation, it cannot be waived).

The above is aligned with the Romanian legal doctrine and more recent jurisprudence of Romanian courts of law, according to which, in the last few years, in similar legal circumstances, the courts of law have issued decisions in lieu of

enforcement of the sale purchase agreements, when one of the parties to the pre-sale purchase agreement has refused, without grounds, to sign the sale purchase agreement. The new Romanian Civil Code, on which our assessment is based, was published in 2009 (and republished in 2011); we believe that, at the date of our assessment, enough time has passed and, today, there is sufficient jurisprudence[1] in support of the fact that, as mentioned above, when one of the parties to the pre-sale purchase agreement will refuse, without grounds, to sign the sale purchase agreement, the courts of law, will issue favourable decisions in lieu of enforcement of the sale purchase agreements. We take the view that the body of jurisprudence which we have encountered is sufficient in order to draw the reasonable conclusion that the practice of the Romanian courts of law is rather consistent in this respect. Moreover, between the date the current Romanian Civil Code has been enacted and the date of this opinion, the body of relevant jurisprudence, i.e., whereby the courts have issued decisions in lieu of sale purchase agreements, has increased and therefore if until the last few years, the amount of law cases was relatively low and therefore it was harder to determine that there was a comprehensive practice, in the last few years the growing amount of cases before the courts, accumulated into a critical mass of decisions amounting to a comprehensive practice.

Just to note, as per the provisions of article 57 of Government Emergency Ordinance 80/2013 on judicial stamp duties a court of law, before issuing a decision in lieu of a sale purchase agreement for immovable assets, it will request a land book excerpt, a fiscal certificate and, for apartments in condominiums, evidence of payment of the amounts owed towards the owners association (although the energy performance certificate is not expressly mentioned, this should be presented as well); however, these documents would also be required by a notary public before proceeding with the authentication of a sale purchase agreement, thus, obtaining this documents in court should not be an issue.

3.1.2 Terminate the agreement and request the incurred damages

According to articles 1549, 1551 and 1552 of the Romanian Civil Code, in case one party breaches substantial provisions of an agreement, the other party is entitled to:

(a) *Article 1549 (termination in court)*: claim in court the termination of agreement, in case no unilateral termination right has been provided under the agreement;

(b) *Article 1551 (unilateral termination)*: claim through a contractual notice delivered to the breaching party the unilateral termination of the agreement, in case such right is provided under the agreement; or

(c) *Article 1552 (automatic termination)*: deliver a notice for informing the breaching party that the termination has automatically occurred, in case such right is provided under the agreement

(hereinafter, collectively referred to as "**Termination Rights**").

[1] Decision of Beclean First Instance Court 5/2022, decision of Oradea First Instance Court 46/2023, decision of Slobozia First Instance Court 295/2023, decision of Caracal First Instance Court 584/2023, decision of Turda First Instance Court 2306/2023, decision of Targu Mures First Instance Court 2512/2024, decision of Focsani First Instance Court 9479/2024 – please see details on the aforementioned court decisions included in Annex 2 hereto.

3.1.3 **Exercise a break option (if provided under the agreement)**

According to the Romanian Civil Code, a party can unilaterally cease and agreement if such party benefits of an express right of withdrawal from the agreement, without paying penalties (Romanian: drept de denunțare unilaterală) ("**Break Option**"); in this case, the party exercising the Break Option does not require to provide any justification for the termination of the agreement, its only obligation being to notify the other party in a reasonable term:

From a contractual point of view, Break Options must be specifically provided under an agreement in order to be effective.

Note: The Romanian Civil Code also comprises other cases in which agreements can cease, such as the expiry, dissolution of the parties, force majeure or resolutory conditions. Although these cases can be generally referred to as termination grounds for agreements, considering that these cases are not incumbent on a party's will, but rather on objective grounds (terms, conditions, events etc.), we will not include these in our Legal Analysis and/or Accounting Analysis.

3.2 *Court Enforcement Right*

3.2.1 *Court Enforcement Rights [Clause 9.2 and 9.4 of the Pre-SPA]*: the Project Company is entitled to exercise the Court Enforcement Right in case:

(a) the compliance of the Project Company with the provisions of the Pre-SPA;

(b) the validity conditions of the sale-purchase agreement being met, namely:

(i) the real estate being available to be sold – meaning the construction works related to the real estate are completed until the Final Date and the real estate is in the civil circuit (not subject to public property/subject to interdictions to sell);

(ii) the Project Company and the Buyer having capacity to contract/stand in court – meaning that the parties to the Pre-SPA have not been liquidated (in case of companies) or the Buyer has not deceased (in case of individuals) before the Final Date, without transferring the legal obligations provided under the Pre-SPA (through corporate reorganization or inheritance or assignment);

(c) an implicit or explicit refusal of the Buyer to conclude the sale-purchase agreement after the contractual deadline.

This means that the Project Company is entitled, through the court ruling, *and* subject to the above-mentioned conditions, to transfer the ownership title over the real estate to the Buyer and claim the purchase price from the Buyer (including through foreclosure, in case not voluntarily paid).

3.3 *Termination Rights of the Project Company*

3.3.1 According to Clause 9.1, letter (c), point (ii) of the Pre-SPA, the applicable *legislation* (i.e. art. 1530 and 1531 of the Romanian Civil Code) and the courts of law practice, the Project Company is entitled to enforce the Pre-SPA and claim the full amount of the purchase price and any other incurred damages.

This means that the Project Company is entitled, through a notice delivered to the Buyer, to terminate the Pre-SPA and claim the purchase price from the Buyer. In case not voluntarily paid, the Project Company can keep any advance payment amounts already paid by the Buyer and can request in court the purchase price and any other incurred damages (e.g. court fees, attorney fees, agent fees).

3.3.2 The enforcement right of the Project Company to request the above-mentioned amounts is subject to:

(a) the compliance of the Project Company with the provisions of the Pre-SPA;

(b) the Buyer is in breach of the Pre-SPA, as per the provisions of Clause 9.1;

(c) the Project Company delivers a termination notice to the Buyer.

3.4 *Project Company's liability*

3.4.1 *Legal Provisions*:

(a) Limitation *of liability*: according to article 1355 of the Romanian Civil Code, parties to an agreement are entitled to limit their liability through agreements, except for cases where they act with gross negligence or intention;

(b) *Aggravation of liability*: although the Romanian Civil Code does not comprise specific caps for aggravating the liability, by way of interpretation, according to articles 1538 and 1541 of the Romanian Civil Code, it can be construed that liability can be aggravated based on the parties' will, but in case the damages are plain excessive, the court can limit the damages to a reasonable amount.

3.4.2 *Aggravation of liability*: following the review of the Pre-SPA, we have not identified any clauses which aggravate the liability of the Project Company.

3.4.3 *Termination Rights of the Buyer [Clauses 8.4 and 9.4 of the Pre-SPA]*: following the review of the Pre-SPA, we have identified unilateral Termination Rights of the Buyer, which are subject to the Project Company's breach of contract, which can be activated in the following cases:

(a) The Project Company (i) refusing unjustifiably to be present before the notary public for the authentication of the sale-purchase agreement or (ii) refusing unjustifiably to sign the sale-purchase agreement until the final date set under the Pre-SPA ("**Final Date**");

(b) In case the Project Company does not deliver to the Buyer the real estate until the expiry of the Final Date (as determined following the extensions provided under the Pre-SPA).

