

Moldova: LTT – Assistance with Amendment of Housing Codes Regulating Private Sector Housing Associations of Apartment Owners

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Comparative Analysis of Housing Legislation of Czech and Slovak Republic, Romania, Lithuania and Moldova

REPORT

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This document provides summary of comparative analysis of Housing Legislation in Czech Republic, Slovak Republic, Romania Lithuania and Moldova. Brief review of laws in Russian Federation, Kazakhstan and in Tajikistan is also provided. The analysis was performed for laws currently in force in all countries. This report includes comparison of the important attributes of each law and attempts to provide basis for development of Amendment to the Law on Condominium in Moldova

TABLE OF CONTENT

1. INTRODUCTION	7
2. COMPARATIVE ANALYSIS RESULTS	7
2.1 Legislation Assessed	8
2.2 Definitions	10
2.3 Registration of Ownership	10
2.3.1 Apartment Units	10
2.3.2 Ownership of Common Property	11
2.3.3 Definition of Ownership	13
2.4 Establishment of Home Owners Association (HOA)	14
2.5 Building Management	18
2.5.1 Building Management by Home Owners Association (HOA)	18
2.5.2 Building Management by a Housing Management Entity	20
2.6 Lien on Property	23
2.7 Decision Making Process	24
2.8 Fund for maintenance and repairs	26
3. BRIEF REVIEW OF HOUSING LEGISLATION IN OTHER COUNTRIES	30
3.1 Legislation Reviewed	30
3.2 Ownership Registration	31
3.3 Establishing HOA for Building Management	31
3.4 Building Management by Manager	32
3.5 Maintenance Fund	32
3.6 Definition of Share of Common Property	33
3.7 Lien on Property	33
3.8 Decision Making Quorum	34
3.9 Voting by Proxy	34
3.10 Rights and Responsibilities of Owners	35
4. CONCLUSIONS AND RECOMMENDATIONS	35

TERMS AND ABBREVIATIONS

Review of legal documents in total of eight countries involved translation to and from several languages and comparison of names and definitions applied in these documents. These names and definitions describing “the same item” were by no means identical and comparison created confusion. For the purpose of this Comparative analysis, the following main terms and their abbreviations were used.

Abbreviation	Term or Name	Notes
LC	Law on Condominium	The reviewed law were named differently (“On apartment ownership”, “On establishment, organization and operation of homeowners associations”, “On home - owners associations in multi-apartment houses”, “Condominium for housing stock”.
HOA	Home Owners Association	Organization established for the purpose of management (maintenance, repairs, reconstruction and related activities) of multi-apartment building with minimum number of owners defined by specific laws. HOA has status and is registered as legal, non-profit, non-commercial entity, and has its defined structure, rights and responsibilities. Other terms used: “Apartment owners association”, Association of apartment owners, Condominium associations”, etc.
IP	Isolated Premises	Romanian (Moldova) uses this term for describing the particular spaces in the building - apartments, other living spaces, rooms or other non-residential premises located in the residential buildings, which can be registered as separate real estate property as regulated by legislation. This term is also used for cadastral registration. Other terms used: “Individual property” (RO), “Units” (LT), “Apartments and non-residential spaces”(SK, CZ).
	Building administration	Several terms that relate to building administration and the function of administrator are used in reviewed countries. The terms “Building Administration”, “Building Management” or Administrator of Manager are equivalent. Administration (or management) includes all tasks that are required for technical task such as operation, maintenance, repairs, refurbishment of the building and proper care of the land. It also includes administrative (office work) tasks, financial tasks (banking, collection), legal (contractingaa0 and commercial (negotiating).

EXECUTIVE SUMMARY

This document provides summary of the comparative analysis of the housing legislation governing the ownership relations of apartments and non-residential¹ premises in residential buildings in the **Czech Republic, Slovak Republic, Lithuania, Romania and Moldova**. Brief summary of main issues in housing legislation in **Russian Federation, Kazakhstan, and in Tajikistan** is also provided for enhancing the view of applied practices in each significant issue.

In Czech and in Slovak Republics, Lithuania, Romania and in Moldova, as well as in other countries of the Eastern Europe and in CIS, one of the outcomes of the political changes in 1989 was a need to address the issue of ownership of the housing stock, which, at that time was mostly owned by the state. Despite the fact that the operation and maintenance of the housing stock was highly subsidized, the conditions of the housing were substantially deteriorating. For this reason, in 1991 state governments initiated the first privatization phase and transferred free of charge the ownership of apartment buildings from states to municipalities. In addition, the Czech and Slovak Republics have moved to the gradual deregulation of rent, which was addressed differently in both countries. The rent deregulation was completed in 2012 in Czech Republic

The timely introduction of the relatively well crafted housing legislation in Slovakia provided enabling legal environment for housing privatization, which resulted in privatization of more than 95% of the apartment housing. The legal standard for ownership of housing and non-residential areas (Act no. 182/1993) provided the opportunity to the original tenants to request the transfer of ownership of an apartment at reduced prices established by the law. If requested by the tenant, the municipalities had a legal obligation to transfer ownership of the apartment within two years.

The obligation to transfer the property to the tenants was not originally established in the Czech Republic (Act no. 72/1994 Coll. Z.)². Instead, apartments were sold to the tenants, for the price that was determined on the basis of expert estimates, which often resulted in a less attractive purchase price to the tenants. This is one of the reasons why a substantial part of the housing stock, more than 20% to date, has not privatized and remains in ownership municipalities, who constantly struggle with lack of funds for the maintenance and reconstruction of the buildings. It is expected that this problem will be solved in the Czech Republic this year, when completed rent deregulation will start to have its impact.

In Lithuania, privatization of housing was launched in 1991 as an integral part of the Lithuania's economic reforms. The first act establishing the privatization process was the "Law of the Republic of Lithuania on the Privatization of Apartments" as published in Official Gazette in 1991, under No 17-449 and amended during the 1992-1996. This law establishes the procedure of purchase and sale of the state and public housing fund, defines which public housing fund may be sold and who is entitled to purchase them. This law did not regulate the issues of management of the building or the relations among the owners.

The Housing sector is regulated by a complex set of laws that include General Housing Regulations, (Constitution, Civil Code) Legal Framework on Owner-Occupied Housing (Law on Real Estate Register, Law on Homeowners Associations, Law on Provision of Social Housing), Legal Framework for Rental Housing (Civil Code, Governmental Regulations) and Legislation regulating financial aspects of the housing (Law on establishment of Mortgage Institutions, Law

¹ Non-residential units/space may be retail shops, offices, etc. Owners of such non-residential spaces have the same rights and responsibilities as owners of apartments and their ownership has to also be registered, including the share of the common property

² This Act expires in 2012 and will be replaced by the amended Civil Code

on Real Estate Taxes, Governmental Resolution on Housing Credit Foundation, State Programme “DWELLING”).

In Slovakia, Czech Republic and in Lithuania, the tenants of the individual apartments who became owners through the privatization process assumed the responsibility for their assets. Owners in all three countries in majority now fully understand that their buildings (and by extension, the housing stock) requires substantial financial resources for ensuring safety of the residents, improving comfort inside the apartment at least to the level required by norms, and improving energy efficiency, thus reducing the cost of energy for each household. While the financial resources of the owners are still limited, the owners strive to properly maintain their houses. In all three countries, law stipulates responsibility of owners to contribute their respective share of financial resources for repair and maintenance of the building.

The **Czech and Slovak law** further stipulates that financial transactions are only allowed through the bank account and only based on contractual relations with service suppliers and other partners.

The right to impose a lien on property registered in the registry of immovable property was included even in the first version of the Slovak law. This created an enforcement mechanism for payment to the maintenance fund, which in turn made the fund acceptable to the banks for securing the HOA loan for building reconstruction. However this enforcement mechanism became very effective only after introduction of law on voluntary auction³. This law allows effective and timely execution of a lien without need to follow the lengthy court proceedings, which in some cases may take up to several years. Law on voluntary auction facilitates application of much faster, outside of court process, allowing execution of auction against the non-payer only with approval of simple majority of condominium unit owners. Slovakia is the only country among transformation countries which provides such tool for payment enforcement, similarly to many other Western countries. It is important to note that the availability of such payment enforcement tool in Slovakia was to the best knowledge of the authors not used and serves as an excellent preventive mechanism.

Romanian Law on establishment, organization and operation of HOA⁴ is in many aspects also similar to the laws in other reviewed countries. However, it may not be the best example to follow for amendment of the Moldova law in several important aspects, as many of these issues are dealt with by other legislation because of certain deficiencies. Among important issues, the law does not sufficiently stipulate the registration of ownership of the share of the common property together with the registration of the individual property (apartment or non-residential spaces), does not properly establish the relation of the HOA to the land on which the building is located, and does not stipulate the accountability of HOA for its liabilities, or responsibilities of owners for liabilities by HOA. The law also does not provide for effective mechanism for enforcement of regular payments to the maintenance fund by the owners.

In **Moldova** similarly to **Lithuania law** on privatization of housing was adopted in the earlier stage in 1993. This law determined the conditions of privatization, including prices for the apartments. The common assets (structure, spaces and utilities) remained in the ownership of the state or state institutions, and the condominium type ownership was not applied. The shares of common property were not assigned or registered. The apartment owners were responsible for contributing to the maintenance fund in a proportion to the apartment floor area.

The Law on Condominiums that governs the housing stock now was adopted by the **Republic of Moldova** in 2000. The structure of this law is significantly different from the laws in the **Czech or Slovak Republics** and also in **Lithuania**. The name of the law (Law on Condominium) already suggests the differences with the laws of the other three countries, where the main instrument for management of the buildings are Home Owners Associations (HOA) and/or administrators. The concept “Condominium” means a form of ownership of multi-apartment

³ Law 527/2002 on voluntary auctions, and as amended

⁴ Law 230/2007 on establishment, organization and operation of homeowners association

building, in which the owners of individual apartments and non-residential spaces had registered ownership of share of the common parts of the building. From the Law of **Republic of Moldova**, this concept is not clear: “condominium” is understood as a “building” or a “complex of apartment buildings” where individual units are owned by their residents. This is not consistent with international best practice and leads to further confusions in the Law with respect to residents’ ownership rights and management of the building and its parts held in joint ownership by the residents.

The differences between the actual situation in housing sector in **Moldova** and the content of the law indicates that the issue of housing property ownership and transfer was done prior to introduction of this law, and several important issues remain unanswered, including 1) registration of shares in common areas⁵, 2) establishment of owner associations, and 3) building operation and maintenance. Further, the law does not provide conditions for an owner’s responsibility for their own property and building management is done according to the previous practices by the municipal management company (known as a “Zhek”).

Improvements to the Law on Condominium must include amending existing Articles and introducing new Articles to establish clear ownership of the jointly owned common space and increase the transparency for administration and maintenance of the common property

The relations among the owners were stipulated by **Moldova Law** on associations in apartment buildings from 1995. This Law established the association as a legal entity for management of the building, and established the association’s body. It did not establish the statutory responsibility for operations of the association or mandatory creation of the maintenance and repair fund. Resolution of non-payments was left for the court decision. Significant change was introduced only in 2000 by new Civil Code which introduced main rights and responsibilities of owners. In 2000 was also adopted the Law on condominium in housing⁶ introduced significant changes in definitions, ability of building management by the associations of owners, by building manager, or management based on contract. This law also establishes the responsibility of payments to the repair and maintenance fund, voting quorum, and rights and responsibilities of the association members. However, this law does not provide for important issues such as payment enforcement to the maintenance Fund, establishment and protection of fund separately for each building, proper registration of share in common property of each owner.

It is necessary to implement several organizational and technical changes to achieve trend in Moldova similar to the other countries with more progressive legislation. It is absolutely necessary for the apartment owners to realize that they are responsible for reconstruction, operation and maintenance of their own assets.

This requires definition of responsibility for maintenance of the assets (building), which has been successfully addressed in the **Czech and Slovak Republics** and in **Lithuania** (as well as in other countries) through home owners associations or by contract with a qualified maintenance organization.

The rights and responsibilities, as well as the structure of the home owner’s association and all individual owners (members) must be clearly defined by the law to ensure transparency, and accountability. The law must address and adopt the following principles:

1. Clear definition of ownership of common space in multi-apartment buildings, including direct ownership of apartment and/or non-residential spaces and corresponding share of the building’s common spaces and land. The share of the ownership of common property must be properly registered together with the apartment ownership registration. Government of Moldova should introduce a program assisting the existing apartment owners in condominiums to

⁵ in fact, the common areas have not been transferred to the apartment owners

⁶ Law 913/2000 on Condominium in housing

properly register the shares of the common property through time-limited (1-2 years) assistance that may include, for example, waiving the registration fee, development of forms, calculation methodology of the ownership shares. It would also be constructive if Government of **Moldova** introduces legislative requirement on the banking sector to require proper registration of shares of common ownership as a condition for the loan to condominiums. Mandatory requirement to establish and maintain repair and maintenance fund separately for each building, to which the apartment owners contribute on monthly basis. This fund is separate from payment for services and the resources are used for both minor maintenance and major reconstruction.

2. Management and decision making regarding the financial resources and bank account of the building maintenance must be organized separately for each building. The individual approach to manage buildings, financial resources, and bank accounts is considered the basis for transparent utilization and control of resources provided by the owners.

3. Direct involvement of apartment owners in the decision making process for maintenance and reconstruction of their own building is necessary for the implementation of energy efficiency improvements. Transferring financial resources among buildings creates apathy and loss of interest by the apartment owners, which results in lower willingness to contribute to the maintenance fund.

4. Implement intensive process of education of apartment owners. Substantial role in improvement of the building stock reconstruction and maintenance plays the education of owners. Intensive training of the apartment owners should be done by the members of association's management, or by maintenance organizations experts, or by non-profit organizations, and also by media and by state institutions

5. The Law must include clause that allows enforcement of mandatory payment and payment of arrears from the apartment owners through possibility to execute liens or other means to guarantee payments. The ability to enforce payments by the owners is very important in case where larger reconstructions require bank loan which requires repayment guarantees. Repayment of the loan may then be guaranteed by the maintenance fund to which every owner must contribute⁷.

