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INTERNATIONAL LAWYERS NETWORK

BUYING AND SELLING REAL ESTATE: AN INTERNATIONAL GUIDE

ILN REAL ESTATE GROUP

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SALABERREN Y LÓPEZ SANSON ABOGADOS

Buying and Selling Real Estate in Argentina

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER ARGENTINIAN LAW

I. INTRODUCTION.

Below you will find a brief outline of the legal regulation of the acquisition of real estate property in Argentina, which is mainly governed by the Argentine Civil and Commercial Code ("CCC").

II. FORMS OF REAL ESTATE OWNERSHIP.

Argentine law regulates different forms of real estate ownership. A brief summary is provided below:

a) Sole Ownership.

Sole Ownership confers all the powers to legally use and materially and legally dispose of a real estate property. All of the existing constructions belong to the owner, which are presumed to be built by said owner, except evidence to the contrary. This kind of ownership extends to the subsoil and airspace, with the exception of specific cases determined by law. The owner is also legally entitled to exclude third parties from said real estate property.

b) Joint Ownership.

Joint Ownership is the right over a real estate property that belongs to more than one person, where each person owns an undivided share of said property. Each co- owner can, solely or jointly, use the common property without altering its destiny, and also, they can agree either the use of the common property at alternate times or the exclusive use over determined parts of the property.

Additionally, each co-owner can sell or encumber his or her undivided share without the assent of the other co-owners, while the sale of the whole property requires the consent of all the co-owners. Each co-owner is responsible for paying the expenses corresponding to his/her share, as well as refunding other co-owners the expenses in which they may have exceedingly incurred in relation to their shares. Unless otherwise agreed, every co-owner may require the legal partition of the ownership and the division of the property.

c) Condominiums.

Condominium (*propiedad horizontal*) confers rights of use and disposal of an independent and undivided share of a building (called a functional unit) and the proportional part of said building's common areas. The building's different parts, as well as the rights arising from them, are interdependent. This type of property exercised over the *functional unit*, which may consist in a flat, a commercial property or other space with functional independence and direct or indirect access to a street. The condominium is governed by internal regulations which are incorporated to the title deed.

d) Residential Developments.

This category comprises country clubs, gated communities, industrial, commercial, or nautical parks or any other type of residential developments regardless of their destiny (temporal or permanent homestead or commercial), also including those with mixed uses, in accordance with local administrative regulations. The residential developments are considered a type of condominium.

The main characteristics of these developments are enclosure of the development, existence of common and individual areas and the existence of an internal regulation. All of the common and exclusive parts and areas are interdependent, as well as the rights over them, conforming a non-divisible whole.

Aspects in connection with authorized areas, dimensions, uses and other urbanistic elements of residential developments are governed by local administrative regulations of each jurisdiction.

e) Surface rights.

Surface right is a temporary right over a third party's real estate property, which confers to its holder the power to use and dispose the legal right to plant, forest or construct in said property (or a right over existing plantations, forestations or constructions), comprehending property's terrain, soil and/or subsoil, in accordance with the terms and conditions set forth in the deed title. The third party remains owner of the real estate property.

The term of the surface right cannot exceed seventy years for constructions, or fifty years for plantations and forestations, both terms considered as from the date of acquisition of the surface right. The term can be renewed as long as it does not exceed said maximum terms.

The owner of the property keeps his right to sell and dispose of the property as long as it does not interfere with the existing surface right. During the agreed term, the surface right holder may transfer and encumber the constructions without the prior consent of the owner.

f) Usufruct.

Usufruct confers the right to use a third party's real estate property. This right can apply over a whole property or just a share of said property. This right can only be granted by the owner of the property.

Usufruct can be granted for the lifetime of the holder if the holder of the right is an individual or for a maximum of 50 years if the holder is a corporation.

III. LEGAL FORMALITIES IN RELATION TO REAL ESTATE OWNERSHIP ACQUISITION.

a) Preliminary Purchase Agreement.

Under Argentine law, all transfers or creation of rights over real estate properties must be granted as a public deed before a notary. The notary must conduct due diligence to verify the soundness of the title of the seller over the relevant property, obtain certificates attesting the ownership and the inexistence of injunctions preventing the transfer. The notary also acts as a withholding agent of the taxes connected with the transfer.

Although it is not mandatory, usually seller and buyer execute a preliminary purchase agreement (*boleto de compraventa*) of the real estate property, in order to agree on the terms of the transaction while all the required formalities for executing the transfer deed are complied with.