In both cases, the Termination Right is subject to the Buyer delivering to the Project Company a termination notice after the expiry of a 2-month term following the Final Date (including any extensions/additional grace periods).

3.5 *Buyer's Liability*

3.5.1 *Break Options*: following the review of the Pre-SPA, we have not identified any Break Options in favour of the Buyer.

3.5.2 *Limitation of liability*: following the review of the Pre-SPA, we have not identified any clauses which limit the liability of the Buyer.

3.5.3 *Hardship*: the Buyer cannot apply the hardship provisions provided under article 1271 of the Romanian Civil Code.

According to article 1271 of the Romanian Civil Code, in case following the conclusion of an agreement the performance of this agreement has become excessively onerous due to an exceptional change in circumstances that would make it manifestly unfair to oblige one party to perform its obligation, such party is entitled to claim in court (i) the unilateral amendment of the agreement, for ensuring a proper balance between the parties' obligations or (ii) to terminate the agreement, in case balance cannot be achieved.

Kindly note that the provisions related to hardship have been expressly waived by the Buyer, according to Clause 15.1 of the Pre-SPA.

3.5.4 *Force Majeure*: the Buyer is not entitled to refuse a payment obligation based on force majeure events.

According to article 1634, paragraph (6) of the Romanian Civil Code, a party cannot apply force majeure in case its obligation is related to gender goods (such as money).

Thus, even in case a force majeure event would intervene after the conclusion of the Pre-SPA, the Buyer would still be obliged to pay any amounts which are due to the Project Company.

3.6 *Clear Delimitation of the Real Estate*

3.6.1 The real estate which is subject to the Pre-SPA is delimited based on the following criteria:

(a) *Clause 1, definition of "Apartment"*: apartment number, floor number, building, entrance and layout attached in annex 1 of the Pre-SPA;

(b) *Clause 1, definition of "Finishing"*: standard and optional finishing of the apartment, as provided under Annex 2 of the Pre-SPA.

Based on these criteria, the Project Company's main obligation under the Pre-SPA is clearly delimitated, with no alternative use – to provide to the Buyer the real estate, in accordance with the above-mentioned specifications.

3.6.2 According to article 627, paragraph (4) of the Romanian Civil Code, the seller under a pre-sale-purchase agreement is, by law, obliged to not sell the real estate which is subject to the pre-sale-purchase agreement to another person than the buyer.

Thus, as per these legal provisions, the Project Company is under an interdiction to sell the real estate which is subject of the Pre-SPA to another person than the Buyer.

4 DETAILED ACCOUNTING ANALYSIS

4.1 Relevant IFRS 15 provisions

According to IFRS 15.35 an entity transfers control of a good or service over time and, therefore, satisfies a performance obligation and recognizes revenue over time, if one of the following criteria is met:

(a) the customer simultaneously receives and consumes the benefits provided by the entity's performance as the entity performs;

(b) the entity's performance creates or enhances an asset (for example, work in progress) that the customer controls as the asset is created or enhanced; or

(c) the entity's performance does not create an asset with an alternative use to the entity and the entity has an enforceable right to payment for performance completed to date.

The assessment of whether to recognize revenue over time or at a point in time requires an assessment of the particular facts and circumstances of the contract, taking into account the legal environment within which the contract is enforceable.

As per the Template of the Sale-Purchase Pre-Agreement ("Template Pre-SPA"), which is the focus of this analysis, the properties included in the Template Pre-SPA are part of Phase II of the H Pipera Lake Residential Complex, which is currently under development. The Project Company has not yet obtained the building permit for the construction, as stipulated in clause 8.18.

Paragraph IFRS 15.35 (a) is not relevant for the construction and selling the real estate. This is because buyers generally do not consume the benefits of the property as the real estate developers construct the property; rather, those benefits are consumed in the future.

In applying paragraph IFRS 15.35 (b), it is important to apply the requirements for control to the asset that the entity's performance creates or enhances. In a contract for the sale of real estate that the entity constructs, the asset created is the real estate itself. It is not, for example, the right to obtain the real estate in the future. The right to sell or pledge a right to obtain real estate in the future is not evidence of control of the real estate itself.

In some cases, it may be unclear whether the asset that is created or enhanced is controlled by the customer, therefore the underlying objective of the criterion in paragraph IFRS 15.35(c) is to determine whether the entity transfers control of goods or services to the customer as an asset is being created for that customer. **Applying paragraph 35(c), an entity recognizes revenue over time if:**

(a) the asset created by the entity's performance does not have an alternative use to the entity; and

(b) the entity has an enforceable right to payment for performance completed to date

4.2 Analysis of criteria under IFRS 35.15 (c)

4.2.1 The asset has no alternative use to the entity

An asset created by an entity's performance does not have an alternative use to an entity if the entity is either **restricted contractually** from readily directing the asset for another use during the creation or enhancement of that asset or **limited practically** from readily directing the asset in its completed state for another use**.** The assessment of whether an asset has an alternative use to the entity is made at contract inception. After contract inception, an entity shall not update the assessment of the alternative use of an asset unless the parties to the contract approve a contract modification that substantively changes the performance obligation [IFRS 15.36].

As explained in the Basis for Conclusions to IFRS 15, the boards developed the notion of alternative use to exclude the circumstances in which the entity's performance would not result in the transfer of control of goods or services to the customer over time. This is because when the entity's performance creates an asset with an alternative use to the entity, the entity could readily direct the asset to another customer and, therefore, the customer would not control the asset as it is being created. This may occur in the creation of many standard inventory-type items for which the entity has the discretion to substitute across different contracts with customers. In those cases, the customer cannot control the asset because the customer does not have the ability to restrict the entity from directing that asset to another customer [IFRS15.BC134].

Conversely, when an entity creates an asset that is highly customized for a particular customer, the asset would be less likely to have an alternative use. This is because the entity would incur significant costs to reconfigure the asset for sale to another customer (or would need to sell the asset for a significantly reduced price). In that case, the customer could be regarded as receiving the benefit of that performance and, consequently, as having control of the goods or services (i.e. the asset being created) as the performance occurs. However, an entity would also need to consider whether a right to payment exists to conclude that control transfers over time. [IFRS 15. BC135].

In assessing whether the asset has an alternative use, the entity would need to consider practical limitations and contractual restrictions on directing the asset for another use. In determining whether the entity is limited practically from directing the asset for another use, the boards decided that an entity should consider the characteristics of the asset that will ultimately be transferred to the customer. This is because, for some assets, it is not the period of time for which the asset has no alternative use that is the critical factor in making the assessment but, instead, whether the asset that is ultimately transferred could be redirected without a significant cost of rework. This may occur in some manufacturing contracts in which the basic design of the asset is the same across all contracts, but the customization is substantial. Consequently, redirecting the asset in its complete state to another customer would require significant rework [IFRS 15. BC136].