6. Initial government support during the transition period. Assistance by State is a very important transition bridge, alleviating the resistance of the apartment owners to guarantee the loan through a lien on their apartment. In **Slovakia**, the state run Slovak Lending and Development Bank assisted with the introduction of loan financing for residential housing reconstruction and improvement of energy efficiency by providing loan guaranties for a small fee derived as a percentage of the loan. Such assistance by the Government allowed home owners to take a loan without mortgaging their apartment. This approach had an extremely positive impact on expansion of residential housing refurbishment through bank loan financing.

⁷ Loan guarantee by the maintenance fund is widely used in Slovakia.

1. INTRODUCTION

High energy consumption in Moldova's residential housing sector is a significant burden on public finances, mostly because energy prices are highly subsidized. The process of removing energy subsidies will gradually shift the cost burden to consumers and households. Increasing current household energy consumption from 129 kWh/m² to 179 kWh/m² to achieve full thermal comfort is not sustainable increase in energy demand, as confirmed by developments in other Eastern European countries (including the Czech Republic, the Slovak Republic, Romania, and in Lithuania). These countries adopted legislative acts and pricing policies that have resulted in a process of significant energy efficiency improvements and a commensurate reduction in energy consumption.

Energy consumption reductions in households of 35-50% have been achieved through installation of weatherization, heat supply regulation systems, and other energy saving measures in the Czech Republic, the Slovak Republic, in Lithuania and in other Eastern European countries. The penetration of energy efficiency improvements in these countries will increase, from approximately 40% of the housing stock today, based on expert analyses, to almost 100% of the housing stock in the next 10 years. According to the National Energy Efficiency Action Plan⁸, it is expected that the energy savings in residential buildings by 2015 reach 10% and 20-30% by year 2020. These savings however are subject to availability of funds (through available financial facilities, e.g., enforcement of minimum energy efficiency standards and establishment of enabling legal environment. The improvement in energy efficiency and other general repairs was mainly privately funded by the apartment owners through funds created for repairs and maintenance, and by bank loans. States (central governments) provided partial support to the housing reconstruction process by subsidizing the rectification of faults in panel building construction that were caused during the design stage by inexperience with the then new panel construction technology. State involvement in the implementation of energy efficiency measures has been mainly through the support of low cost loans, in order to ease the transition to decreasing energy price subsidies.

As with other countries in Central and Eastern Europe, Moldova's current energy subsidies will need to be eliminated and energy prices will need to conform with those international energy markets, as exemplified in Slovakia last year, where the electricity and gas prices are now determined for households by market.

The experience of other Central and Eastern European countries over the last two decades shows that an enabling legal environment and sensibly designed government programs that provide incentives and start up conditions are fundamental for improving the technical conditions and energy efficiency of the residential housing stock. This comparative assessment of laws governing the housing sector in the Czech and Slovak Republics, Romania and in Lithuania identifies the elements in the housing laws that provided sizable improvements in the residential housing stock over the past two decades in order to provide a basis for similar reforms in Moldova.

2. COMPARATIVE ANALYSIS RESULTS

The comparative analysis provided in this document is organized by subject addressed, rather than by the specific articles of the assessed laws. The main two reasons are that a) the four assessed legislations have different structures and b) to clearly identify the issues that need to be addressed in amendments to the Moldova housing law.

⁸ National Energy Efficiency Action Plan for 2013-2015, adopted on 7th February 2013 by government decision No 113

One of the issues to be addressed in comparison of laws originally written in different languages is the translation of definitions and names⁹. In this work, legal documents needed to be translated from/to and between Czech, Slovak, Lithuanian, Romanian and English languages, which besides being an intensive effort, it caused many difficulties with proper selection of used terms. For the purpose of this analysis, the terms listed in the abbreviation table are used. The name of the organization of owners of apartments and non-residential spaces used is “Home Owners Association (HOA)”; “Isolated premises” means apartment, living spaces, rooms or other non-residential premises (in Romania - individual property) located in residential buildings, which can be registered as separate real estate property as regulated by legislation. This term is used for cadastral registration, so it is appropriate to use the same notion/definition.

2.1 Legislation Assessed

The housing legislation and its current structure in each of the considered country is different and its development was heavily influenced by several factors, including the privatization process in each country, priorities set by the legislative bodies and also by the overall situation in residential housing stock at the time of initial privatization of apartment houses. Comparative analysis of the housing legislation is based on the laws provided in the Exhibit 1, which lists only the basic housing laws reviewed. Complete list of legislative governing the housing sector in Moldova is provided in Annex 1.

Exhibit 1: Basic Housing laws

Country	Legislation
CZ	Law Nr. 72/1994 on Apartment Ownership Law Nr. 89/2012 New Civil Code, in force from 1. 1. 2014
SK	Law Nr. 183/1993 on Apartment Ownership
RO	Law Nr. 230/2007 on establishment, organization and operation of homeowners associations
LT	1. Law Nr. I-1374/ 1991 on privatization of apartments 2. Law Nr. 798. Home-owners Association in multi-apartment house 3. Law Nr. VIII-1864/2000 Civil Code 4. Law Nr. VIII-1741/2000 Home-owners Associations in multi-apartment houses
MD	1. Law Nr. 1324 /1993 on privatization of housing stock 2. Law Nr. 913-XIV/ 2000 Condominium for the housing stock

Czech Republic

The analysis included the Civil Code of Czech Republic which will be in force as of 1.2. 2014. It will replace the current Law on apartment ownership 72/1994 and as amended. This law acts as a “Lex specialis”¹⁰ to the Civil Code and to other legislative relevant to the immovable property.

The current law also includes the rules for privatization of the housing fund, which allowed resolving the issue of common property of the owners of apartments and non-residential property. However this law did not allow (except for the housing cooperatives) such wide privatization of housing such as in Slovakia, mainly due to high prices and missing requirement of property transfer onto tenants.

Slovakia

⁹ Such as “Association of Property Co-owners”, “Association of home owners”, “Apartment owners association

¹⁰ The doctrine states that where two laws govern the same factual situation, a law governing a specific subject matter (*lex specialis*) overrides a law which only governs general matters (*lex generalis*).

The Law on ownership of apartment and non-residential spaces No 183/1993 and as amended serves as “Lex specialis” to other civil norms which regulate the relations of ownership of apartments and non-residential spaces. About one half of the law regulates the relations associated with the ownership of apartments and non-residential property, rights and responsibilities of owners for management of the common parts of the building and other common property. The second half of the law establishes the rules for privatization of the housing fund. This combination allowed resolution of issues of management of the common property of the owners of apartments and non-residential property together with the privatization of their apartments and non-residential spaces.

Romania

The Law on establishment, organization and operation of homeowners associations No 230/2007 regulates the legal, economic and technical issues related to the establishment, organization and operation of homeowners associations and the administration and operation of residential buildings owned by at least 3 natural or legal person, public or private law, including those who own in the building non –residential spaces. In many aspects, law is similar to the laws in other compared countries. However it does not provide for properly establishing the property registration, or establishing legal basis for responsibilities for liability the relation of the HOA, to the land on which the building is located, and does not stipulate the accountability of HOA for its liabilities, or responsibilities of owners for liabilities by HOA. The law also does not provide mechanism for enforcement of regular payments to the maintenance fund by the owners.

Lithuania

Law on Home Owners Associations in apartment buildings from 20th June 2000 and as amended in 2001 stipulates the relations among the owners of apartments and non-residential spaces, their rights and responsibilities related to the management of common spaces in the building, and rules and processes for the management of the common property. Previous law from 1995 was enacted only after the privatization of housing stock (1991) and it did not solve the common property management together with the privatization of apartments and non-residential spaces.

Moldova

Law on Condominium in apartment buildings from 30 March 2000¹¹ stipulates relations among the owners of apartments and non-residential spaces and their rights and responsibilities for management of common spaces of the building, and rules and processes for the management of the common property. This law was enacted after the privatization of housing (1993) and it did not solve the common property management together with the privatization of the apartments and non-residential spaces. In comparison with the laws in other reviewed countries, it is unnecessarily extensive; it is allowing intervention of local self-government into the relations among the owners and makes differences between the individual groups of apartment owners and owners of non-residential spaces.

Allowing intervention of local self-government into an affairs that should be strictly among the owners of condominium units in the building and differentiating between the type of owners is not in line with best practices. Such approach does not establish direct responsibility of owners for their own property, which is essential for proper administration of the condominium.

This inefficiency of the law is caused by the inadequate regulation of registration of ownership and inadequate stipulation of administration and maintenance responsibilities, (such as form of administration, establishment of maintenance fund, payment enforcement, etc.) as compared to other countries,

¹¹ Complete list of Moldova legislation governing the housing sector is provided in Annex 1

2.2 Definitions

The definitions of terms used by the legislation are important for clear understanding and interpretation of the subject issues and unclear definition may cause confusion and misinterpretation. The definitions of terms in the Czech, Slovak and Lithuanian laws are identical or very similar and are presented in clear and simple way. Defined are terms such as “apartment, building, non-residential property, building with apartments and non-residential spaces, common spaces of building, unit (apartment or non-residential space), floor area of apartment and non-residential spaces, share of ownership of the common parts of the building, etc.”

Definitions provided in Romanian law are covering the wording used in the document. In general attempt to use a wide definition of issue, and the definition of unnecessary terms (such as definition of agreement on HOA, contribution rate, certificate, etc.) For this reason, the clarity of certain definition is reduced. For example wide definition of the common ownership (Instead of specifying common ownership of building parts and common ownership of land) may lead to many interpretations. This report provides recommendations for definition and content of these concepts. Most of the definition terms are similar to the other laws.

In Moldova legislation, the definitions of terms are also similar, with exception of definition of “Condominium”. While the term “Condominium” was understood by other laws as a form of ownership of multi-apartment building, in which the owners of individual apartments and non-residential spaces had registered ownership of share of the common parts of the building, from the Law of Republic of Moldova, the “condominium” can be understood as “building” or “complex of buildings” with apartments in an ownership by their residents. This definition is incorrect and will be subject to change.

2.3 Registration of Ownership

2.3.1 Apartment Units

Registration of ownership of apartment units is the fundamental administrative step necessary for establishing the relation to real property and for determining the rights and responsibilities of the owners of such property. Registration of ownership of apartment units is required in each of the considered country, with some differences as described below.

In **Czech Republic**, the ownership rights are recorded in the “Cadastre” (public registry of properties). In the case where the building has a single owner, registration is made by the building owner. In the case where the apartments and/or non-residential¹² units in the building are owned by different individuals, registration of ownership of their respective units is made by all individual owners. Registered is direct ownership of the apartment and also the share of the common property in the building.

In **Slovak Republic**, the ownership rights are registered in Land Register (“Cadaster”). A division of building into individual units can be done if ownership of at least one unit in the building is transferred to another owner¹³. In case of a new construction of the building by multiple builders who will have joint ownership of the house after the final approval of occupancy permit, registration is also done for each respective owner, similarly to the process in the Czech Republic.

In **Romania**, the registration of ownership of the individual property is not stipulated by the law 230/2007, and it is addressed by the Civil Code.

¹² Non-residential units/space may be retail shops, offices, etc. Owners of such non-residential spaces have the same rights and responsibilities as owners of apartments and their ownership has to also be registered.

¹³ This was typically the case at the beginning of privatization process

In **Lithuania**, the requirements for registration of ownership are established by the Civil Code¹⁴. Ownership of the apartment unit or residential house must be registered in Public Real Property Register.

The **Moldova Law** also stipulates that there must be at least two owners for executing the division of building into condominium units (Article 4, point. A). The Moldova law allows also privatization of individual rooms in the apartment (Article 7). Registration can be done for apartments or individual rooms in apartments. The shares of the common property are not subject to registration¹⁵. The non-residential spaces (such as first floor stores or services) were not included in the calculations, which may require substantial effort of re-registration of the ownership rights of the privatized apartments.

2.3.2 Ownership of Common Property

Ownership of common property in the multi-apartment residential building, share allocation and proper registration is one of the most important issues that have significant impact on building operation, maintenance and reconstruction.

Common property definition

The **Czech, Slovak, Romanian** and **Lithuanian** legislation define the common property in the buildings in very similar manner, with small differences in listing actual items. In general, the common property of the owners of units is considered as the property which is essential for the maintenance and security of the building and facilities serving only the building where their units are located and the land on which the building stands. This includes structures, (walls, roofs, exterior, main doors, etc.), utilities (water, sewage, gas, water, TV antennas, etc.) and common spaces (stairways, hallways, attics, basements, cellars, etc.). In addition, Slovak law considers also adjacent land on which systems and equipment are located that are not part of the building itself, but serves solely the specific building (such as a fenced yard, fenced garden sheds, other outbuildings, and fencing). In all four countries, common property also includes water and energy distribution, and possibly also the boiler house that serves the building.

Common property allocation

The legislation of all three countries – **Czech** (article 8-2), **Slovak** (article 5b) and **Lithuania** (article 4-1) , the share of ownership of the common property that includes structures, utilities and common spaces, are allocated to the owners based on the ratio of floor area they own to the cumulative floor area of the entire building.

Slovak legislation also stipulates that the share of ownership of adjacent land can be allocated differently (not in a proportion of the floor area of the apartment or non-residential space to the total floor area of the building) by agreement between the owners of the apartments or non-residential spaces and the owner of the building (article 5e)

The **Romanian law** Nr. 230/2007 on establishment, organization and operation of homeowners' association defines in article 3e) that the share of the common property is determined by ratio of the individual property (apartment or non-residential space) and the total area of the all properties in the building.

In **Lithuania**, use and responsibilities of apartment owners are also established by the Civil Code¹⁶. Civil Code defines share of common property and the share of common land as a ratio of the floor area of the apartment or non-residential spaces to the total floor area of the building.

The **Moldova Law** on Condominium stipulates (Articles 8 and 9) that the common property to be transferred to the owners of units within 30 days from the date when the owners form an

¹⁴ Civil Code Article 6.393, 6. 398

¹⁵ Article 404 and 405 of the law on cadaster stipulates registry of new buildings. It does not mention registration of existing buildings.

