



PROPERTY INSURANCE INITIATIVES

## **Title Insurance/ Legal Indemnities**

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in

## **Central and Eastern Europe**



a creative and dynamic approach to risk solutions...



## What is Title Insurance/Legal Indemnities?

Legal Indemnity insurance, also known as Title insurance, is a form of general insurance which protects against loss from legal defects. These are typically discovered during a transaction or remortgage by the solicitors involved in the deal.

## Why Use Title Insurance/Legal Indemnities?

- Surety of ownership
- Cover for known & unknown title defects
- Replace seller's title reps and warranties
- Transfer contingent liabilities to the Insurer
- Streamlined acquisition and disposal process
- Unlimited legal defence costs

There are many reasons to put a policy in place. The main reason is that it removes the risk from the transaction, allowing for the smooth sale / purchase of the land. Often these risks can be resolved legally, but this process can be time consuming and could turn a potential issue into a very real one.

Some common reasons for insurance being put in place are:

- Protects against the risk itself
- Speeds up the transaction
- Helps satisfy lender requirements
- Protects investments
- Allows for the sale of the land at a greater price
- Enables the seller to exit cleanly without any ongoing obligations

## What does it Cost?

Premiums are related to the level of cover required and the risk exposure. They are a one off payment and can range from 0.2% to 2% of the value of the transaction, depending on the size, complexity and risk of the deal.

## Common Risks

- Restitution Claims
- Missing Title Documentation
- Third Party Rights
- Corporate Defects
- Breach of Legislative Requirements
- Planning Risks
- Breach of Pre-emption Rights
- Registration Gap
- Faulty Public Tender Process
- Illegal Privatisation Procedure

## Country Specific Risks

### **Czech Republic - Failure to follow the correct privatisation procedure**

Many state owned assets have been transferred into private ownership since privatisation commenced in 1990; through restitutions. The major part of these restitutions (affecting real estate, farm land and shares in some industrial enterprises nationalised after February 1948) was completed in 1990-1991, the total property privatised in this way amounting to approx. 200 billion Czechoslovak crowns (CZK).

There are rigid rules which must be followed in order for this process to complete. It is a requirement of the Privatisation Act that a list of all assets owned by the company is compiled, but often assets are missing. This can cause problems for future purchasers who may find their asset reclaimed by the State. Insurance can be used to mitigate this risk. Any policy will cover the loss of the asset and associated costs should the asset be returned to the State.

### **Poland – Restitution**

After World War II, nationalisation of private property was a common practice throughout Europe. Countries which later became part of the Eastern Bloc – Hungary, Czechoslovakia, Bulgaria, Romania, Yugoslavia, the German Democratic Republic and Poland – nationalised private property on a massive scale. Persons who lost their property after World War II and their legal successors (even if they are not Polish citizens) may pursue their claims through court and administrative procedures. Persons claiming property restitution may apply, without time limits, for a declaration of invalidity.

Declaration of invalidity leads to disregarding the administrative decision in the process of establishing the legal status of property. If a decision has led to irrevocable legal consequences, then an administrative body (instead of declaring the decision to be invalid) finds that it was issued in breach of the law.

In the event that property was seized without legal grounds or based on an invalid administrative decision, a claim may also be filed with a common court of law for possession of property (Article 222 § 1 of the Civil Code) and for reconciling the entries of a land and mortgage register with the actual legal status of the property in question.

Insurance can be obtained to protect against the consequences of a restitution claim against your property. This will compensate should the land be returned as well as pay all associated legal costs in dealing and defending the claim.

## **Slovakia – Lack of Proof of Title**

Although, the current Cadastre of Real Estates regulated by the Cadastre Act 162/1995, is a relatively modern and effective system of land/title registration. The actual information system of the Cadastre is not yet complete. The system is also complicated as the titles to land are recorded in more separate registers developed during the 19th and 20th centuries, such as:

- Land Books – entries made between 1855 and 1964
- register of the Department of Geodesy and Cartography – entries made between 1964 and 1993
- registers administered by the Cadastre offices – entries made from 1993 until this date

There are also many areas where ownership is not documented and the owner is unidentifiable. It is believed this applies to somewhere between 20-45% of land. Even if the owner holds a document, which proves his title to land, from one of the registers, these documents have to be adjusted to the Cadastre and the identification of the land submitted to the Cadastre. Only then may the owner obtain the Certificate of ownership and make valid dispositions. Many older entries, particularly prior to 1993, have inaccuracies, or simply lack sufficient information. Title insurance can be used to ensure that should someone claim ownership of your property, you are protected from financial loss.

## **Hungary - Public Procurement Defect**

Land cannot be transferred for speculative purposes in Hungary. Usage rights are commonly used, to allow for the transfer of land for development. This has almost all the same benefits as ownership.

The Hungarian civil code requires that there should be an exact term of years for a usage right to run. Although the public authorities do often abide by this, the land registry entry of the usage right against the public authority's title may not be as accurate and often fails to specify the term. It could, therefore, be challenged by the public prosecutor at any time, requiring the right to be removed from the public register and the land returned. This could mean the demolition, or loss of the property. Insurance can help mitigate the risks and help rectify the matter in the Hungarian courts.

If you would like to know more about  
Title Insurance / Legal Indemnity  
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