Although the level of customization might be a helpful factor to consider when assessing whether an asset has an alternative use, the boards decided that it should not be a determinative factor**. This is because in some cases (for example, some real estate contracts), an asset may be standardized but may still not have an alternative use to an entity, as a result of substantive contractual restrictions that preclude the entity from readily directing the asset to another customer.** If a contract precludes an entity from transferring an asset to another customer and that restriction is substantive, the entity does not have an alternative use for that asset because it is legally obliged to direct the asset to the customer. Consequently, this indicates that the customer controls the asset as it is created, because the customer has the present ability to restrict the entity from directing that asset to another customer (an entity would also need to consider whether a right to payment exists to conclude that control of the asset transfers over time as it is created). The boards observed that contractual restrictions are often relevant in real estate contracts, but might also be relevant in other types of contracts [IFRS 15. BC137].

According to the contractual clauses of the Template Pre-SPA, the object of the contract is represented by an apartment identified by number and precise location within H Pipera Lake Residential Complex (floor, building, entrance of the building, built surface, number of rooms, kitchen, hall, bathrooms) according to the plans included in the Annex 1 (Plan and Location of the Building/Apartment/Pipera Land/Property).

Clause 2.3 of the Template Pre-SPA allows for a margin of +/- 5% in the variation of the built area compared to that stipulated in the contract without modifying the contract price.

Moreover, clause 8.5 of the Template Pre-SPA mentions that except for the case when this Pre-Agreement is terminated before the Final Date, according to Article 627 par. 4 of the Civil Code, **the Promissory Seller undertakes not to sell, promise or offer for sale the Apartment to a third party.** Additionally, the Template Pre-SPA does not provide for the option of the Promissory Seller or Promissory Buyer to unilaterally terminate the contract (Break Options), a fact confirmed also by paragraph 3.5.1 of the legal opinion.

Based on all the above-mentioned together with paragraphs 2.3 and 3.6 from the legal opinion, **we can conclude that the Promissory Seller is contractually restricted from making changes to the asset/ Apartment (except as required by the Building Permit or by any applicable law) and from readily directing the asset subject to the Template Pre-SPA to another customer. Therefore, the asset created by the entity's performance does not have an alternative use to the entity, meeting the first condition of IFRS 15 paragraph 35(c).**

Nonetheless, the boards decided that while the notion of alternative use is a necessary part of the criterion in paragraph 35(c), it is not enough to conclude that a customer controls an asset. Consequently, the boards decided that to demonstrate that a customer controls an asset that has no alternative use as it is being created, an entity must also have an enforceable right to payment for performance completed to date [IFRS 15.BC141].

4.2.2 Enforceable right to payment for performance completed to date

An entity shall consider the terms of the contract, as well as any laws that apply to the contract, when evaluating whether **it has an enforceable right to payment for performance completed to date i**n accordance with paragraph 35(c). [IFRS 15.37].

An entity has an enforceable right to payment for performance completed to date if it has a right to receive an amount that approximates the selling price of the goods or services transferred if the contract is terminated by the customer or another party for reasons other than failure to perform as promised. The likelihood that the customer would terminate the contract or that the entity would exercise its right to payment are not relevant in making this assessment. [IFRS 15.37, IU 03-18].

Therefore, to meet the criterion 3 indicated in IFRS 15.35, the entity's right to payment has to be for an amount that approximates the selling price of the goods or services transferred - e.g. a right to recover costs incurred plus a reasonable profit margin. The amount to which the entity is entitled does not need to equal the expected profit margin in the contract, but has to be based on either a reasonable proportion of the entity's expected profit margin or a reasonable return on the entity's cost of capital. However, if an entity would only recover its costs, then it would not have the right to payment for performance completed to date and this part of criterion 3 would not be met. [IFRS 15.B9-B13].

In addition, the standard clarifies, in IFRS 15.B13, that including a payment schedule in a contract does not, in and of itself, indicate that the entity has the right to payment for performance completed to date. This is because, in some cases, the contract might specify that the consideration received from the customer is refundable for reasons other than the entity failing to perform as promised in the contract. The entity must examine information that might contradict the payment schedule and might represent the entity's actual right to payment for performance completed to date. Therefore, a fixed payment schedule might not meet this requirement. [IFRS 15.B13].

The customer's obligation to pay for the entity's performance to date (or, the inability to avoid paying for that performance) suggests that the customer has obtained the benefits from the entity's performance. [IFRS 15.BC142].

When a right to payment on termination is not specified in the contract with the customer, an entity may still have a right to payment under relevant laws or regulations. The fact that the entity may sue a customer who defaults or cancels a contract for convenience does not in itself demonstrate that the entity has an enforceable right to payment. Generally, a right to payment exists only if taking legal action entitles the entity to a payment for the cost incurred plus a reasonable profit margin for the performance completed to date. Factors to consider when determining if an entity has a right to payment include:

- relevant laws and regulations;
- customary business practices;
- the legal environment;
- relevant legal precedents; and
- legal opinions on the enforceability of rights. [IFRS 15.B11-B12, BC147].

According to paragraph B12 of IFRS 15, in assessing the existence and enforceability of a right to payment for performance completed to date, an entity considers the contractual terms as well as any legislation or legal precedent that could supplement or override those contractual terms.

The standard also states that even when an entity chooses to waive its right to payment in other similar contracts, an entity would continue to have a right to payment for the contract if, in the contract, its right to payment for performance to date remains enforceable.

Clauses 4.1 and 4.3 of the Template Pre-SPA specify the total price of the asset as well as that the total price of the asset is paid in several instalments, of which 30% of the total price is paid until commencement of the construction (clause 4.3. a) -c)) and the rest of 70% of the price will be paid by the Promissory Buyer after the reception of the construction, respectively after the Promissory Seller has finalized the performance obligation within the contract.

In addition, clause 9.1. c) - ii) indicates that in case of termination of the Pre-Agreement, the Promissory Seller **shall retain as penalty the total part of the total price of the asset paid up to that point to the Promissory Seller ("Minimum Damages"). However, the fact that the 30% upfront payment is non-refundable in case of termination by the Promissory Buyer does not automatically create an enforceable right for the Promissory Seller to retain that payment**. [IFRS 15.BC146] **and also it does not compensate the Promissory Seller for the performance completed to date at all times throughout the contract.**

Also, clause 9.1. c) - ii) indicates that the Promissory Buyer agrees to indemnify the Promissory Seller **against any and all losses, damages, litigation, costs and attorney fees incurred and suffered by the Promissory Seller, as a direct result of a breach of the Agreement by the Promissory Buyer, as such will be determined based on a final court ruling**. The Minimum Damages shall be automatically withheld by the Promissory Seller from the total price of the property, without the need for any other formality or court intervention and shall not be deemed as waiver for the actual, full damages suffered by the Promissory Seller deriving from the breach. This clause is applicable in all cases where the Pre-SPA can be terminated for reasons other than the Promissory Seller's failure to perform as promised.

Based on the paragraph 2.2 and 3.3 of the Legal Opinion, the Promissory Seller has the right to claim the full amount of the purchase price of the Apartment and any other incurred damages, which according to the applicable legislation (i.e. art. 1530 and 1531 of the Romanian Civil Code) and the courts of law practice , are calculated as direct injury (i.e. costs incurred up to date) and the loss of chances/loss of profits, which is in line with IFRS

15.B9-B13 provisions (e.g. a right to recover costs incurred plus a reasonable profit margin). Therefore, under the applicable legislation and the courts of law practice, the Promissory Seller is entitled to claim at least an amount that compensates the entity for the work performed until that date.