¹⁶ Civil Code, Article 4.72, 4.73 and 4.82

association of owners, and that local authorities determine the boundaries and the size of the condominium plot adjacent to the building. Law does not stipulates the common property ownership issue in the buildings without formed home owners association and the responsibility for administering the common property is not clear.

The wording of Article 5 and 6 in Moldovan Law suggests that the common property of the owners of units (apartments) could be quite large and may include adjacent lands within the boundaries established for condominium building, green elements and other objects designed to serve the real estate belonging to the condominium). On the other hand, utility distribution systems, such as for water and sanitation are not jointly owned by the owners of units (Article 4 paragraph. 1 section A of the Moldovan law). Such an arrangement does not provide for clear responsibility for maintenance, repair or replacement of the systems inside the building.

Best international practice suggests that common parts should include the areas inside and outside the building needed for the purpose of serving (solely) the functions/normal operation of systems of that particular building and its residents. Additional property, such as sidewalks, parking space etc. adds to the cost of maintenance and is counterproductive to the building maintenance effort and should be avoided

In Moldova, it appears that the ownership of common property to the apartment owners has not yet been resolved completely.

Common property registration

In **Czech** and **Slovak** legislation, the common property registration in the Registry of Immovable Property (Cadastré) is required as part of the registration of ownership of the apartment or non-residential premises in the building. The article 5b of the Slovak Law requires that the definition and description of the share of common property is part of the application for registration in Cadastré. Identically, article 6d of the Czech Law also requires that the share of the common property must be part of the application of registration of the property in Cadastré.

In **Romania**, the registration of ownership of the share of the common property together with the individual property is not stipulated by the law 230/2007, and it is addressed by the Civil Code. Law on establishment, organization and operation of homeowners associations requires that the definition of share of common property of each owner must be part of the agreement on establishing the HOA, which is part of the required documents for application to receive status of legal entity issued by the financial authority having jurisdiction over the territory where the building is located. The legal entity status must be approved by the court. This is not a good practice because the share of an owner in common property should not be subject to registration of a HOA. Share in ownership of common property is part of the ownership of the apartment or the non-residential space, and not part of the form of association of owners. Further, this share can change over time, while the home owners association is established for the life of the buildings or until it can be dissolved according to the conditions set by the law.

The **Lithuanian** legislation requires registration of share of common property in a public register, and each contract must be notary certified¹⁷. The Law on HOA stipulates that the use of the common property is determined by agreement of owners. In case of a special use of a specific part of the common property or its shares, agreement can be registered in the registry of immovable property and such agreement will be part of property transfer in the future. Please draw a conclusion. Registration requirements for the share of common property are similar to requirements by **Czech** and **Slovak** legislation and provide sufficient definition of shared ownership. Housing legislation in **Moldova** does not stipulate registration of the shares of common property together with the registration of the apartment unit or non-residential unit. Common property shares are not registered and non-residential spaces (such as stores on the ground floor) are not included in the floor space of the building from which the individual shares

¹⁷ Civil Code, article 4.81

are calculated. Exhibit 2 summarizes the registration requirements of common property ownership in reviewed countries.

Exhibit 2: Common Property Ownership Registration

Category	Country	Comparison	Recommendation
Common Property Ownership Registration	CZ	Required as part of the registration of ownership of the apartment or non-residential premises in building	Registration of shares of common property is recommended.
	SK	Required as part of the registration of ownership of the apartment or non-residential premises in building	
	RO	Registration of shares of common property is not stipulated by the Law. Share of the common property must be part of the HOA agreement for all owners	Administrative instruction (law is not required) for timeframe for implementing the registration may be required due to excessive workload at the Registry.
	LT	Registration of shares of common property is not stipulated by the Law. Special arrangement of utilization of common spaces could be registered	
	MD	Law does not stipulate registration of common property share.	

Another difference is in the place of registration. In Czech and Slovakia the association is registered in the state Registry of immovable property (Land Register), in Moldova – at the Registration Chamber of the Ministry of Justice

Registration of ownership of immovable property, including ownership of apartments, non-residential spaces and shares of the common property in Land Register (Cadastre Authority) provides additional benefit as a source of information for tax purposes.

It is recommended that Moldova law is amended to 1) require registration of share of common parts of the building and share of common land together with registration of apartment or non-residential spaces, 2) The non-residential spaces (such as ground level retail stores) should be included in the total floor area and the respective shares of each owner of apartments and non-residential spaces should be recalculated, It is further recommended that as part of future reforms, an independent Land Register is established

2.3.3 Definition of Ownership

According to the housing law in the **Czech Republic** the ownership of the common area by the apartment owners is specified by either the proportion of the floor area of individual apartment unit to the total floor area of all apartment units in the building, or, according to the Civil Code the owner can request allocation of different share of the common property.

Under the **Slovak Republic** law, the ownership share of the common area is specified by the proportion of the floor area of individual apartment unit to the total floor area of all apartments and non-residential units in the building (which does not include the balcony and terrace, defined as accessory property of the owner of the dwelling unit)

Under the **Romanian** law, the ownership share of the common property is determined by the ratio of usable floor space of the individual property to the total usable floor space of all individual properties.

Under the **Lithuanian** law, (Article 3, part 4) the share of ownership of the common property described in Article 2, part 5, is established based on the ratio of the useful area of the spaces

owned by the owner and the useful area of the building.

In **Moldova**, similarly to the law in Czech Republic, the law stipulates that the ownership of the common area by the apartment owners is specified by either by the proportion of the floor area of individual apartment unit to the total floor area of all apartment units in the building, unless the General Assembly states otherwise¹⁸,

It is essential that it is made clear if the total area of the building includes the floor area of the non-residential spaces (on ground floor). This may have a substantial impact on the shares calculation.

Determining the share of the ownership of the building parts and the land by each owner of condominium unit, and proper registration of the share together with the apartment or non-residential space is one of the most important conditions for proper function of condominium administration- by Home owners association or by professional administrator. Share of the ownership, is the basis for determining the contribution by the owners towards the operation and maintenance of the building.

2.4 Establishment of Home Owners Association (HOA)

The main and the only purpose of establishment of Home Owners Association (HOA) is to ensure proper administration of multi-apartment building where the apartments and the non-residential spaces are owned by multiple owners. In most of the Western Countries, (such as Netherlands, USA, Czech Republic) the establishment of HOA is mandatory and it is typically registered before, or at the time when first apartment or unit is conveyed to the new owner. In transition countries, where most of the condominiums are created as a result of privatization of existing older housing (as oppose to new construction) where residents lived for long time and were accustomed to building administration by the state or municipal organizations. Establishment of HOA in these countries is hindered by multiple issues that include lack of resources, lack of understanding of the owner's responsibility for their own property, and also reluctance "to associate". Therefore, some transition countries allow voluntary approach to establishing HOA (including Slovakia, Ukraine¹⁹)

The owners are responsible for selecting the form of condominium administration through vote on their General Meeting; the results are binding for all owners.

In case that the HOA is not established (case allowed by the legislation in voluntary approach), the owners, on their General Meeting are responsible for selecting the form of building administration by administrator and execute agreement on building administration between the administrator and the owners. This agreement (contract) is required part of the condominium registration document. Also, without the administrator, there would be no legal entity to enter in contract(s) for services.

Czech Republic

Current law No 72/1994:

For buildings with five (5) or more apartments, the HOA is established mandatory. Original owner of the apartment building assembles meeting of owners which approves the bylaws and elects the officials and bodies of HOA. The Minutes of Meeting are then notarized. The law treats differently the buildings where the original owner was the apartment cooperative, providing that this cooperative performs building management in conformity with this law. If the building has five or more units, law does not allow for any other form of building management than by HOA. Dissolving the HOA is possible only with demolition of the building, or if single

¹⁸ Article 7 of Moldova law on condominium

¹⁹ Ukraine Civil Code, Article 385 states that owners may establish HOA

owner owns all units in the buildings or of the entire building. The registry of the HOA is done at the court, similarly to the commercial registry.

The bodies of HOA are:

- General meeting of owners of apartments and non-residential spaces is the highest body
- Committee of minimum of three (3) representatives authorized by the owners or authorized owner as statutory representative
- Other bodies as determined by the HOA bylaws

Law does not provide for controlling body. Controlling authority can be created by the HOA based on bylaws.

Civil code to be in force on 1.1. 2014:

This law also stipulates mandatory establishment of HOA in buildings with five (5) or more units and three (3) or more owners. If building has less than five units, HOA can be established with agreement of all owners. This law allows establishment of HOA also in buildings that do not need to establish the HOA mandatory. This law also requires that the building management is performed by HOA as the only option for the buildings with five or more units and with three or more owners. Owner who owns more than 50% of the property can be the property manager, also in case when the HOA is established. HOA can be dissolved only in case it was established voluntary, or when the number of units becomes lower than five.

The bodies of HOA are:

- General meeting of all owners of units (apartments and non-residential spaces) is the highest body
- Committee as a statutory body, in case when the bylaws do not specify that the statutory representative is the chairman of HOA
- Other bodies specified by the bylaws. These other bodies cannot have authority of the statutory body.

Slovakia

The rules for establishing the HOA:

Establishing the HOA in Slovakia is not mandatory, however the law requires that after privatization of first apartment each building must have established form of administration by HOA or by professional administrator who is properly licensed for such activity. Administrator is contracted by the owners of apartment and non-residential spaces in the building with decision of simple majority of the owners.

Initially, at the time of privatization of first (or first few) apartments, the majority owner of the rest of the apartments were municipalities, thus they could decide on building administration by the municipal companies (so called Zheks). Situation have changed dramatically when most of the apartments were privatized and when the private building administration sector developed and created competition to municipal companies.

Since the amendment of the law in 2007, HOA cannot be established for management of multiple buildings, and can only be established for administration of its own building. This amendment prevented establishment of large, multi-building HOAs, which were proven not to function properly, as the administration was not transparent and owners were not interested in decision making process. Apartment building is defined as a building with more than 50% of the floor space being residential space and has more than three (3) units – apartments and/or non-residential spaces are in ownership of different persons, and common parts of the building and common technical systems are in shared ownership of owners of apartments and non-residential spaces. HOA is established based on Agreement on establishing HOA which is

executed by the owner of the building with first new owner at the transfer of the first apartment or non-residential space. The HOA membership of all additional apartments or non-residential spaces who acquire ownership at a later time is mandatory. When the form of building management is changing (from HOA to building manager or vice versa, 2/3 of all owners must agree with the change.

HOA can also be established according to the law in case where the building manager cancels the management contract and owners do not execute contract with another manager within one year.

HOA is established by the registration in state registry.

The law from 1993 established the rules for establishment of HOA and relations inside the HOA only on general terms. Amendment of the law in 2004 changed the rules significantly.

(Note: In author's opinion the amendment of 2007 which eliminated ability of the owners to effectively manage other buildings (garages, multi-function buildings, etc.) was a negative step. This amendment (2007) was challenged by ombudsman in the Constitutional Court.)

The HOA bodies are elected by the simple majority of all owners and are

- General Assembly of members is the highest body
- Chairmen as the managing and statutory authority
- Advisory board as controlling authority
- Other bodies, as decided by the HOA agreement

This latest structure of the HOA bodies was established by the amendment of 2004. This change created complications with restructuring the already established structure from 1993, when it was possible to have board of directors as a statutory body of HOA. The law allowed one year period for restructuring the HOA bodies.

Romania

Rules for establishing the HOA

Association can be created with the agreement of at least 50% + 1 of the number of owners of individual property. Creation of association is mandatory, as the Law provides for establishing a Home Owners Association (HOA) within 6 months from the Law adoption date. The establishment of HOA cannot be left to the discretion of owners.

To ensure the implementation/execution of this provision, substantial penalties are established by the Law for individual property owners in case of noncompliance with the requirement to organize the HOA for the purpose of property management. (Note: penalties range from Euro 125 to 2500). The penalties apply to all owners or, or to owners who opposed the establishment of HOA.

This law is applicable to all buildings with several apartments, owned by several owners. These buildings are recognized as condominiums and fall under the Law. In some specific cases, the HOA can be created in sections, stairs, separate buildings, residential complexes, having as main characteristic - the property precise boundary demarcation without overlapping with other properties.

The HOA bodies are:

- General Assembly
- Executive Committee
- President
- Auditor (the function of auditor is incompatible with the function within the executive committee). In buildings with up to 10 owners the body of "executive committee" can be avoided.

Lithuania

The rules for establishing the HOA:

- Establishment of HOA is mandatory in the building when the units are owned by three (3) or more owners
- Application for establishing HOA can be made also by third party. This law specifies the persons and organizations in general terms (not specifically)
- General meeting of owners decides on establishing the HOA. Meeting must have more than 50% of the owners present. Simple majority of votes then approves the decision.
- The HOA is registered at the level of local self-government.

The HOA bodies are:

- General meeting of members is the highest body
- Meeting of authorized persons of HOA, to whom the general meeting can delegate part of their rights and responsibilities
- Management of HOA or chairmen of HOA as statutory representative
- Controlling committee or controller as a controlling body

The Law allows that the owner may delegate his rights to authorized person, thus giving up his rights to make decisions related to his property.

Moldova

The rules for establishing the HOA:

- HOA establishment is not mandatory
- HOA can be established by at least two owners of apartment or non-residential spaces or by territorial privatization agencies and local public administration authorities;
- HOA is registered in the State Registration Chamber of the Ministry of Informational Development

Law does not specify the registration process and for establishing the HOA in the same way as in other compared countries. It is also apparent that HOA activities are regulated by the legislation and also by bylaws prepared according to the format provided by the legislation.

The HOA bodies are:

- General meeting of members is the highest body
- General meeting of authorized persons of HOA, (if the HOA has more than 40 members, representatives to this general meeting of representatives are elected)
- Managing committee and its chairmen as a managing statutory body
- Controlling committee or controller as a controlling body

General Assembly is able to vote if the 2/3 of all the owners in condominium are present. This quorum is excessively high and may be part of the reason for problems with functionality of HOAs in Moldova

Law requires that the owners in larger HOA with more than 40 members delegate their rights of decision on their property to authorized persons. This results in loss of interest by owners to manage the building.

Law allows merging of two or several HOAs for the purpose of common management of the buildings of all merged HOAs. Such merge results in creation of HOA with several buildings, which usually causes loss of interest by individual owners in active participation in managing the buildings.