Chapter 3.1 "*Remedies for Breach of the Agreement"* of the Legal opinion concluded that from a contractual point of view, **there is no requirement to include the Court Enforcement Right (as it was defined in paragraph 3.1.1 from the legal opinion) in an agreement, in order for it to be effective – the Court Enforcement Right is automatically applicable by law** (and, same as in the case of Termination Right, according to a conservative interpretation, it cannot be waived).

Based on clause 15.1 of the Template Pre-SPA, the Promissory Buyer undertakes to fully comply with its obligations hereby undertaken and assume, in all cases, the risk that their performance will become more onerous either due to the increase in the costs of the performance of its own obligation, or due to the decrease in the consideration, waiving the right to invoke hardship. Moreover, paragraph 3.5.3 of the legal opinion supports our understanding that the Promissory Buyer will be liable for payment even in the event that they are unable to meet the terms of the contract due to factors such as unemployment or a serious illness (hardship situation).

Based on all of the above-mentioned together with paragraphs 2.1 and 2.2 from the legal opinion, the Promissory Seller has a right to payment for performance completed to date in accordance with paragraphs 37 and B9–B13 of IFRS 15. This is because if the Promissory **Buyer were to default on its obligations, the Promissory Seller would have an enforceable right to all of the considerations promised under the contract if it continues to perform as promised.**

Therefore, the terms of the contract and the practices in the legal jurisdiction indicate that there is a right to payment for performance completed to date. Consequently, both conditions imposed by paragraph 35(c) of IFRS 15 are met and the entity has a performance obligation that satisfies over time.

ANNEX 1: ASSUMPTIONS AND QUALIFICATIONS

A. ASSUMPTIONS

For the purpose of issuing our Legal Opinion, we have based our findings on the following assumptions:

(a) The authenticity and completeness of all documents and information furnished to us by the Client by the time of the issuance of this Legal Opinion.

(b) There are no provisions of the laws of any country or jurisdiction outside of Romania which would be contravened by the execution / performance of the Pre-SPA or which would render the execution / performance of the Pre-SPA (or any part thereof) illegal, ineffective or unenforceable or which would otherwise have any implications for the findings that we express herein and, insofar as the laws of any country or jurisdiction outside of Romania may be relevant, such laws have been and will be complied with.

(c) This Legal Opinion is limited to the matters expressly contained herein, and no opinion is to be inferred or implied beyond the matters expressly contained herein.

B. QUALIFICATIONS

Our advice comprised under the Legal Opinion is based on the following qualifications:

(a) This Legal Opinion refers solely to the Pre-SPA and is based only on the applicable legal provisions concerning enforceability/liability/termination related to the Pre-SPA. We have not investigated, analyzed or contemplated any other information, data, facts and circumstances affecting or relating to the Pre-SPA other than those disclosed by the Client. Should further information and / or documentation and / or data exist, which was not disclosed or provided to us, or should any of the written or verbal instructions, representations or explanations provided to us prove to be incorrect or misleading, any findings, interpretations, or opinions contained herein might be incomplete and might have generated different conclusions.

(b) We will not proactively inform the Client of any changes to Romanian law that could affect the matters addressed in this Legal Opinion following the date of issuance hereof and we will not update this Legal Opinion either, unless KPMG has expressly accepted in writing to update this Legal Opinion pursuant to the instructions of the Client.

(c) It should be noted that it is not possible to express a precise and definitive view of the exact scope of Romanian public policy at any particular time.

(d) We did not investigate or comment on laws or jurisdictions other than the Romanian law and jurisdiction. Romanian legislation is undergoing constant change, and because of this, there is a significant amount of uncertainty and lack of clarity. Against this background, our advice is based upon currently available information, accepted practice, as well as principles of sound business judgment.

(e) The services provided as part of this engagement did not include decision-making responsibilities.

(f) Moreover, KPMG did not undertake a management role as a consequence of or arising from the work performed during this engagement. KPMG is not to be responsible for any decisions, actions or lack of actions of any third party, including any supervisory authority in relation to our assistance, and the business decisions shall remain entirely with you.

(g) This Legal Opinion shall not be disclosed to, nor relied upon by any third party without

our prior written consent. We shall not be held liable in any way whatsoever for any consequences arising from the disclosure of this advice to any other party. Moreover, this Legal Opinion is not to be used for any other purposes than those specified herein, nor may extracts or quotations be made without our express written approval.

(h) For clarity, this Legal Opinion is issued in the benefit of the Client and Project and KPMG specifically agrees that this Legal Opinion can be disclosed by the Client/Project Company to the Israel Securities Authority (ISA), without requiring any other approval from KPMG.

(i) Romanian jurisprudence is not all publicly published / available.

ANNEX 2: JURISPRUDENCE OF THE ROMANIAN COURTS REGARDING DECISIONS IN LIEU OF SALE-PURCHASE AGREEMENTS

1. Decision of Beclean First Instance Court 5/2022

In case number 5/2022, the buyer (claimant) filed a lawsuit against the seller (defendant) seeking a ruling that would serve as a decision in lieu of a sale-purchase agreement over a plot of land.

The claimant argued that he acquired this land through a pre-sale-purchase agreement concluded with the defendant, having fully paid the sale price and taken possession of the land. Although the defendant was the heir of the deceased seller, he failed to conclude the authentic sale-purchase agreement as he had committed to do.

The court admitted the claimant's action, determining that, according to the provisions of law, if one party refuses to conclude the sale-purchase agreement, the party who has fulfilled its obligations may request the court to issue a ruling that would serve as a decision in lieu of a sale-purchase agreement. The court noted that the claimant had complied with all contractual obligations, while the defendant did not justify his refusal to sign the authentic sale-purchase agreement. Consequently, the court's ruling acknowledged the claimant's property rights over the land and ordered their registration in the Land Book. The defendant did not contest the claimant's request in any manner, and the court ruled in favour of the claimant, establishing that the decision in lieu will serve as an authentic sale-purchase agreement.

2. Decision of Oradea First Instance Court 46/2023

In case number 46/2023, the buyer (claimant) alleged that the seller (defendant) failed to fulfill their contractual obligations regarding the sale of the properties. Specifically, the buyer alleged that the seller and her predecessors did not justifiably execute their obligation to present themselves before a notary to formalize the sale through an authentic sale-purchase agreement, despite the buyer having paid the full purchase price. The buyer requested the court to issue a decision in lieu of a sale-purchase agreement.

In response, the seller argued that she agreed with the buyer's claim; however, she had not presented herself at the notary to complete the sale. The court noted that the buyer had indeed fulfilled their obligations by paying the purchase price at the time of signing the pre-sale-purchase agreement, which was uncontested by the seller. The court also confirmed that the seller was the owner of the properties in question, which were part of her inheritance. The court emphasized that the conditions set forth in relevant laws regarding property sales were met. Additionally, the court found that the buyer had obtained the necessary approvals from local authorities, thus meeting all legal requirements for the sale.