It is recommended that the law is amended to: a) reduce the quorum to simple majority, 2) disallow nomination of owner's representatives and, 3) disallow merger of two or more HOAs for the purpose of common management of multiple buildings. The best practices show that all these issues reduce the interest of owners in active participation in building management, resulting in poor building administration

2.5 Building Management

Building management also referred to as building administration can be organized by three generally used forms: a) Administration by the HOA, b) by professional administrator contracted by the owners with agreement between the owners and the administrator, or by professional administrator under agreement with the HOA.

The option of administration of building under contract between the HOA and administrator is not regulated by the law on condominium. Such contract between the two legal entities is regulated by provisions of Civil Code and Commercial Code, and should not be regulated by the law on condominium. HOA can contract all or selected activities to the building manager and this contractual relationship is between the HOA and the manager. Relations between the HOA and the owners remain unchanged

There are significant differences in the legislation of the four countries regarding maintenance of the common areas. There are also substantial differences in financing options and in protection of financial funds provided by the owners to the provider of maintenance services. Only Slovak law stipulates that the building cannot exist without a management entity.

Administration of building also involves administration of services necessary for normal use of apartments and non-residential spaces. It is typical in all countries that the services metered for each owner, are contracted between the utility and the owner directly. This typically includes electricity, gas, telephone and cable TV. Shared services, including utilities for common spaces (elevator energy consumption, common water use, etc.) is typically part of the operating cost of the HOA or administrator and is being allocated according to the share in common property by each owner. In cases where the services are not metered or are metered on the entrance to the building (such as District Heat, solid waste removal), utilities enter into contract with the HOA or administrator who is then responsible for collection of payments from owners and for payment to the utility.

2.5.1 Building Management by Home Owners Association (HOA)

The Laws in all four considered countries similarly define building management by the Home Owners Association (HOA) as one of the options of building operation and maintenance. The conditions for establishing an HOA are similar and are based on the housing legislation, association's bylaws, by contract, and its registration. In all four countries, the HOA has a status of a not-for-profit organization.

Differences in the laws are in the ability that they provide to control the funds obtained from the apartment owners for the management entity. The Czech and Slovak legislation provide greater protection to the apartment owners, as the law relates to the use of the funds under the control of the Association. Lithuanian and Moldova laws do not have any provision regarding the protection of the maintenance fund.

HOA Activities and Assets ownership:

Under the **Czech law**, the Home Owners Association is a legal entity established for the purpose of ensuring the management of the building and land; HOA cannot engage in business activities and cannot participate in business of other persons or entities. HOA can acquire movable and immovable property and dispose of it only for the purpose of managing the

building and land (e.g. ownership of apartment in building HOA is managing²⁰).

Under the **Slovak law**, the HOA is a legal non-profit entity and also cannot engage in any business (own or others) and cannot acquire any property. However the Law allows that the HOA can, on behalf of the apartment owners, rent out the common space in the building (e.g. for commercial purposes) and use the rental income for the operation and maintenance of the building. Authors consider this to be the best model because it does not allow HOA to engage in business risks outside the building it manages, and it allows generating (virtually risk free) rent income to alleviate the administration and maintenance cost for the owners.

Under **Romanian law**, the HOA is a form of non-profit autonomous association of majority of owners in the condominium established for the purpose of building management. Law specifically does not stipulate whether the HOA can engage in any other commercial activities of its own or whether it can participate in activities of others. HA can have income from operation of the property in common ownership and the revenue must be deposited in a special funds for repairs and other investment into common property.

Under the **Lithuanian law**, the HOA is a non-commercial, not-for profit organization established to serve the owners. It can not engage in other business activities which are not related to its building management, and cannot be a founder of any other business entity. HOA may acquire and dispose of property necessary for the management of the building.

According to **Moldovan Law**, the HOA can own property other than apartment units in the building(s) for which it was formed to serve (Article 18 paragraph, Section 2 C, and Article 20 paragraph. 1, Section 2), can perform certain business activities of other persons or entities (Article 18), and can do business in the form of purchases of securities (Article 32, paragraph 2.). In sharp contrast with other countries, HOA is defined differently and its establishment can have multiple purposes, not just administration and maintenance of its building. This is not consistent with the best practices, as on one hand, the HOA can generate income and can cover the cost of the Administration (the positive case), but its business activities can result in substantial loses/liabilities.

It is recommended that HOA is defined in the same manner as in other countries as non-profit legal entity established for the solo purpose of administration of the building for which it was established. The current definition of HIA activities is unacceptable, may lead to abuse and loss of funds and its change is necessary.

Contracting:

The **Czech, Slovak** and Romania law stipulate that the selection of suppliers of goods and services, and management and maintenance of the common areas is done on commercial basis. In **Lithuania**, HOA also execute contracts and agreements for provision of goods and services with individuals or with legal entities on commercial basis.

In contrast, the **Moldova** law²¹ obliges the HOA to secure maintenance and operation of the common property through tender allowing the participation of natural and legal entities which are duly authorized. This practice is commonly applied in other countries, especially in CR and SK and such approach to securing supplies and services is acceptable. The issue to consider is whether the current market is developed to the extent that this practice can be successfully applied. In the case when the market is controlled by local monopolies, such provision is not feasible. It is recommended that market situation is considered in amending this article.

Owners' liability for HOA

Another difference is the treatment of liability of individual apartment owners for the obligations

²⁰ This stipulation in CC, articles 1206-1208 is not found in other laws of evaluated countries and its impact can only be judged after some period of time

²¹ Article 19, part (1)

of the HOA. According to **Czech** and **Slovak** legislation, the apartment owners are responsible for liabilities of the HOA in proportion to the size of common property they own. **Romanian** law does not address the responsibility of owners for HOA liability. The **Lithuanian** law specifies that the owners bear responsibilities for liability to third party in line with their commitments related to the ownership and utilization of the common property.

The owners of apartments in **Moldova** are not responsible for liabilities of the HOA at all (Article 16 paragraph 4). Considering the ability of HOA to engage in other businesses (Article 18) and in purchasing securities (Article 32), HOA's activities may result in substantial liabilities. This article was likely designed to release the owners from such potential liability. The negative impact of this article is low creditworthiness of the HOA, as there is nobody responsible for the liability. Best practice in this regard makes HOA liable only up to the received payments (balance of the fund) and owners are responsible for the remainder of liabilities caused by services received from HOA.

It is essential that this article is amended to make HOA responsible for liabilities caused by provision of services to the owners only up to the amount of the funds received (balance of the fund) and require owners of condominium units to be responsible for the remainder of liabilities created by provision of services they received. This amendment must be coordinated with amendments of Article 18 and Article 32.

2.5.2 Building Management by a Housing Management Entity

Housing management comprises of provision of all services required for proper operation and maintenance of the building and land, including technical, legal and economic/financial tasks. One important responsibility of the administrator is improving energy efficiency, as the cost of energy typically represents about 80% of the total operating cost. It is advantageous that the services in this form of management are provided by qualified professionals.

The Law in all four countries allows provision of operation and maintenance of buildings by Housing Management entity as an alternative to the HOA discussed above.

Czech Republic:

- a. The Housing Management (Manager) is the owner of the majority (more than 50%) share of the common property in the building. If such an owner does not exist, the owners will select the Manager of the property (trustee). In case that reason exists, manager can be removed by the court decision initiated by one of the owner
- b. The property Manager does not need any specific license or permit to perform the building maintenance.
- c. Manager is authorized to make decisions related to the property management, except in issues that are in the authority of the General Assembly of owners
- d. The property manager performs its duties in accordance with rules recorded in the Cadastre (registry of real estate). These rules are part of a statement recorded in the property registry and if the property manager is operating as a registered person (e.g. self-employed), these rules are recorded also in the register of trade.
- e. The Czech Law does not provide for protection of bank deposits of the apartment owners, and does not stipulate any of the requirements mentioned by the Slovak law

Slovakia

- a. The relationship between the building Manager and owners is not addressed in the Law on ownership of apartments and non-residential spaces. The HOA utilize their status as legal entities under the provisions of the Civil and Commercial Code and enter into a contract with a professional building manager. In case that the HOA is not established, owners can enter into contract with the professional Building Manager by simple majority decision.

b. According to the Law on Trade²², the property Manager must be a registered business, with subject competencies listed as “Management and maintenance of the housing stock.” The terms and conditions of building management are set by the Contract between the HOA and the Manager. The framework of this agreement is established by the law. These terms and conditions are not registered with any state authority and they are not subject to regulation by the state.

c. According to the Slovak legislation, the assets used by the property Manager for building operation and maintenance (these include funds designated specifically for operation and maintenance, and payment for services associated with utilization of apartments and non-residential areas) remain the property of the apartment owners and it must be:

- Deposited in a the bank account
- Maintained separately from the Manager’s assets
- Cannot be part of the execution of the Manager’s assets
- Cannot be part of the bankruptcy of the Manager
- The bank account is protected by the Law on deposit protection

Romania

a. The management of the building can be organized and performed by HOA, who can hire licensed building manager, or under contract by specialized building management organization licensed for performing such services. Applicants for the position of building manager must provide their credentials (education, criminal record, etc.)

b. Building manager performs all the necessary activities including technical services, management of finances, handling formal documents for supply of services, and other activities required by the HOA

c. Law does not stipulate whether or not the building manager must keep the financial sources received from owners in a separate account.

d. In order to protect the interest of owners, the building manager can obtain professional liability insurance

Lithuania

a. Amended law established mandatory requirement of contributions to the repair and maintenance fund (Article 4, part 4), stipulated ability of building management without established HOA based on owners agreement (Article 10, part 1), or by building management organization. In case of non-existent HOA or manager, the building management is established by the local government. Services are contracted based on best value.

b. Building Manager must be attested by the government or its responsible institutions for performing such services.

c. Building manager appointed by the local government cannot be the supplier of the services for operation repair and maintenance of the managed building. Services must be acquired through competitive bidding.

d. Building manager follows the decision of the assembly of owners which he assembles or by decisions which was obtained by form of inquiries.

e. Building manager provides the owners with annual report on performance.

f. Building manager is released of his duties in case of establishment of HOA or when the owners execute agreement on their common activities.

²² Law 455/1991 on Trade, and as amended by 395/2011

Moldova

Moldova law does not stipulate qualifications, responsibilities or other conditions for building manager.

According to the Moldova law, a building manager is selected through a tendering process and the manager can be selected for the entire or part of a building. The contracting parties are the HOA (not individual owners) and the manager. The Moldova law does not stipulate the process for contracting the manager in cases where the HOA is not established. Absence of legal requirement for the process of ensuring the proper building administration and maintenance where HOA is not established may cause insufficient contractual conditions which may cause insufficient building maintenance and consequently worsening of the technical, hygienic and safety conditions. This in turn can cause increased future maintenance costs.

Exhibit 3: Building Management

Country	Issue
CZ	Current law No 72/1994: with the registration of the first apartment or non-residential space, mandatory "Building Owners statement" stating rules on contribution to the maintenance fund for the common parts of the building, rules for management of the common spaces and identification of the person responsible for the management. The law applies to the buildings with at least five (5) and with at least three (3) different owners. Civil Code to be in force on 1.1. 2014, at least 2 units required for shared ownership of common property. In building with more than five units, HOA must be established.
SK	The Slovak Law provides for two options of building management <ul style="list-style-type: none"> - by HOA - By professional manager based on contract. This could be private person or legal entity qualified and registered for provision of such services, and selected by the owners. The law stipulated rules for privatization of housing fund together with the need for building management
RO	The Romanian law provides for building management directly by the HOA, who is entitled to hire licensed professional for management of all required tasks. HOA can contract professional building management organisation licensed specifically for the building management activities. Law does not stipulate the responsibilities for liabilities, other than the building manager can obtain professional liability insurance for protection of the owners.
LT	Law provides for two options of building management: <ul style="list-style-type: none"> - by HOA - in absence of HOA, management of the building is done by specialized organization selected by the local self-government The law on association of home owners was enacted only after the privatization of housing fund. This creates certain difficulties with organizing proper building management.
MD	Law provides for building management in condominium: <ul style="list-style-type: none"> - directly by owners in buildings with up to four (4) owners - by HOA - HOA can contract administrator (partially or entirely) which could either private person or legal entity authorized to perform such services. While the law was enacted after the privatization of housing fund, the border of the condominium property were set by the local self-government without agreement of the owners. Law allows assignment of decision- making process to higher management of the associations, which reduces the involvement of the individual owners. This results in less interest of the owners in building management.

It is recommended that the amended law considers introducing legal requirements for administration of building in case where the HOA was not established. This option will ensure that the process of contracting the Administrator and ensuring proper execution of services in such cases. This is especially needed under the current situation when HOAs are not established or not properly functioning in large number of cases

2.6 Lien on Property

In **Czech Republic**, according to the existing law No 72/1994, to ensure execution of the court decision regarding the recovery debts incurred due to the unpaid cost of repairs and maintenance by the debtor, the other owners can impose lien on the debtor property – apartment or non-residential space. At the sale of the apartment, the priority is on settlement of the debts to the other owners. The Civil Code to be in force as of 1.1. 2014 does not stipulate this option.

A significant provision of the **Slovak Law** and legislation establishing a statutory lien on residential and/or non-residential areas in the building to secure claims arising from building administration or from actions of individual owners of apartments and office space, such as non-payment into the maintenance fund. While this provision was included in the 1993 Law on ownership of apartments and non-residential areas in residential buildings, it was not very effective until 2002, when the Law on voluntary auctions was enacted. Without this law, the execution of lien on property was possible only through the court process, which were (and still are) very lengthy (often more than a year) and thus very ineffective. This later law allowed effective execution of a lien only with simple majority of owners, without the court process. Experience has shown that this provision serves as a tool for responsible behaviour. Enforcement of debt payment through the court process and through execution of property in Slovakia is lengthy, in spite of several improvements made to the court process rules. Debt payment can be enforced faster in so-called **short process through issuing payment order**. In this process, court makes decision only on basis of the petitioner's statement on amount and reason for request. Defendant has a right to appeal, stating the reasons. If defendant does not appeal, and does not pay the requested amount, court decision allows for the execution of assets. According to the Law 233/1995 and as amended, the execution process consists of the following steps:

- Request for execution is submitted by the petitioner to the executor of his choice
- Executor then request court's authorization to perform execution
- With the authorization, executor is authorized and is responsible for search of assets owned by the debtor
- Execution can be performed in a form of salary (or other income) deductions or sale of assets, etc.