Consequently, the court ruled in favour of the buyer, admitting the request and issuing a decision in lieu that will serve as an authentic sale-purchase agreement. It also ordered the registration of the buyer's ownership rights in the Land Book, affirming that all statutory conditions for the sale were fulfilled and that the seller's failure to finalize the sale-purchase agreement was unjustified.

3. Decision of Slobozia First Instance Court 295/2023

In case number 295/2023, the buyer (claimant) filed a lawsuit against the seller (defendant) seeking a ruling that would serve as a decision in lieu of a sale-purchase agreement.

The claimant argued that the specific legal provisions regarding the transfer of ownership of agricultural land were respected in the case at hand, asserting that the action was well-founded and should be admitted. The court confirmed that all required documents were submitted to the

case file, including the land book extracts, tax certification, sales offer, and the finalization report from the local authority, which stated that no purchase offers were registered (in accordance with the preemption procedure). Additionally, it was certified that the land did not contain archaeological sites, negating the need for specific approvals from the Ministry of Culture.

Thus, the court ruled in favour of the buyer, admitting the request and issuing a decision in lieu that will serve as a decision in lieu of an authentic sale-purchase agreement.

4. Decision of Caracal First Instance Court 584/2023

In case number 584/2023, the buyer (claimant) alleged that the sellers (defendants) failed to fulfill their contractual obligations regarding the sale of a land plot as per the pre-sale-purchase agreement concluded between the parties. Specifically, the buyer alleged that the sellers refused to complete the necessary cadastral works and to present themselves at the notary for the authentication of the sale-purchase agreement. The buyer requested the court to issue a decision in lieu of an authentic sale-purchase agreement for the property.

The sellers argued that they had not completed the authentic sale-purchase agreement due to financial constraints preventing them from completing the cadastral works, thereby failing to fulfill their obligations. They did not file a counterclaim in the case.

The court held that the buyer had complied with the terms of the pre-sale-purchase agreement and had paid the agreed price, taking possession of the property. The court found that the sellers unjustifiably refused to attend the notary, despite being invited. The court ruled that since all conditions of validity were fulfilled, it would issue a decision in lieu of a sale-purchase agreement to supplement the parties' consent to formalize the sale-purchase agreement in authentic form.

The court rejected the sellers' claims regarding their financial inability as insufficient to justify their refusal. The court further determined that the transaction's essence was a pre-sale-purchase agreement giving rise to an obligation on the part of the sellers to transfer ownership, and therefore granted the buyer's request, allowing the court's decision to serve as a decision in lieu of an authentic deed of sale.

5. Decision of Turda First Instance Court 2306/2023

In case number 2306/2023, the buyer (claimant) alleged that the sellers (defendants) failed to fulfill their contractual obligations regarding the sale of two agricultural properties. The buyer requested the court to order the sellers to conclude authentic sale-purchase agreements for the properties or, alternatively, to declare that the court ruling would serve as a decision in lieu of an authentic sale-purchase agreement.

The sellers' predecessor entered into two sale-purchase agreements with the buyer, under private signature. These agreements required an authentic form; in accordance with legal provisions, and in the absence of the formalities required by law, the two agreements are null as sale-purchase agreements but can be converted into pre-sale-purchase agreements, as is the case in the present instance. Thus, the court proceeded to analyze the conditions necessary for issuing a ruling that serves as a decision in lieu of a sale-purchase agreement in the case of the pre-sale-purchase agreements. The sellers acknowledged the validity of the agreements executed by their predecessor and agreed to the registration of the properties in the buyer's name.

The court established that the buyer had fulfilled all necessary legal requirements, including the payment of taxes and fees associated with the properties, thus confirming that the properties were free from encumbrances. The court ruled in favor of the buyer, determining that the sellers were obliged to execute authentic sale-purchase agreements; or, in case of non-compliance, the ruling

would serve as a decision in lieu of an authentic deed of sale, thereby enabling the buyer to proceed with the registration of the properties in their name.

6. Decision of Targu Mures First Instance Court 2512/2024

In case number 2512/2024, the claimant (the buyer) filed a lawsuit against the defendants (the sellers) seeking a ruling that would serve as a decision in lieu of an authentic sale-purchase agreement for a property. The claimant requested the court to validate a prior pre-sale-purchase agreement, arguing that the defendants, as heirs of the original sellers, had not completed the necessary succession procedures to finalize the sale. The court found that the defendants agreed to the claimant's request and recognized the validity of the prior pre-sale-purchase agreement. Consequently, the court issued a ruling that serves as a decision in lieu of an authentic deed of sale, confirming the buyer's ownership of the property and obliging the buyer to pay the remaining balance.

7. Decision of Focsani First Instance Court 9479/2024

In case number 9479/2024, the claimants (the buyers) filed a lawsuit against the defendant (the seller), seeking a ruling that would serve as a decision in lieu of an authentic deed for the sale of a property. Specifically, the buyers alleged that the seller did not complete the necessary legal formalities to authenticate the sale-purchase agreement despite the previous pre-sale-purchase agreement concluded between the parties.

The seller raised the exception of inadmissibility, arguing that the land must be registered in the Land Book, and that the right of preemption procedure had to be respected. The seller asserted that all necessary steps for completing the authentic sale-purchase agreement had been taken, and the delay was caused by external circumstances.

The court rejected the seller’s exception of inadmissibility, holding that the buyers had fulfilled their obligations under the pre-sale-purchase agreement. The court noted that the case file contained both the proof of registration in the Land Book and evidence that the preemption rights procedure had been completed. Therefore, the seller was required to proceed with the sale. As a result, the court issued a ruling in favor of the buyers, stating that the ruling would serve as a decision in lieu of a sale-purchase agreement for the transfer of the property.

נספח ב'- חוות דעת עדכנית מעורכי הדין של החברה ברומניה

24 April 2025

By email
H&S West Properties SRL
Ziv Tetelman, administrator
109 Calea Victoriei, Office 68
Sector 1, Bucharest
Romania

Re: Enforceability by the Promissory Seller of a pre-sale agreement by means of a court decision acknowledging transfer of ownership *in lieu* of a final sale agreement

We have been requested to issue a legal opinion ("**Opinion**") on the enforceability by the promissory seller of a pre-sale purchase agreement ("**Pre-SPA**") by means of a court decision acknowledging the transfer of ownership *in lieu* of a final sale agreement.

This Opinion is based on the premise that (i) the promissory seller has duly and timely observed and fulfilled all its contractual obligations and we analyze only the case where the promissory buyer does not execute its contractual obligations by unjustified refusal to sign the final sale purchase agreement and (ii) all validity conditions for the execution of the Pre-SPA and of the SPA are met and observed.

1. General Aspects

(a) Contracting Principles under Romanian civil law

Before analyzing the specific rules applicable to the Pre-SPA as a special type of contract, we highlight below the general effects and enforcement principles of a contract sustaining its enforceability as provided under the Romanian civil law, such being applicable also to each specific type of contract.

(i) *Binding Nature*

According to Article 1270 of the Civil Code and a well settled legal scholarship and court practice, "a valid concluded contract has the same power between the contracting parties as the law", meaning that a valid concluded contract represents parties' law.

This is a fundamental principle known also as "*pacta sunt servanda*" or "agreements must be kept" which the Romanian legal system recognizes and applies. The binding nature of a contractual agreement obviously presupposes that an agreement has actually been concluded by the parties and that the agreement the parties achieved is not affected by any ground of invalidity.

The Romanian courts held that legally concluded agreements have the force of law between the contracting parties, whereby the parties acquire rights and undertake obligations which both parties must fulfill in good faith[1]. Good faith is one of the most important implicit obligations, representing the initial obligation of other contractual obligations, such as: the obligation of loyalty, the obligation of cooperation, the obligation of contractual coherence, the obligation of information, counseling, warning etc.[2]

In conclusion, a contract concluded by the Parties (presumes the good faith implicitly and does not have to be expressly written in the contract) represents the "law" applicable to the parties in relation to their mutual rights and obligations.

[1] Decision no. 1143 of 8 March 2022, Bucharest Tribunal.
[2] Criminal Decision no. 541 of 21 July 2021, Arad Tribunal.

(ii) *Hardship (in Romanian "impreviziunea")*

Further, Article 1271(1) of the Civil Code provides and states that the contracting parties are bound to execute their obligations, even if the execution of the obligations became more onerous, either due to the increase of costs when executing its own obligation, or due to the value depreciation of the counter performance.

This provision underlines the importance of the binding nature of the contract and further, the article provides ***only by means of exception*** when hardship may be invoked by a party and the available remedies and the limited cases when it can be applied by court, namely when the performance of the agreement has become ***excessively onerous*** due to ***an exceptional change of circumstances*** which would make it ***clearly unfair*** to compel the debtor to perform the obligation.[3]

Thus, in the event of a claim, a court will be entitled to order a remedy only provided that the specific issues invoked by a promissory buyer would fall within the very limited cases and meets the requirements provided by law and only as an exception to the first principle stated under the same article of the Civil Code.

The hardship invoking incidents were classic example during the economic crisis for agreements with successive execution, due to the excessive burden of the debtor's obligation and which he did not take into account when contracting. When reviewing the court practices, we note that most of the claims grounded on hardship were not admitted. Also, we underline that in the event of market disturbances affecting both parties, such as costs of materials, construction, inflation hardship could reasonably not be applicable considering that the obligations of both parties became more onerous, thus the debtor could not invoke that the contract became obviously unbalanced only for a party.

Another case of application of hardship held by Romanian courts is related to the claims regarding the exchange rate fluctuations, especially with regard to foreign currency exchange rates under credit agreements. In these cases, even if we have identified few court decisions where such circumstance was admitted[4], there are numerous decisions where Romanian courts have rejected the application of hardship, considering that the exchange rate fluctuations is not an unpredictable event, but a notorious financial event, acknowledged by the parties at the signing date of the credit agreement and the risks were assumed by the debtor.

The courts also decided that hardship cannot be invoked when the parties have inserted in their contract indexation clauses, which will vary the price according to the evolution of an index chosen by them or have agreed to revise their contract under certain situations.

---

[3] Article 1271 (2),(3): *"(2) Nevertheless, if the performance of the agreement has become excessively onerous due to an exceptional change of circumstances which would make it clearly unfair to compel the debtor to perform the obligation, the court may order:*
a) the adjustment of the agreement so as to fairly distribute the losses and the benefits resulting from the change of circumstances between the parties;
b) the termination of the agreement, at the time and under the conditions set out by it.
(3) The provisions of par. (2) are applicable only if:
a) the change of circumstances has occurred after the conclusion of the agreement;
b) the change of circumstances, as well as its extent have not been and could not have been reasonably considered by the debtor upon concluding the agreement;
c) the debtor has not undertaken the risk of change of circumstances and could not be reasonably regarded as having undertaken such risk;
d) the debtor has attempted, in a reasonable period of time and in good faith, to negotiate the reasonable and fair adjustment of the agreement."

[4] Decision no. 5 of 02 February 2022, Constanta Court of Appeal.

In particular, the courts rejected the hardship considerations when the promissory buyer already bought another similar real estate, so that not the excessive onerousness triggered the non-execution of the contractual obligations of the promissory buyer[5]. Also, according to court practice, hardship was not admitted when: (i) a buyer has assumed under the contractual clauses the changing of circumstances that are invoked as hardship.[6] or (ii) entered into bankruptcy[7].

In conclusion, hardship may be invoked only if it refers to a circumstance where the impossibility of execution of the contractual obligations is determined by an external and exceptional cause, which not only that it is not caused by the party invoking such circumstances but also it could not be foreseen.

(iii) *Content of the Contract*

The civil law provides that a valid concluded contract obliges the parties not only to what it expressly provides but also to all effects the contract is having based on the parties' practices, usage, law or equity, considering the nature of the agreement. This means that although the provisions of the agreement do not expressly provide certain aspects, such are implicitly considered to be assumed and undertaken as per the general contractual principles, the law, parties' practices, usage etc. The clauses are read and interpreted not only according to their express provisions but also alongside with the usual principals above, although such are not expressly stipulated.

This principle as to the contract's effects is in line also with the contract's interpretation principle that a contract shall be interpreted so as to produce its effects.

When a contract contains conflicting provisions, the general principles of law require that such provisions shall be interpreted in a manner which leads to keeping the nature of the contract considering the intention taken into account by the parties.

(iv) *Contract performance - enforcement*

Each of the obligations under a contract should be performed or executed in kind and not by an equivalent obligation (damages, compensation). In addition to this general rule, the Civil Code expressly provides that (provided the conditions under the Civil Code are met) the possibility of a request in court for the enforcement of the Pre-SPA by means of a court decision acknowledging transfer of ownership *in lieu* of a final sale purchase agreement, as further detailed in Section 2 below.

(b) General Rules Applicable to the Pre-SPA

When issuing this Opinion, we considered the relevant legal provisions, legal scholarship and court practice regarding the bilateral promise to sell, respectively an agreement by which its parties undertake to sign a final sale agreement ("**SPA**"), with the promissory seller undertaking to sell and the promissory buyer undertaking to buy a certain asset by signing the SPA.

According to the Pre-SPA, the parties undertake to duly observe their obligations, including payment of advances and to sign the final agreement. As indicated above, all general contractual rules are applicable also to the Pre-SPA, thus the mutual obligations undertaken by the parties are considered to be the "law" of the parties. Nevertheless, a breach by the promissory buyer of any of its obligations may be fulfilled by enforcing the breaching party to perform such obligation.

[5] Decision no. 7/2011, Bucharest Court of Appeal, 3th Civil Section.
[6] Decision no. 733 of 10 February 2022, Bucharest Tribunal.
[7] Decision no. 415 of 19 June 2018, Constitutional Court

Consequently, in the event of breach of payment obligations by the promissory buyer, the promissory seller may procced with the enforcement of the due outstanding payments. For example, if the Pre-SPA provides certain payments in installments, any due, outstanding and liquid obligation can separately be enforced. For court practice on enforcement of the Pre-SPA, please see Section 3 below.