A disadvantage of this process is a need to physically deliver the court order to the defendant. Court usually sends the payment order document via mail and if the delivery fails, court requests delivery by police. Defendants often refuse to accept the delivery, thus causing delays of the process. If the delivery of the order fails, court cancels the decision and transfer the case to the regular court process. This process then may take up to one year.

Improved stipulations of the Civil Code now allow in most cases reaching court judgment at the first court hearing, which must be attended by both, the petitioner and the defendant. Court reviews the complaint and the argument of defendant and issues judgment. Judgment can be delivered also by alternative method by depositing it at the post office. If the defendant does not accept the delivery, the delivery is deemed executed.

Judgment can be appealed within the time set by the judgment. Appeal is then submitted to the court of appeal (2nd level). If this court concurs with the decision, and defendant refuses to settle the debt within set period, execution of his assets is allowed.

Decision on execution process depends on many factors, mainly on the level of income of the debtor, assets available for sale, and on legal conditions. Time required for execution is also a factor considered. Executor is not allowed short sale of the immovable property, which complicates the process and other means are usually sought for settling the case, such as monthly deductions from income.

IN Slovakia, the HOAs and building managers use the payment enforcement through the lien on property only in cases where the debt is substantial and all the other options of payment enforcement have failed. Law does not establish the debt amount for which the lien approach should be applied. In reality, the option of establish lien on debtor's asset serves mostly as deterrent. Experience shows that most of the debtors find way to settle the debt before any "serious action" is exercised against them.

Romanian law does not stipulate the right to establish lien on property of the non-paying owners. Enforcement of payment to the maintenance fund can be done through the court or by allowing the co-owners to establish their own system of financial sanctions which is limited by 30 days grace period and not-to-exceed 0.2% per day of the owed amount, up to the amount of the debt. According to the article 51, in case of non-payment, HOA is entitled to all movable assets of the debtor and such entitlement can be registered with the court, who administers lists of debtors at the request of the HOAs.

The **Lithuanian Civil Code** defines general right to lien on property in its Article 4.198 and in Article 1.51. The law on Associations does not have such provision.

In **Moldova law**, this provision does not exist as well.

Adoption of internal rules in each condominium is a good and necessary practice. It provides clear understanding of issues to all owners and provides for clear, fair and transparent process of payment collection. Such rules need to consider internal and local specific issues, social situation, employment and health issues of owners, etc. It is good practice to consider hardship situation of the debtor and in specific cases waive late penalties, extend the payment calendar, or agree on debt repayment schedule, etc. Rules should also include clearly defined steps of collection, such as "friendly reminder", late payment warning, interview, payment order, court filing, and execution as a last resort. It is also very important that the internal roles are in full compliance with the law.

2.7 Decision Making Process

The decision making process related to the common property is another difference between the housing legislation in the compared countries.

Vote

In **Czech law**, the value/weight of the vote of the apartment owner is set according the size of the common property share in the building. The General Meeting has voting quorum when owners present at the meeting have simple majority of votes. Decision is made by the simple majority of votes present at the meeting,

According to the current law No 27/1994:

- Voting quorum is different and depends on the voted issue 100% of all members is required for decisions related to change of building purpose, change of structure of the building and for changes to the common parts of the building, $\frac{3}{4}$ of members present in meeting is required for decisions related to change of bylaws, issuing a lien on individual condominium units, establishing the payment amount to the fund. Other issues are

decided by simple majority of present members. Meeting is capable to vote if more than 50% of members are present. Voting in proxy (written) is not allowed

- Vote can be challenged in court within 6 months of the decision announcement

According to the Civil Code, as of 1.1. 2014:

- Voting quorum is different and depends on the voted issue:
- 100% of all members is required for vote on changes of share of ownership affecting all owners, or when the share of contribution to the fund is changing and it is not based on share of the ownership of common property,
- Simple majority of all members present in the meeting is sufficient for all other voted issues. Meeting is capable of vote when more than 50% of the members are present at the meeting. But the bylaws may set higher presence.
- Owners may also vote in proxy (in writing)
- Vote can be challenged in court within 3 months since the owner was informed (or could have obtain the information)

In **Slovak law**, each owner of apartment or non-residential unit has one vote for each apartment or non-residential space owned in the building, regardless of the size of the common property share. Co-owners of a single unit have one vote together. The following rules for voting apply:

Vote on all issues except those listed below require simple majority:

- 2/3 of all votes is necessary for decision on loans, agreements on construction of buildings, superstructure of additions and for change of form of administration
- If number of owners present at the meeting does not constitute required quorum, after one hour from meeting start, simple majority of present votes is sufficient.
- Voting by proxy (in writing) is allowed, however, signature of the owners authorizing other person to vote on his behalf must be verified by two persons.
- Vote can be challenged in court within 15 days from the announcement of the decision

In **Romania law**, each owner of individual property has one vote. The following rules for voting apply:

- For vote on establishment of the fund for maintenance, repair and reconstruction, the vote of each owners has value of the share of the common property ownership
- Owner can be represented by family member or by other representative (proxy) if he/she is authorized in writing to do so by the owner. Proxy may represent one or more owners
- The president of HOA has the tie-break vote
- In special case, the decisions can be adopted by written form.
- Decision must be registered in the HOA registry and announced in writing to all owners
- The General Meeting may adopt decisions if the majority of members of the owners' association (50+1) are present in person or by a legal representative. If quorum quota is not reached, the decisions may be adopted at the repeated general meeting with necessary quorum of owners present at the meeting. For decisions on the establishment of investment funds for building rehabilitation and modernization, the vote of each owner has an weight equal to the share held in the common property

The **Lithuanian law** stipulates that owner (or owners) of each apartment or non-residential space has one vote (Article 4, part 6). Vote decision is valid when more than ½ of the owners are present at the meeting. Meeting is considered eligible to vote when majority of owners are present. In case that the meeting is not attended by majority, in two weeks, meeting is able to vote only with 25% of the owners present in case of vote on reconstruction, amount of mandatory payments or in case of change in general agreement, approval needs simple majority of all owners (article 21, part 5).

According to **Moldovan law**, co-owners of one apartment have together one vote. Owner who owns several apartments have one vote for each apartment. Each property owner who owns non-residential premises has only one vote. The owners of a communal dwelling also have one vote (Article 26 paragraph. 3 and 4). The number of votes is not based on the size of their respective share in the common area of the building.

- Meeting can vote when number of eligible votes is 2/3 or more. If the number of votes is insufficient, new meeting will be called and the second meeting can vote if there is 51% of the vote present.
- Voting Quorum is established when a simple majority of owners are present

In case of vote on modification and improvement of building and its utilities (elevators, heating systems, etc.), decision is made by 2/3 of the votes

Associations of Home Owners Associations

Associations of Owners in **the Czech and Slovak Republics** may be assembled only for the purpose of collaboration in promoting common interests; for example, the support for necessary legislative changes or the exchange of experience. Assembly of HOAs is not used for the management of several condominium associations, as such a step may alienate the owners from the decision making process.

Romanian law does not stipulate whether the associations of home owners can associate, join or merge with other associations.

In **Lithuania** the HOA can join with other associations, establish new associations with others. (Article 25, part 5)

Assembly of HOA is allowed by the **Moldova Law** (Article 34) for all three purposes including legislative changes, exchanging experience, and management of several condominium associations.

Rights and Responsibilities

In the **Czech, Slovak** and Romanian legislation there are no differences in the rights and obligations of the owners, and it is immaterial whether the owner is a natural or legal person, state, or municipality. Also, relations arising from ownership and use of the units are only between owners and managers, whether it is an association of owners or building management entity.

In **Lithuania**, the rights and responsibilities are established by the law and elaborated by the owners' agreement and are equal for private individuals or legal entity. Responsibility of payment for the cost of building management, repair and maintenance is proportionally divided among the owners based on their share of ownership.

In certain issues **Moldovan law** differentiates between the forms of ownership and provides the possibility of a relationship between the association of owners and the tenants of apartments owned by the state and municipalities (Article 14 paragraph 2).

The best practices in other countries show that it is very important that the owners of apartment and non-residential spaces in condominium have equal rights and responsibilities, regardless of whether they are private individuals, legal entities or public organizations (state or municipal). This is especially important for payment for services and maintenance. Tenants in principle cannot have the same rights as the owners, as their legal relation is by agreement with the apartment owner, not with the HOA. The equality of all owners is very important for maintaining interest in building administration by all owners.

2.8 Fund for maintenance and repairs

The establishment, contribution into and utilization of fund for maintenance, repairs and

reconstruction of the common parts of the building, as well as protection of the fund as owners' asset is one of the most important issues that needs to be properly addressed by the legislation. Following is the description of the approach to this issue in compared countries.

Czech Republic

The **Czech** legislation requires the apartment owners to contribute for management of the common area of the building. The definitions of the purposes for which the financial sources can be used are not present in the Czech legislation.

According to the existing law No 72/1994, each owner of the unit in the building is responsible for participating in the management of building according to the size of his share of ownership of the common parts of the building, providing that the owners did not decide otherwise. For this purpose, owners contribute in advance to the fund by the amount which they decide, based on the expected need assumed for the next months or for an upcoming year. This is very similar approach used in Slovakia. With HOA established, these contributions represent liabilities of the HOA to the owners. These contributions are not refundable in case of unit ownership transfer, and are not protected by the law.

Owners are liable for the obligations of the HOA in ratio of their ownership of common parts of the building

Subject to agreement by the owners, HOA can use the apartments and non-residential spaces as a collateral for obtaining loan for required for the building management. Owners are liable up to the value of their respective units

This part of the law, which requires the "saving" for the future repairs and maintenance are comparable to the Slovak Law requiring the Fund. However, Slovak law requires contribution by periodical monthly payments of the fund, which is protected by the law.

According to the Civil Code as of 1.1. 2014, the following applies:

- Owner of each unit contributes for management of building or land according to the share of his ownership of common parts of the building. In case when some part of the common parts is used exclusively by specific owner(s) the amount of contribution is determined individually. Cost of management is distributed to the owners equally, by the same shares
- At the time of unit ownership transfer, the original owner must present the new owner with the statement of the debts to the fund for maintenance and these debts are transferred to the new owner.
- Owners are responsible for the debts of the HOA in the ratio of their ownership of common parts

The law does not stipulate mandatory creation of the maintenance and repair fund. This is different from the older version of the law.

Slovakia

In **Slovakia**, the operation, maintenance, and repair fund enjoys high credibility and banks are willing to use this fund to guarantee the loans for building reconstruction. According to the Slovak legislation, the apartment owners are required to create a fund for operation, maintenance and repair in the amount determined by the simple majority vote of the apartment owners. The legislation or administrative acts do not set the size of the fund, which owners determine according to the technical conditions of the building, owners financial situation, and (sometimes) the availability of state funds. The law provides definition of purposes for which the fund can be used and what other income is acceptable in addition to total owners' contributions (e.g. interest on bank account, arrears, penalties, rent receipts from common parts, etc.).

The following rules apply for financing the repair and maintenance of the objects of common use:

- The creation of the Fund is mandatory. Owners contribute based on their share of the ownership of the common parts of the building. Contributions are monthly and the amount is determined by simple majority of owners of apartments and non-residential spaces, and it is set on the level to which they agreed to. The amount is decided by the owners and it is not set by any regulation or norm
- Income from common property is mandatory set as income to the fund (rent, sale of assets, interest earned, etc.)
- The law determines the purposes for which the fund can be used
- The financial resources must be managed in a separate bank account by HOA or by manager.
- Law stipulates that the financial resources in the bank account set up by the HOA or by the Manager is a property of the owners and HOA or Manager have right to access and to operate it. The resources are not part of the bankruptcy proceedings in case of bankruptcy of the Manager. The fund resources cannot be part of the execution against the Manager.
- Financial resources in the bank account are protected by the law on bank deposit protection
- The owners of apartments and non-residential spaces are responsible for liabilities of the HOA or the Manager which are the results of the activities related to the management of the building in case that they are not covered by the fund or payments for services paid to the HOA or to the manager

These requirements by the law resulted in very positive experience that supported reconstruction of the housing stock in Slovakia. The “Fund” is a reliable and trusted tool for the banks and used to secure the loans for reconstructions. Payments to the fund are secured by the ability to put a lien on the property, thus making it safe guarantees for the bank loan.

Law stipulates that the income from common property of owners is not distributed to the owners, and that it must be deposited to the fund for repair and maintenance. In case of property sale, owners can decide otherwise.

It is also important to the owners, that the bank account statements are transparent and can be reviewed by owners.

In Slovak law, the income from renting of common parts of property is an income of the HOA and can be deposited only to the fund. It is not distributed to the owners. Option of utilizing rent as contribution to the maintenance fund does not bear any risks and is not considered to be viewed as business activity. Rent income deposited to the maintenance fund reduces monthly contributions by the owners and it is very popular and viewed as a good practice. This income is taxed according to the tax law.

The protection of the fund was introduced by the amendment in 2004 and 2010 and it is considered to be the best protection of the owner’s resources in both forms of management.

Since any liabilities were the result of the building management, it is fair that the owners are liable for them. Also, this potential liability creates incentive for controlling the HOA or Manager’s activities. Such responsibility is also supporting trust with the suppliers of goods and services.

Romania

The Romanian law does not explicitly say that the maintenance and repair fund must be established; however it implies that the owners will contribute to such fund. The executive committee of the HOA prepares financial performance statements for the past year and prepares plan for maintenance, repairs and improvement of the common property for next year and proposes the amount of contributions to the fund for approval by the general meeting of the owners. Owners are then required to contribute to the fund by monthly payments in advance. Owners can also establish other special funds and can open one or more bank accounts in any

bank.