The Pre-SPA is not an agreement whereby rights over an asset are transferred at a certain date, but an undertaking to sign an SPA at a certain date having the nature of a receivable right, with the ownership rights over the underlying asset being transferred only upon signing the SPA. The Pre-SPA should not be confused with the sale of a future asset, as in the latter case the parties actually sign a sale purchase agreement and the seller undertakes to transfer the ownership right over the relevant asset and handover such asset at a certain future date when such asset will exist. However, although the nature of the obligation to be performed is different under a Pre-SPA or SPA, enforcement of each specific due obligations in accordance with the nature of the obligation of each contract falls under the general contractual rules, being binding upon the parties in accordance with the contractual provisions agreed by the parties.

The Pre-SPA has as main obligation the undertaking "**to do**", namely to sign the SPA under the terms and conditions agreed in the Pre-SPA and not to "**transfer**" the ownership, as the latter obligation occurs only upon the signing of the SPA. Nevertheless, the Pre-SPA, being a contract, enforceability of such falls under both the general rules and principles as well under the specific ones provided under the Civil Code, namely that provided the conditions are met, it constitutes a binding obligation and the breaching party can be forced by the available legal means to properly execute its undertakings.

Pursuant to the final Decision no. 6702 of 2 June 2021, Timisoara Fist Instance Court held that the Pre-SPA has binding force between the parties: *"The promise was validly concluded, having determined the object and the price. Based on the provisions of Article 1516 of the Civil Code, the plaintiff has* ***the right to the exact fulfillment of the obligation, respectively to the conclusion of the sale-purchase agreement****"*. Further, the court stated that by concluding the Pre-SPA, two main obligations were born, namely the obligation of the promissory seller to sell and the obligation of the promissory buyer to buy the residential unit.

In the event the promissory buyer does not observe its key obligation to sign the SPA, the promissory seller may either terminate the agreement and claim compensation (equivalent remedies), including starting enforcement procedure for any due, outstanding and payable amounts due under the contract (installments, etc.) or, provided that the conditions under the Civil Code are met, request in court the enforcement of the Pre-SPA by means of a court decision acknowledging transfer of ownership *in lieu* of a final sale purchase agreement.

2. The Relevant Civil Code Provisions

In addition to the general principle of Article 1279 of the Civil Code regarding the "promise to contract" (meaning any type of pre-agreement), the Civil Code includes specific rules under Article 1669 governing the "promise to sale".

Thus, the rules under Article 1669 of the Civil Code will be applicable to the Pre-SPA and the situation at hand:

> *"(1) When one of the signatory parties of a bilateral promise to sale refuses, without justification, to conclude the promised agreement, the other party may request the pronouncing of a court decision to stand in lieu of the agreement, provided that all other validity conditions are fulfilled; (2) The right of claim is time barred to a six months term as of the date when the agreement should have been concluded […]"*

According to Article 1669, the Pre-SPA may be enforced by requesting the court to pronounce a court decision standing *in lieu* of a SPA, provided the following cumulative conditions are met:

(i) the Seller is not in breach of the Pre-SPA; and

(ii) the Buyer refuses without justification to execute the SPA; and

(iii) the validity conditions for the SPA are met; and

(iv) the court claim must be filed with the competent court within six months as of the date when the SPA in question should have been signed.

3. The Courts' Practice

As a general note, with few exceptions under the competence of the High Court of Justice and Cassation, the court decisions issued are not binding against other courts and cases and do not amount as binding precedents.

Currently there is a general and relatively constant practice recognized by the courts in issuing court decisions in lieu of and SPA in favour of the promissory buyers. The legal provisions expressly indicate the right of any of the parties (seller or buyer) to seek remedy by applying Article 1669 of the Civil Code, nevertheless, we identified just few cases when promissory sellers filed court claims.

The High Court of Cassation and Justice held in Decision no. 23 of 3 April 2017 for resolving legal issues in civil matters stated that "for the interpretation and application of the provisions of Article 1279(3) first sentence and Article 1669(1) of the Civil Code, the authentic form is not mandatory at the conclusion of the sale-promise agreement of a real estate, in order to pronounce a decision to take the place of an authentic deed".

Nevertheless, it is generally acknowledged that the notarization of a deed has significant advantages in terms of contractual force and enforcement procedures. The authenticity of the document acknowledges the identity of the parties, the expression of their consent (both in relation to the content and to the signature and date of the agreement).

If the agreement is authenticated by the notary, the consent and content of the contract are considered and presumed checked and confirmed for compliance with the laws by the notary. Therefore, a promissory buyer may not be successful in filling a court claim.

Although the authentic character of the Pre-SPA does not automatically confer its enforceability, an authenticated deed is considered to be itself an "enforcement title", thus procedures regarding enforcement are simpler. In addition, the document authenticated by the notary public ascertaining a due, payable and liquid debt has the force of an executory title at the date of its due date.

We identified a large number of court decisions where the promissory buyer requested the court to pronounce a decision to stand *in lieu* of a final SPA. Conversely, court claims by promissory sellers against promissory buyers are rather limited, although permitted by law and practice.

A court will analyze on a case-by-case basis each specific claim and whether the conditions for admitting the claim are met for issuing a court decision in *lieu* of the SPA.

The High Court of Cassation and Justice stated in Decision no. 2411 of 24 November 2015 that, in addition to verifying the validity of the relevant pre-agreement, there is a need to verify the validity conditions of the sale purchase agreement. According to the decision, in all cases having as object the issuance of a court decision *in lieu* of a final sale purchase agreement, the court will have to assess in each case the validity conditions to be met for the SPA and whether the refusal to conclude the SPA is justified or not.

There are four contract validity conditions that would need to be examined: (a) the capacity to contract, (b) the consent, (c) a determined and legal object of the contract, and (d) a legal cause of the contract. Even though it is not a common commercial practice, the court can pronounce a decision without the purchase price being fully paid and thereafter the seller may request price payment based on SPA.

Starting from the assumption that (i) the Pre-SPA is concluded with the observance of the legal provisions, (ii) the promissory seller duly observed all its obligations under the Pre-SPA and (iii)

the validity conditions for executing the final SPA are met, in the event the promissory buyer unjustified refuses to execute the final sale agreement, the promissory seller is entitled to request the application of Article 1669 of the Civil Code.

We identified a verry few cases whereby the promissory seller requested the court to pronounce a decision acknowledging transfer of the ownership *in lieu* of final sale purchase agreement. Some of the promissory sellers' requests were admitted, as the promissory seller fulfilled all of its obligations and the promissory buyer has not paid the full price or the promissory-buyer's refusal to conclude the SPA was not justified when requested to extend the object of the sale with additional immovables that were not object of the initial agreement.

We also identified few court decisions issued in the past revealing the lower courts assessment on the justified reasons to refuse entering a SPA, such as the promissory-buyer's relocation in another country (the court ruled that the promissory seller did not prove that the buyer "unjustified refused" to sign the sale agreement as the promissory seller could not provide relevant notices, certifications of facts, etc. Moreover, the buyer acknowledged by sending an affidavit to the court that it does not oppose to the sale, thus a simple relocation should not constitute a reason for the court to reject promissory seller's claim) or a promissory-buyer's mental distress or very serious health condition. These seem to be very limited exceptions to the general practice of the courts in admitting to issue a court decision *in lieu* of the SPA.