The following rules apply for financing the repair and maintenance of the objects of common use:

- Fiscal year of the HOA operation is calendar year
- Executive committee prepares the report on financial performance and plan for maintenance, repairs and improvements. HOA is also responsible for improvements in thermal comfort in the building (Article 40)
- General meeting approves the plan (budget) for the next year and the amount of contributions required to the fund.
- All owners are responsible for monthly payments to the fund

Lithuania

In **Lithuania** the requirement to contribute to the repair and maintenance fund is stipulated by the Civil Code (Article 4.83, part 3). This responsibility is also stipulated by the Law on Associations. This requirement is set also in case that the HOA has not been established (Article.10, part 5). The law on Home Owners Associations from 2000 requires the owners to share the costs of repairs and maintenance based on their share of ownership of common property (Article 4, part 4) and to contribute to the fund periodically. The amount of the contribution is not determined.

The following rules apply for financing of objects of common use:

- Owners are responsible for contributing for the cost of maintenance and repairs according to their share of the common property. They are required to periodically contribute to the maintenance fund, unless they decided otherwise. The requirement to contribute to the fund is similar to current Czech and Slovak law.
- The owner of the apartment or non-residential spaces is not required to contribute to costs to which he did not agree and which are not the mandatory required costs for maintenance under the laws and mandatory requirements for the use of buildings and also with energy-saving programs, implemented by the State. (Article 29, part 2). This provision of the law contradicts the “rule of majority” determined by the votes and may be counterproductive to the effort of improving the building comfort, safety and general conditions,
- The HOA agreement must include rules for utilization of resources and distribution of any profits by the HOA
- HOA agreement must determine the rights and responsibilities of the HOA members

Moldova

According to the **Moldova** law, the apartment owners contribute to the maintenance and repair fund according to the share of the common property they own, and the amount of this contribution is set within the limits of the Norms of allocation of funds for technical maintenance and repair of the housing stock. (Article14, part 4)

The following rules apply for financing of objects of common use:

- The owners contribute towards the cost of repairs and maintenance of the common property according to the requirements set by the law and by other legislation and norms.
- Level of mandatory payments for repairs and maintenance of common property is determined based on the share of the ownership of the common property, in line with the Norms for financial resources for technical maintenance and repairs of housing fund.
- Income from business activity of the HOA is transferred to special funds
- Law does not require HOA to save for larger repairs or reconstruction

- HOA is responsible for its liabilities up to the level of its assets and it is not responsible for the liabilities of owners. Owners are not responsible for liabilities of the HOA.
- The Moldova Law allows the state and local government the highest level of influence on relations in apartment and non-residential spaces ownership from all the compared states.
- Law allows creation of special funds. However those funds are in reality not created and the resources for the repair and maintenance are missing,
- Only in Moldova law, the owners are not responsible for the liabilities of the HOA which were the result of administration of the building and services obtained by the owners based on their previous agreement. HOA is responsible for such liability only to the level of received payments (balance of the fund). The owners must be responsible for the remainder of the liabilities in proportion to their ownership share in common property. Responsibility for liabilities in any contractual relations is a basic requirement by the providers of supplies and services and needs to be identified.

3. BRIEF REVIEW OF HOUSING LEGISLATION IN OTHER COUNTRIES

Brief review of significant issues stipulated by the legislation in **Russian Federation, Kazakhstan, and Tajikistan** was performed for broader view of the applied approaches to the housing management. Review of the basic issues stipulated by the legislation in these countries that is provided here will help understand the “general concepts” and will help with identifying the best practices for amending the Moldova Law on Condominium. The findings are briefly presented by the category for each country.

3.1 Legislation Reviewed

Three other updated and relatively well drafted legislations from CIS countries and one neighbour country legislation were reviewed following the criteria applied for the comparative analysis of the legislation in other countries. Included are also notes providing comparison with the current housing legislation in Moldova that offer local view on the discussed topics. The legislation reviewed is summarized in the Exhibit 4.

Exhibit 4: Summary of reviewed legislation

Country	Legislation
Russian Federation	Law Nr. 188:2004 on Housing Associations
Kazakhstan	Law on Housing Relations
Tajikistan	1. Law Nr. 672:2009 on Maintenance of Multi-apartment Buildings and on Apartment Owners Association

Though, all the above legislations tend to apply the Western best practices in terms of housing management and building maintenance, they incorporate peculiarities that are not applicable to Moldova, due to countries' culture and administrative systems.

3.2 Ownership Registration

The ownership registration procedure in all four countries requires registration of the “composite”, which consists of the unit (apartment or non-residential space) and the share of the common property. The registration type is presented in Exhibit 5

Exhibit 5: Registration of ownership

Country	Description
RU	Condominium is a composite of units of real estate. The rights to property in a condominium and transactions shall be subject to state registration in accordance with applicable law and provision of ownership passport. Ownership Passport is issued by the territorial bureaus of technical inventory.
KZ	Condominium is a unitary composite object and should be registered in accordance with the laws of the Republic of Kazakhstan on the state registration of rights to real estate. The first registration of the condominium (as real estate object) is financed by the state.
TJ	The initiation, transfer and termination of the right to housing and other property in the multi-apartment building is done in accordance with the Law of the Republic of Tajikistan "On state registration of real estate property and rights to it".

The comparison of registration of common property with Moldova also suggest that in it is necessary to redefine the Moldova concept of “Condominium” in order to establish clear ownership relations between all actors involved, and define the responsibilities arising from these property rights. It is imperative to establish the necessary legal framework to protect the rights of all owners who, in addition to individual properties, jointly own the common parts of the building.

3.3 Establishing HOA for Building Management

In Russian Federation, the HOA must be established for five or more owners, and in Tajikistan, the HOA must be established for two and more owners in the building. In Kazakhstan, the form of owns association is a cooperative. Regardless of the form, owners have to create organization for building management as a mandatory step.

Exhibit 6: HOA for Building Management

Country	Comparison
RU	HOAs are created by agreement of 2/3 of the participants in the founding meeting, which must be attended by at least 50+1 of the total number of inhabited and uninhabited units, in buildings with at least 5 owners - natural and legal entities. The Association becomes a legal entity from the moment of its registration.
KZ	The association form of administration in KZ is the cooperative. At the founding meeting must be present at least 50% of owners of condominium units. If the owners fail to form the administration of condominium within the period provided by law, the local public authority organizes the creation of the cooperative by the owners. The cooperative is established as a legal entity from the moment of its state registration, according to legal procedures. Cooperatives are registered in the Legal Inventory of Justice. The approval of the condominium management form may be done by 10% of all owners of real property units.

Country	Comparison
TJ	The Association is a legal entity and is established from the moment of its registration in the manner determined by the Law of the Republic of Tajikistan "On state registration of legal entities and individual entrepreneurs." Associations are created by agreement of 2/3 of the participants in the founding meeting, where must attend at least 50 +1 of the total number of inhabited and uninhabited rooms in buildings with at least 2 owners - natural and legal entities

The approach to building management by creating compulsory HOA should also be applied in Moldova. To accommodate the local Moldova conditions, the initiator of the process could be public authorities which should organize this process in terms of logistics, and ensuring the accomplishment by registering the property rights over the owned shares in common parts of the building.

3.4 Building Management by Manager

In all compared countries, the building management by the Manager is supported by the law, as described in the Exhibit 7

Exhibit 7: Building Management by Manager

Country	Comparison
RU	Associations may enter into management contracts with full or partial administration with the building professional manager - individuals and companies.
KZ	The law provides possibility for management of residential block by individuals - elected administrators or under contract, and through businesses - professional managers.
TJ	Building management can be done by a professional manager based on contract with owners association of property units. Selection of administrator is made through competitive bidding.

In relation to Moldova, companies specialized in building management in Moldova are at a stage of initial development. The IMGFLs [municipal enterprises for housing management], which manages the apartment buildings, perform fragmentary maintenance of buildings, focusing only on delivery of communal services, and some maintenance works of common areas. Due to the reason that mandatory repair funds are not created, the IMGFLs are poorly funded, having resources just to keep these companies "alive". It is necessary to develop rules for development of housing services market and stimulate the capacity building of companies - managers.

3.5 Maintenance Fund

IN all countries, the creation of repair and maintenance fund is mandatory. Contributions to the fund are defined differently, including regulation by local authorities, based on decision of owners or based on annual estimate of need for repairs.

Exhibition 8: Maintenance fund

Country	Comparison
RU	Overall size of mandatory payments for maintenance and repair of the common property is set on the basis of uniform accounting rules and regulations approved by the local authorities, and provide compensation for the costs of maintenance, current repair and preventive maintenance, as well as compensation for the costs of capital repair of the common property.
KZ	The owners of the premises (apartments), for the accumulation of funds for the repair of the common property of the condominium object, must make monthly contributions to the savings account [Fund] of the condominium management body, commensurate to the amount determined at a meeting of the owners of the premises (apartments), but not less than 0.02 times of the size of the monthly index set for the financial year by the law on the state budget, based on 1 square meter of floor space of residential (non-residential) premises. The decision on the size of contributions to the Fund is approved by the general meeting of owners.
TJ	Association may create special funds, including housing repairs with monthly contribution obligation of each owner of the unit. The decision for creation of the Fund is within the competence of the General meeting.

3.6 Definition of Share of Common Property

Definitions of shares of common property are similar in all reviewed countries. Difference in Kazakhstan legislation is that the elements of common parts are described in greater detail. In contrast, Moldovan housing laws stipulates that the ‘total area of the apartment, or space is regulated by other legislation’

3.7 Lien on Property

None of the legislation reviewed includes provision for establishing lien on the property of non-paying owners.

Exhibit 9: Lien on Property Option

Country	Comparison
RU	There is no possibility of establishing lien on real property due to the debt service of the association for the Fund
KZ	There is no possibility of establishing lien on real property due to the debt service of the association for the Fund
TJ	There is no possibility of establishing lien on real property due to the debt service of the association for the Fund

The local experts concur with the idea that an efficient method of ensuring contribution to the Fund, and as a measure against the owners evading the mandatory contributions to the Fund, could be setting lien on their properties (apartments or non-residential spaces) for the benefit of all other paying owners of HOA. In this case, the lien shall be entered in the Real Estate Register and applied to this legal procedure and ownership right in cases when some of the owners delay payments to the Fund for a certain period of time (for example for 6 months).

Notably, that in Moldova, the lien cannot be instituted except for the amounts due under the tax laws as a result of a court decision. So to establish this possibility will require changes to be made in these relevant laws, and in the condominium law.

3.8 Decision Making Quorum

The quorum required for decision making by the owners meeting varies in in each country, however, as a general rule, most of the decisions can be made by simple majority present at the meeting.

Exhibit 10: Quorum required

Country	Comparison
RU	According to the basic rule, the general meeting decisions shall be approved by a simple majority of owners present at the general meeting. With 2/3 of the owners' votes are taken decisions specified in Art. 34, p.3 of the law, including the problems of alienation, mortgage, credit, capital repairs
KZ	Founding meeting requires a quorum of 2/3 of total owners. The quorum for general meetings is 50% of owners participating in the meeting. Decisions are approved by a simple majority of the participants at the meeting. For specific questions pertaining to the statutory changes, selection of the Administrator, lending, pledging, the vote of 2/3 of the owners is required.
TJ	The General Meeting may adopt decisions if the majority of members of the owners' association (50+1) are present in person or by a legal representative. Decisions are adopted by 50% +1 vote, except where otherwise regulated by other laws or association statute.

In comparison, it is necessary to decrease the quorum in Moldova in order to facilitate decision making for decisions that have to be approved by the owners. For the decisions on lien, it will also be necessary to modify other legislation to reduce the quorum.

3.9 Voting by Proxy

All reviewed laws provide for possibility for the owners to vote in proxy.

Exhibit 11: Vote in Proxy

Country	Comparison
RU	Law provides for voting competence transfer through empowerment by the owner of property unit - to the representative.
KZ	Law provides for voting competence transfer through empowerment by the owner of property unit - to the representative. There is also provided procedure for voting through questionnaires (signature for agreement with the decision).
TJ	Law provides for voting competence transfer through empowerment by the owner of property unit - to the representative.

Voting by proxy is generally acceptable representation of person who cannot or elects not to participate in the vote in person. Based on the circumstances and the importance of the issue that is subject of the vote, the documents authorizing the proxy to vote (power of attorney) must be verified by acceptable means (by notary public, by number of witnesses, etc.). Vote by proxy for individual owners should be allowed by the amended law in Moldova.

3.10 Rights and Responsibilities of Owners

All reviewed legislation provides for equal rights and responsibilities of all owners, regardless of their legal status or ownership.

Exhibit 12: Rights and responsibilities of owners

Country	Comparison
RU	Conditions provided for the rights and obligations for all owners of real estate units are equal, regardless of ownership.
KZ	Conditions provided for the rights and obligations for all owners of real estate units are equal, regardless of ownership. For commercial units located in the building the law expressly provides for specific measures required to fulfil activities related to building maintenance areas.
TJ	Conditions provided for the rights and obligations for all owners of real estate units are equal, regardless of ownership.

The equal conditions for all owners of condominium units are prerequisite to properly functioning HOA and this approach is recommended for the amended Moldova law. The conditions and conduct for the owners of non-residential units may be addressed better in the internal rules for conduct, not by the legislation.

4. CONCLUSIONS AND RECOMMENDATIONS

The objective of the comparative analysis of the housing laws in Czech and Slovak Republic, In Romania and in Lithuania with the current Law on Condominium in Moldova was to develop understanding of how the housing issues are being addressed in other countries and utilize the best practices for amending the Moldova law. The analysis shows that in some aspects, the five laws are similar and that in some significant issues these laws have substantial differences. A brief overview of main issues of housing legislation of another three countries – Russian Federation, Kazakhstan, and Tajikistan also provided useful information about the practices in housing management. It is undeniable that the well-designed housing legislation in Czech and Slovak Republic, and also in Lithuania, while somewhat different from each other in certain aspects, provided good basis for reconstruction and maintenance of the residential housing stock in their respective countries. It is therefore strongly recommended that the basic principles of the Czech, Slovak and Lithuanian housing legislation are incorporated in the Amendment of the Moldova law on Condominium.

The well-functioning housing law must be designed with respect to the overall situation in residential housing sector, social and economic situation of the country and the citizens. There needs to be a balance between the required investment for maintenance and repair of the buildings and the ability of the owners to provide the contribution, and between the application of payment enforcement tools introduced by the legislation and need to protect the socially disadvantaged people. Therefore the whole spectrum has to be designed properly, not just the housing law. This is more important in the less economically potent, thus the best practices from economically better-off countries must be applied carefully. For example, Amnesty International²³ criticizes the Romanian authorities about failing to provide affordable housing and about forceful eviction.

The summary of most important aspects that need to be properly addressed in the Amendment of the Law, following the best practices from other countries are:

1. Clear definition and registration of ownership of common space in multi-apartment buildings, including direct ownership of apartment and/or non-residential premises, and

²³ Amnesty International: Unsafe Foundations secure the right to housing in Romania, 2012.

corresponding share of the building's common spaces and land, with this share properly registered together with the apartment ownership registration

Clear definition of property and its registration is important for understanding and proper addressing of all details in relevant legislation documents. It is important to define the term “**Condominium**” and consider its use, as this term relates to several unclear statements by the Moldova law.

It is necessary to establish accurate calculation of the size of the share of individual apartments and non-residential area that are the basis for calculation of the share of the costs. It is necessary to include into the calculation also non-residential spaces on the ground floor. This will also require recalculation of the ownership shares. The common ownership must also include all parts of the house, including stairways, basements, boiler rooms, roofs, attics, etc. The ownership of the individual apartment and non-residential space, including the share of ownership of the common property must be registered, as they are basis for the legal and financial relations of the owners.

Government of Moldova should introduce a program assisting the existing apartment owners in condominiums to properly register the shares of the common property through time-limited (1-2 years) assistance that may include, for example, waiving the registration fee, development of forms, calculation methodology of the ownership shares. It would also be constructive if Government of Moldova introduces legislative requirement on the banking sector to require proper registration of shares of common ownership as a condition for the loan to condominiums. Mandatory requirement to establish and maintain repair and maintenance fund separately for each building, to which the apartment owners contribute on monthly basis. This fund is separate from payment for services and the resources are used for both minor maintenance and major reconstruction.

2. Mandatory requirement to establish and maintain repair and maintenance fund separately for each building, to which the apartment owners contribute on monthly basis. This fund is separate from payment for services and the resources are used for both minor maintenance and major reconstruction.

The responsibility of the owners for repair and maintenance of the building must be established by the law and in secondary legislation, in Agreement on Association or in agreement on building management. The control over the technical conditions of the building should be with the respective municipal Architect office. In Slovak legislation, this responsibility is also included on the criminal law. Mandatory establishment of maintenance fund and mandatory monthly contribution by the owners

The responsibility for the repair and maintenance of building is closely related to the responsibility to collect sufficient financial resources. Therefore, the law must include mandatory requirement to create the repair and maintenance fund. Management and decision making regarding the financial resources and bank account of the building maintenance must be organized separately for each building. It is essential to provide the owners with proper reporting of the financial performance of the building fund and about the cash flows, which should be executed only through the bank account for transparency. Each building must have its own account and money contributed to the fund must be utilized only for the needs of their building. Such system of financial management provides for transparent utilization of the resources. Without such transparency, the owners will be hesitant to properly contribute to the fund. And will have passive attitude towards the building management.

3. Direct involvement of apartment owners in the decision making process for maintenance and reconstruction of their own building is necessary for the implementation of energy efficiency improvements. Transferring financial resources among buildings creates apathy and loss of interest by the apartment owners, which results in lower willingness to contribute to the maintenance fund. Also, while allowing voting in proxy for individuals (e.g. due to health issues, travel, or other personal reasons), the voting through elected representatives should not be

allowed.

4. Implementing intensive process of education of apartment owners. Substantial role in improvement of the building stock reconstruction and maintenance plays the education of owners. Intensive training of the apartment owners should be done by the members of association's management, or by maintenance organizations experts, or by non-profit organizations, and also by media and by state institutions

5. Ability to execute lien on apartment as a payment enforcement tool. The law must ensure enforcement of the payment by the owners. This is well accomplished by the ability to execute lien on the property of the non-payer for the benefit of the other owners. The issue related to socially disadvantaged people should then be addressed by other means, such as by state subsidy or by subsidy for poor by the municipal budget. Without ability to enforce payment, it is difficult, if not impossible to apply system of bank loans that are necessary for the large repairs or improvement of the energy efficiency of the building. Repayment of the loan may then be guaranteed by the maintenance fund to which every owner must contribute²⁴. Also, without the ability to enforce payment to the fund, the banks would hesitate to provide loans and the cost of commercial loan insurance would be extremely high, if at all available.

6. Initial government support during the transition period. Assistance by the State must serve as a very important transition bridge, alleviating the resistance of the apartment owners to guarantee the loan by mortgaging their apartment or risk a lien on their assets. In Slovakia, the state-run Slovak Guarantee and Development Bank assisted with the introduction of loan financing for residential housing reconstruction and improvement of energy efficiency by providing loan guarantees for a small fee derived as a percentage of the loan. Such assistance by the Government allowed home owners to take a loan without mortgaging their apartment. This approach had an extremely positive impact on expansion of residential housing refurbishment through bank loan financing.

It is highly recommended that Moldova Government establishes program of loan guarantees for the HOAs for financing the investment in refurbishing the residential housing and for increasing their energy efficiency. Such program could be organized either directly by the government, through cooperation with commercial banks or with assistance by development banks or with international donor community.

Inclusion of these principles in Amendment of Law on Condominium is necessary for creating legal environment that will support the refurbishment and proper maintenance of the residential housing stock in Moldova.

²⁴ Loan guarantee by the maintenance fund is widely used in Slovakia.

ANNEX 1: Index of legislative and normative acts regulating housing sector in Moldova

Laws regulating the housing sector:

1. The Housing Code, (as amended and supplemented), Nr. 306 from 03.06.1983. [rom/rus]
2. Law on condominium in housing, no. 913 of 30.03.2000 // MO no. 130-132 from 19.10.2000. [rom/rus]
3. Law on special-status housing. 982 of 19.09.1996 // MO no. 31-32 from 05.15.1997. [rom/rus]
4. Law on privatization of housing stock no. 1324 of 10.03.1993 // MO no. 000 from 27.06.2006. [rom/rus]
5. Law on construction authorization, no. 163 from 09.07.2010 // MO no. 155-158 from 03.09.2010 [rom/rus]
6. Law on construction quality. 721 of 02.02.1996 // MO no. 25 from 25.04.1996. [rom/rus]
7. Law on urban planning and spatial planning no. 835 of 17.05.1996 // MO no. 1-2 from 01.02.1997. [rom/rus]
8. Law on management and privatization of public property no. 121 from 04.05.2007 // MO no. 90-93 from 29.06.2007. [rom/rus]
9. Law on social assistance no.133, from 13.06.2008 // MO No.179/625 of 30.09.2008
10. Law on real estate monitoring. 267of 29.11.2012 // MO no. 1-5/6 from 01/04/2013

Normative legislation regulating the housing issues:

1. Government Decision (GD) no. 601 of 29.10.1996, regulating the attraction of funds in construction by using housing certificates // MO no. 078 of 05.12.1996.
2. GD no. 378 of 22.04.1997 on the concept for operation of existing buildings // MO no. 031 of 15.05.1997
3. GD no. 814 of 09.11.1994 on training of the interdepartmental Council for coordination and implementation of basic principles of national housing Concept and of the National Centre for Human Settlements (Habitat) // MO no. 016 from 08.12.1994.
4. GD no. 300 of 12.03.2002 on measures to improve the situation in the municipality housing fund of Chisinau // MO no. 100 of 11.07.2002.
5. GD no. 191 of 19.02.2002 on Regulation on the mechanism of delivery and payment of housing services, communal and non-communal, for housing stock, metering of apartments and conditions for disconnection from / reconnection to heating systems and water supply // MO no. 29-31 of 28.02.2002. [rom/rus]
6. GD no. 1224 of 21.12.1998 on approval of provisional Rules for operation and maintenance of residential buildings and associated land plots in Moldova // MO no. 003 of 14.01.1999.
7. GD no. 1271 of 27.09.2002 on expanding the action of provisional Rules for operation and maintenance of residential buildings and associated land plots in Moldova on dormitories [hostels] // MO no. 135 of 03.10.2002.
8. GD no. 416 of 10.05.1999 on approval Strategy of housing market and other real estate // MO no. 050 of 20.05.1999.
9. Regulation on the authorization of operation of buildings and change of destination, approved by GD no.306 from 30.03.2000 // MO no. 037 of 06.04.2000
10. General Regulation on Urbanism approved by GD no. 5 of 05.01.1998 // MO no. 14 of 26.02.1998.
11. Regulation on reception of building and related facilities, approved by GD no. 951 of 14.10.1997 // MO no. 076 of 20.11.1997
12. Framework Regulation on activities of local bodies in architecture and urbanism approved by GD no. 499 of 30.05.2000 // MO no. 65-67 of 06/08/2000.
13. Regulation on the assignment and change of land-use destination, approved by GD no.1451 of 24.12.2007 // MO 5-7/24 of 11.01.2008
14. GD no. 761 from 31.07.2000 on Rules for the compensation to certain categories of people. MO no. 94-97/849 from 03.08.2000
15. Regulation on technical approvals for products, processes and equipment in construction, approved by GD no. 461 of 06.07.1995 // Official Gazette no. 55/435din 05/10/1995
16. Regulation on public consultation in the development and approval of documentation on urban planning, approved by GD no. 951 from 14.10.1997 // MO no. 076din 11/20/1997
17. Regulation on establishment and maintenance of functional urban cadastre, approved by GD no. 1300 of 27.11.2001 // MO no. 147-149/1349 from 12/06/2001
18. The model Statute of the housing construction cooperative of the Moldavian SSR approved by the Council of Ministers no. 338 of 08.10.1984

19. GD no. 411 from 09.06.2011, on Approval of the Action Plan to remedy the situation in the housing construction for years 2011-2012 / / MO no. 99-101/474 of 17.06.2011; MRDC Action plan for the rehabilitation of residential buildings construction for years 2011-2012

Laws regulating the energy efficiency in housing sector:

1. Law on Ecological Expertise and Environmental Impact Assessment. no 851 of 29.05.1996 // MO 52-53 of 08/08/1996
2. RM Law on Energy no. 1525 of 19.02.1998. // MO no.50-51 of 04.06.1998.
3. Law on energy efficiency, no. 142 of 02.07.2010, // MO no 155-158 from 03.09.2010.
4. Law on Renewable Energy, no. 160, of 12.07.2007, // MO no 127-130, from 17.08.2007. Article No.: 550
5. RM Law on Energy Conservation. no 1136 of 13.07.2000 ,// MO no 159 157 from 12.21.2000 (repealed)
6. Law on RM accession to the Treaty establishing the Energy Community, no. 117 of 23.12.2009

Normative legislation regulating the energy efficiency in housing issues

1. GD no. 401 of 12.06.2012 on Energy Efficiency Fund. // MO no.126-129/448 of 22.06.2012
2. GD no. 833 on the National Energy Efficiency Programme 2011-2020. //MO no. 197-202 from 18.11.2011, Article no. 914
3. GD no. 421 of 05.04.2002 on the renovation and thermal rehabilitation of built residential blocks. // MO no. 50-52 from 11.04.2002.
4. GD no. 767 from 11.08.1997, on the National Agency for Energy Regulation. // MO no. 71 of 30.10.1997.
5. GD no. 434 from 09.04.1998 approving regulation on provision and utilization of thermal energy. // MO no. 60-61 of 02.07.1998
6. GD no. 420 from 11.05.1999, on setting a state body on energy supervision and approval of the Regulation on state supervision of power. // MO no.48-49 from 13.05.1999
7. GD no. 189 from 20.02.2003, on concept of renovating republican heating supply system. // MO no. 27-29 of 28.02.2003
8. GD no. 958 from 21.08.2007 on Energy Strategy of the Republic of Moldova until 2020. // MO no. 141-145 of 07.09.2007
9. GD no. 102 from 05.02.2013 on Energy Strategy of the Republic of Moldova until 2030. // MO no. 27-30/146 of 08.02.2007
10. GD no. 833 of 10.11.2011 on the National Energy Efficiency Program 2011 – 2020. // MO no. 197-202 of 18.11.2011
11. Instruction on energy efficiency projects' implementation and use of renewable energy for public entities approved by the Minister of Economy, no. 162 of 30.09.2011.
12. GD no. 1173 of 21.12.2010, on Energy Efficiency Agency, // MO no. 254-256 of 24/12/2010.
13. The Parliament Decision no. 828 of 03.05.1996, to ratify the Energy Charter Protocol on energy efficiency and related environmental aspects, // MO no. 032 of 30.05.1996
14. MoE Decision no. 1060-M of 29.01.2002 on water and thermal power metering in residential buildings. // MO 21-22/49 of 05.02.2002
15. MoE Order no. 129/62 of 07.11.2001 on compensation for maintenance services of water supply and sewage networks of residential buildings. // MO 147-149/355 of 06.12.2001
16. The decision of the Parliament to ratify the Energy Charter Protocol on energy efficiency and related environmental aspects, no. // MO no. 828 dated 03.05.1996. 032 of 30.05.1996

Indirect legislation in housing sector:

1. Law no. 933 of 14.04.2000 on special social protection of certain categories of population. // MO no. 70-72 of 22.06.2000, article no. 507. [rom/rus]
2. Law no. 643 of 14.11.1995 on interpretation of some provision of the Law on Privatization in housing area. // MO no. 70 of 14.12.1995. [rom/rus]
3. Law no. 909 of 30.01.1992, on social protection of people suffered from Chernobyl catastrophe. // MO no. 80-82 of 21.05.2004, article no. 413. [rom/rus]
4. Law no. 1543 of 25.02.1998 on real estate cadastre. // MO no. 44-46 of 21.05.1998, article no. 318. [rom/rus]
5. Law no. 354 of 28.10.2004 on real estate formation. // MO no. 233-236 of 17.12.2004, article no. 999. [rom/rus]

6. Law no. 179 of 10.07.2008 on PPP. // MO no. 165-166 of 02.09.2008, article no. 605. [rom/rus]
7. Law no. 1402 of 24.10.2002 on municipal public services // MO no. 14-17 from 02/07/2003. [rom/rus]
8. Criminal Code of the Republic of Moldova: Article 258
9. Contravention Code of the Republic of Moldova no. 218 of 24.10.2008, Article 180
10. Civil Code, adopted by Law no. 1107 from 06.06.2002 // MO no. 82-86/661 from 22.06.2002
11. Law on mortgage. no.142 of 26.06.2008 // MO no. 165-166/603 of 02.09.2008
12. Law on Consumer Protection, no 105 from 13.03.2003 // MO no. 176-181/513 of 21.10.2011

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ANNEX 2: Typically Asked Questions

This Annex provides answers to frequently asked questions and describes issues that are important for full understanding of the process applied in Slovakia in the sphere of building management.