However, we underline that these decisions refer strictly to cases where the conditions for signing the SPA were not fulfilled. Thus, in the event that all conditions are met, the court should admit to issue a court decision *in lieu* of a SPA.

In the past few years, there is a constant and large number of decisions pronounced in favor of the promissory buyer[8]. All such decisions were pronounced considering the provisions of Article 1669 Civil Code mentioned above, which applies to both parties, either the promissory seller or the promissory buyer. Consequently, the court practice identified in respect to the promissory buyer's claims, are applicable also to the promissory seller, based on the same article of the Civil Code.

4. Our Conclusions

- The Pre-SPA is a binding contract between the parties, obliging the parties to fully observe their undertakings. Should a party unjustified refuse to execute its obligations, the other party is entitled to request the enforcement and execution of the breaching party's undertakings, including by means of a court decision, in accordance with the legal provisions.
- As per the provisions of the Civil Code, the promissory seller is entitled by law to seek such a remedy considering the binding nature of the contract, provided that the Civil Code's cumulative conditions for allowing a promissory seller to seek a court decision transferring the title over a real estate asset in lieu of a final SPA are met.
- **In the period 2023-2024, we have noticed (from inquiring public-available sources) a coherent, material, certain and clear new trend in court practice in the sense that the volume of cases in which courts are asked to issue a court decision in lieu of an SPA has significantly increased. This legal opinion is meant to reflect this update and new emerging trend in court practices**.

[8] Decision no. 1318 of 25 October 2024, Bucharest Tribunal;
Decision no. 521 of 3 April 2024, Brașov Court of Appeal;
Decision no. 239 of 07 June 2024, Blaj First Court of Justice;
Decision no. 834 of 30 April 2024, Arges Tribunal;
Decision no. 46 of 5 January 2023, Oradea First Court of Justice;
Decision no. 2306 of 4 July 2023, Turda First Court of Justice;
Decision no. 5 of 11 January 2022, Beclean First Court of Justice.

This Opinion is issued subject to the limitations provided in Annex 1 herein below.

This Opinion was issued today, 24 April 2025 by,

BIRIS GORAN SPARL

_____

By: Sorin Aungurenci, Partner

Annex 1

Limitations

For the avoidance of doubt, this Opinion is subject to the following limitations:

(a) this Opinion relates to matters of Romanian law exclusively and we have not independently verified any statements or matters of facts. This Opinion is strictly limited to the matters stated in it and may not be read as extending by implication to any matters not specifically referred to in it, and the Opinion is subject to general principles of materiality, reasonableness, good faith and fair dealing;

(b) this Opinion is rendered as of the date indicated herein and we express no opinion regarding future changes or interpretations or retroactive application of any law or regulation, and we have no duty to update the Opinion in this regard;

(c) the obligations of a party to an agreement, to the extent that Romanian law is applicable thereto, are subject to and limited by rules of force majeure, good faith, abuse of law, lesion, unforeseen circumstances and other defenses afforded by Romanian law to obligors generally. In addition, the documents may be held to be null and void if they were caused, obtained or affected by fraud, mistake, misrepresentation, undue influence, duress, or a violation of a principle of public policy or morality. In addition, the enforcement of the documents is subject to prescription or limitation periods or may be or become subject to defenses of set-off or counterclaim;

(d) this Opinion concerns only the laws of Romania in force on and as at the date hereof and published in the Official Gazette of Romania;

(e) enforcing rights in Romania requires a creditor to act reasonably and take diligent steps to protect its interests;

(f) immediately prior to, and at the moment of execution of the documents and at the moment of the proper recording within the relevant competent authorities the parties had or shall have full right and title to all the rights and have the right to dispose of these rights purported to be transferred thereunder, free and clear of any charge, encumbrance, pledge, lien, security interest, attachment or similar restriction of any kind;

(g) the enforcement of any of the documents, may be limited by applicable bankruptcy, judicial reorganization, insolvency, or other similar laws relating to or affecting the enforcement of creditor's rights generally (e.g. priority, currency or value of claims);

(h) Romania is a civil law jurisdiction where judicial precedent is not binding on the courts and few decisions other than the Supreme Court of Romania are published. In addition, the legal environment for modern commercial transactions is still developing in Romania and thus many laws continue to be unclear and sometimes contradictory. In common with other emerging markets, the exercise of administrative discretion and judicial decisions in the Romanian courts may result in decisions or circumstances that are inconsistent with decisions that may reasonably have been expected to have been made, and may not be rendered on an objective basis for a variety of reasons. In addition, enforcement of security or judgments can experience delays and incur enforcement costs beyond those reasonably envisaged in more developed jurisdictions;

(i) This Opinion is governed by and shall be construed in accordance with the laws of Romania. Our liability under this Opinion is governed by the terms of our legal services agreement concluded on 16 February 2016 and assigned to H&S West Properties as Client.

נספח ג'- ציטוטים

וילאר אינטרנשיונל בע"מ

P1582754-00.pdf

הכנסות מפיתוח והקמה של נדל"ן ביזום בישראל וברומניה

החברה פועלת בתחום נדל"ן ביזום להקמה ומכירה של דירות מגורים בישראל וברומניה. במועד ההתקשרות בחוזה עם לקוח, החברה מזהה את יחידות הדיור או המשרדים כמחוייבויות ביצוע.

בקשר עם פעילות החברה בתחום הנדל"ן היזמי בישראל וברומניה, החברה הגיעה למסקנה על סמך חוזי המכירה שלה עם לקוחות בתחום הנדל"ן היזמי בישראל וברומניה, ועל סמך הוראות החוק והרגולציה הרלוונטיות, ובהתאם לחוות דעת משפטיות שהתקבלו, שכאשר החברה מתקשרת בחוזה למכירת דירות מגורים בישראל וברומניה, לא נוצר נכס עם שימוש אלטרנטיבי לחברה, וכן קיימת לה זכות לתשלום הניתנת לאכיפה עבור ביצועים שהושלמו עד לאותו מועד. בנסיבות הללו, החברה מכירה בהכנסה לאורך זמן.

ONE UNITED PROPERTIES S.A

2023-annual-report.pdf

Determining the timing of revenue recognition on the sale of property

The Group has evaluated the timing of revenue recognition on the sale of property based on an analysis of the rights and obligations under the terms of the contract.
The Group has generally concluded that contracts relating to the sale of completed property are recognised at a point in time when control transfers. For unconditional exchanges of contracts, control is generally expected to transfer to the customer together with the legal title. For conditional exchanges, this is expected to take place when all the significant conditions are satisfied.

For contracts relating to the sale of property under development, the Group has generally concluded that the overtime criteria are met and, therefore, recognises revenue over time. The Group's performance does not create an asset with alternative use to the Group. Furthermore, the Group has generally an enforceable right to payment for performance completed to date. It has considered the factors that indicate that it is restricted (contractually or practically) from readily directing the property under development for another use during its development.

In making this determination, the Group has considered the contractual terms as well as any legislation or legal precedent that could supplement or override those contractual terms.

The Group has determined that the input method is the best method for measuring progress for these contracts because there is a direct relationship between the costs incurred by the Group and the transfer of goods and services to the customer.