Q1: Is the right to establish Lien on the property of non-payers the only way to receive the bank loan for financing of investment? Could the loan guarantees be provided by pledge on receivables, pledge on bank accounts or can the loan payment be guaranteed by purchased bank guarantees or by the state program?

A1: Process of establishing the lien on property is not the only way to provide the bank with loan guarantees. As part of their effort to minimize the risks associated with providing the loan, in combination with their interest to provide loans to the clients, (as their main business activity) banks will always look for, and accept reasonable guarantees of the loan repayment. The following (incomplete) list of possible loan guarantees demonstrates the role of the lien purpose, providing that its execution is stipulated by the law:

1. Loan guaranteed by owner's assets. Bank will in some cases accept guarantee of the loan by pledge on owners' assets (e.g. apartments). However such step is mostly unacceptable to the owners and not many banks want to deal with execution of apartments due to potential exposure to negative publicity. The main reason for executing lien on property in this case would be to ensure that the other owners do not assume risks and/or do not subsidize the non-payer. The ability to execute lien on non-payer's property benefits the other owners in the first place and also the process of obtaining the bank loan. Experience from Slovakia shows that the introduction of the lien on property serves mostly as a deterrent, and it is rarely exercised.
2. Pledge on receivables – if there is no mechanism for enforcing receivables, than the pledge of receivables have no value to the bank and cannot be accepted as loan guarantee. The risk that payments may not be received remains, as without ability to execute lien, there is no legal way to enforce it.
3. Pledge on bank accounts: The amount kept in the bank current accounts of HOA or by the building administrator is usually a fraction of the required loan for reconstruction and without enforcement mechanism for payment to the account the bank account may not have sufficient value as a collateral.
4. Bank guarantees: Loan guarantees provided by the “insurance” policy purchased from another bank or financial institution is available in most counties and it is acceptable by the banks. The cost of the bank guarantees subsidized by the Slovakia government was 1% of the loan face value, however commercially obtained loan guarantees (when available) may cost up to 10% of the loan face value or up to 10% of the value of monthly payments, or even more. The cost could be significantly higher without lack of legal enforcement of loan re-payment by the owners as the risk of default would be assessed as high. Commercial market for loan guarantees is not established in Moldova.
5. State guarantee fund: In Slovakia, state supported the HOA and other home owners in their effort to improve the housing stock through establishing and subsidizing program of loan guarantees that could be purchased in the state owned Development and Guarantee Bank for specific type of loans. The cost was set to be 1% of the loan face value. This was very successful instrument and it would be highly recommended that it is also established in Moldova.

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Q2: How does the legislation influences the process of obtaining the bank loan for the reconstruction of the residential buildings with many apartments and many owners. Is there a historically proven relation of the dependencies between the legislation and the banks requirements?

A2: Each bank must ensure the minimal risk of loan default, which is in majority cases done through review of creditworthiness of the borrower and loan guaranties which are possible through various mechanisms applied to the lending process. However it is important to understand what is required by the banks – institutions providing the funds and in their own interest being responsible for assessing the acceptability of the risks of possible loan default. The answer is best provided by describing the behavior of banks in relation to the legislation changes in Slovakia.

1993 - 2003

Legislation provides the following:

Law on ownership of apartments and non-residential spaces No 182/1993, enacted on 1st September 1993 (the “Law”)

- Law provides basis for establishing lien on property, benefiting either HOA or in case where HOA was not established, benefiting the other owners
- Related legislation does not reflect the change. Neither Civil Code or any additional legislation provide for exercising the lien rights
- Law does not stipulate responsibilities for liabilities of owners for liabilities of HOA created as a result of building administration.
- Responsibility for building administration is established marginally and leaves this issue for decisions by the HOA agreement or agreement to administer the building
- Quorum is set for simple majority of all owners in all questions

Banks position

- To issue a loan to HOA, banks required guaranties by majority of all owners (more than 50%) and required notarized consent to potential execution in case of default. This document gave the bank authority to enforce the repayment of the loan issued to the HOA through execution of property of the co-signed owners without the decision of the court.
- Since 2003, loan could also be guaranteed through purchased loan Guarantee (Insurance) from state owned Slovak Guarantee and Development Bank a.s. The loan guarantee was provided for a fee set at 1% of the loan face value.
- In case of building administration by the administrator, it was expected that loan would be assumed by the administrator, subject to positive result of assessment of his creditworthiness. However, administrators were refusing to assume the loan on improvement of someone else property (they did not own), because the lien was not structured for benefit of the administrator. Besides, the contract with administrator was possible to cancel with six (6) months’ notice, which did not provide the administrator with guaranteed control of the fund that was used for loan repayment.

2003 - Current

Legislation provides the following:

Law No 526/2002 from 1.1. 2003 introduced changes to the Civil Code and introduced substantial changes to the way the lien was established and executed

The Law No 527/2002 on voluntary auctions enacted on 1.1. 2003 followed the changes of the Civil Code and provided changes to the process of executing lien on property and together with the Civil Code allowed for more effective enforcement of the rights of claimants. This law allows execution outside of court by vote of simple majority of the owners to execute the property of the debtor owner in their condominium. This approach avoids lengthy court process which may take up to 1-2 years.

The Law No 367/2004 enacted on 1.July 2004 provided for additional improvements in:

- more effective legal stipulation of building administrator process in both cases – management by the HOA or by the manager
- establishment of responsibilities of owners for liability of the HOA over the limit of the value of the fund and received payments for services

The Law No 70/2010 on apartment ownership enacted on 1. April 2010 provided improvements in protection of the common property of owners deposited in the fund and/or administered by the building administrator:

- The owners of the funds deposited in the bank are the owners of apartments and non-residential spaces
- HOA and building manager have only the right to administer the fund
- Building manager must keep the maintenance fund(s) separate from his accounts and maintenance funds cannot be part of the building manager's bankruptcy procedure or execution procedure against the manager's assets.
- HOA bank accounts established for the maintenance funds are protected by the law on deposit protection (up to 100,000 Euro)

Banks position

- Bank can issue loan to HOA or directly to the owners of apartments and non-residential spaces in the building who are represented by the building administrator
- The bank loan closing process is simple and straightforward. Banks have the following standard requirements for issuance of the loan for reconstruction of the building or housing related investments:
 - Verification of the maintenance fund past and present activity and sufficiency of its value for loan repayment
 - Agreement enabling bank to have oversight of the fund activities, including deposits, outlays and other liabilities.
 - Proof of active building insurance policy in which the beneficiary is the bank
 - Direct payment from the HOA account(s) or from the account administered by the building manager
 - Agreement with HOA or with the building manager enabling bank to establish lien on fund
 - Agreement enabling bank to revoke the loan and request lump sum payment of principle, accrued interest and other fees and penalties in case of nonpayment. Owners of the apartments and non-residential spaces in the buildings are liable for the payment. As the agreement is between the bank and the HOA, the payment by the owners will be enforced by the HOA or by the administrator, In summary, the improvements in legislation that established trustworthiness of the fund, such fund provides banks with reasonable guarantee of the loans repayment, even without any specific legal stipulation of the level of monthly payment to the fund by the owners. The fund provides sufficient 'risk management' for the banks because its

credibility is strengthened by the legislation that provides protection of deposits, protection against bankruptcy and execution against the manager, and sets the responsibility of the owners for the liabilities of the HOA. Important legal step was also increase of the quorum in case of loan issues to 2/3 of all owners.

To-date there is not known case where the HOA or the building administrator would default on loan and where bank would revoke the loan. In general, banks view the loans for building reconstruction as low risk.

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Q3: How the enforcement against individual property works in Slovakia where it is well established

A3: Enforcement of debt payment through the court process and through execution of property in Slovakia is lengthy, in spite of several improvements made to the court process rules. However, debt payment can be enforced in so-called short process through issuing payment order:

Advantages: court makes decision only on basis of the petitioner's statement on amount and reason for request. Defendant has a right to appeal, stating the reasons. If defendant does not appeal, and does not pay the requested amount, court decision allows for the execution of assets.

Disadvantage: the payment order must be physically delivered to the defendant. Court usually sends the payment order document via mail and if the delivery fails, court requests delivery by police. Defendants often refuse to accept the delivery, thus causing delays of the process. If the delivery of the order fails, court cancels the decision and transfer the case to the regular court process. This process may take up to one year.

If the case cannot be decided through the short process, the case is submitted to regular court process to reach court judgment.

Improved stipulations of the Civil Code now allows in most cases reaching court judgment at the first court hearing, which must be attended by both, the petitioner and the defendant. Court reviews the complaint and the argument of defendant and issues judgment. Judgment can be delivered also by alternative method by depositing it at the post office. If the defendant does not accept the delivery, the delivery is demerit executed.

Judgment can be appealed within the time set by the judgment. Appeal is then submitted to the court of appeal (2nd level). If this court concurs with the decision, and defendant refuses to settle the debt within set period, execution of his assets is allowed.

According to the statistics of the Slovak Ministry of Justice, the average length of regular court process in such cases during the 2003 was 16.6 months, and in 2001 the length of the process was reduced to 11.4 month

According to the Law 233/1995 and as amended, the execution process consists of the following:

- Request for execution is submitted by the petitioner to the executor of his choice
- Executor then request court's authorization to perform execution
- Executor is authorized and is responsible for search of assets owned by the debtor
- Execution can be performed in a form of salary (or other income) deductions or sale of assets, etc.

Decision on execution process depends on many factors, mainly on the level of income of the debtor, assets available for sale, and on legal conditions. Time required for execution is also a factor considered. Executor is not allowed short sale of the immovable property, which

complicates the process and other means are usually sought for settling the case, such as monthly deductions from income.

IN Slovakia, the HOAs and building managers use the payment enforcement through the lien on property only in cases where the debt is substantial and all the other options of payment enforcement have failed. Law does not establish the debt amount for which the lien approach should be applied. In reality, the option of establish lien on debtor's asset serves mostly as deterrent. Experience shows that most of the debtors find way to settle the debt before any "serious action" is exercised against them.

It is quite typical that the debtor himself is financially not able to pay for the debt, but members of his family (even the closest members) are financially sound, but they would not voluntarily contribute to the debt payment. When the possibility of execution of the apartment (or other assets) is eminent, they almost in all cases step in and settle the debt. This would not happen, if the possibility to put a lien on the property would not exist.

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Q4: How the Law on Condominium in Slovakia interacts with the remaining legislation

A4: There are nine (9) other legislative acts that relate to the Law on ownership of apartments in Slovakia, each dealing with a specific issue:

Law No 40/1964 and as amended (Civil Code) is a supporting legislation to the specific laws on ownership of apartments and non-residential spaces (Law 182/1993 and as amended)

Law No 162/1995 and as amended (Law on Cadastre) stipulates the registration of ownership rights to immovable property into the registry of immovable property

Law No 515/2003 on Regional and district authorities stipulates changes and additions to registration process of HOA

Law No 50/1976 and as amended (Construction Law) stipulates spatial and construction process

Law No 118/1996 on protection bank deposits relates to the protection of owners funds deposited in the banks

Law No 527/2002 and as amended on voluntary auctions. Together with the Civil Code allows expeditions and effective execution of lien on property

Law No 99/1963 and as amended on Civil court orders stipulates the process of payment enforcement

Law No 233/1995 and as amend on Executions stipulates the process of execution of assets.

Law No 513/1991 and as amended (Commercial Code) stipulates the process of cancellation and termination of HOA, contractual issues related to HOA and owners of apartments and non-residential spaces in the building

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Q5: Besides the building management by the HOA, are there any other options available in Slovakia?

A5: Law on ownership of apartments No 182/1993 and as amended recognizes two (2) possible management options of building in condominium type ownership – management by the HOA and management by professional building manager.

A **third option** of building management was established through practical needs and experience with building management since 1995. According to the provisions of the Civil Code, as well as the commercial Code, HOA, as a legal entity can enter into any agreements or contracts with professional building manager. HOA can contract all or selected activities to the building Administrator and this contractual relationship is between the HOA and the administrator. Relations between the HOA and the owners remain unchanged.

Table below shows the differences between these two options.

Home Owners Association	=	Building Administrator (Business of Individual)
Building operation and management has the following specific rules and regulations		
Financial resources can only be kept in the bank accounts	=	Financial resources can only be kept in the bank accounts
Owners of apartments and non-residential spaces remain to be owners of the fund	=	Owners of apartments and nonresidential spaces remain to be owners of the fund
HOA has only right to administer the Fund	=	Building manager has only right to administer the fund
Accounts established in the bank by the HOA for the owners of apartments and non-residential space are protected by the law on protection of deposits (up to 100,000 Euro)	=	Accounts established in the bank by the building administrator for the owners of apartments and nonresidential space are protected by the law on protection of deposits (up to 100,000 Euro)
HOA can not conduct any business activity and cannot participate in in business activities of others	=	Building manager must keep separately the fund account from its other activities
	=	Bank accounts in which the funds are held and administered by the building manager cannot be part of the bankruptcy or the execution of manager's assets
HOA is responsible for liabilities resulting from building administration only up to the value of the fund and value of received payments for services. The owners are responsible for the rest of the liabilities.	=	Building administrator is responsible for liabilities resulting from building management only up to the value of the fund and value of received payments for services. The owners are responsible for the rest of the liabilities.
HOA is a beneficiary of the lien, subject to approval by simple majority of all owners	=	Building administrator can execute the lien for the benefit of the owners, subject to approval by simple majority of all owners

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