In order to enter into the preliminary purchase agreement each of the parties must: (i) have general capacity in terms of the CCC as for the performance of legal acts; (ii) have an Argentine tax ID

number; and (iii) in the case of individuals married under community property regimes, obtain their spouse's assent to the sale.

Preliminary purchase agreements usually include: (i) the identification of the parties; (ii) the price and payment terms; (iii) a detailed description of the property to be acquired; (iv) the current condition of the property to be acquired; (v) time of conveyance of the possession over the property; (vi) tax treatment of the transaction; (vii) general obligations of the parties; (viii) appointment of a notary public for the granting of the transfer deed; and (ix) provisions in connection with parties' failure to compliance with their respective obligations.

b) Transfer Deed.

Once the due diligence of the title has been completed and the certificates have been obtained, which usually takes about 30 days, the parties shall grant the transfer deed which has substantially the same content as the preliminary purchase agreement.

Parties may directly sign the transfer deed and not sign a preliminary purchase agreement.

The notary public is usually chosen by the buyer. The fees of the notary usually range from 1 % to 3 % of the purchase price. The fees and expenses relating to the due diligence over the title to the property are usually paid by the seller, while the remaining fees are paid by the buyer.

c) Registration with the Real Estate Registry.

The final stage for acquiring property is the registration of the transfer deed with the Real Estate Registry of the jurisdiction where the property is located. Once registered, the buyer's ownership over the property is enforceable before third parties. Such registration entails certain fees which are usually comprised in the notarial fees and are also assumed by the buyer.

The times involved in the registration of the deed will depend on the relevant jurisdiction, but in average this should take between 1 and 2 months.

IV. TAXES.

Please find below an outline of the main taxes involved in the sale of real estate property according to the latest tax reform.

a) Real Estate Transfer Tax.

Pursuant to the recent abrogation of the Real Estate Transfer Tax ("ITI") effective July 2024, individual tax residents ("individuals") are not taxed upon the disposition of real property acquired prior to January 1, 2018 ("the date").

If the real estate property was acquired after the date, individuals are taxed at a 15% tax rate over net income (sale price minus acquisition cost).

The transference of any rights over real estate property are also taxed at a 15% tax rate (net income) if such rights were also acquired after the date (this includes the transfer of participations in real estate trusts).

b) Corporate Income Tax (CIT).

Local companies selling real estate must pay CIT over the sale of real estate

property at a progressive tax rate over the net income, according to the following criteria (for the period 2025):

a) if the net income of the company does not exceed ARS 101,679,575.26 in the fiscal year, a 25% tax rate applies;

b) if the net income exceeds ARS 101,679,575.26 but does not exceed ARS 1,016,795,752.62, a fixed amount of ARS 25,419,893.82 must be paid, plus a tax rate of 30% over the income exceeding ARS 101,679,575.26; and

c) if the net income exceeds ARS 1,016,795,752.62, a fixed amount of ARS 299,954,747.02 must be paid plus a tax rate of 35% over the income exceeding ARS 1,016,795,752.62.

c) Stamp Tax.

This is a tax levied by each of the provinces in Argentina and the City of Buenos Aires which in broad terms applies over the purchase price or the registered value of the property, whichever is higher. The tax rate varies in each local jurisdiction. Usually, this tax is borne in equal parts by the seller and the buyer.

V. AGENTS.

Real Estate agents may be used by either buyer or seller of real estate property, but their participation in real estate transactions in not mandatory. The agent fees are not determined by law and may differ from one jurisdiction to another. Usual fees range from 3 % to 4 % of the purchase price.

VI. SPECIAL CASES.

a) Frontier Securities Zone Act (Decree 15,385/44 as Amended) ("FSZA").

The FSZA regulates the acquisition by foreign individuals or foreign companies of rural real estate assets and certain urban real estate assets located in frontier zones. It also regulates the acquisition of shares in companies which own said real estate assets, as well as corporate restructuring operations of said companies.

The regulation of the FSZA considers the following to be foreign companies: (i) companies incorporated abroad from Argentina, (ii) companies incorporated in Argentina, in which foreign companies or individuals hold the majority stake or have sufficient votes to make decisions in shareholders' meeting; and (iii) companies in which foreign shareholders own more than 25% of the corporate capital.

Under the FSZA, all acquisitions of real estate assets located in frontier zones or shares of companies which own said assets require clearance from governmental authorities, with the exception of assets located in certain cities or urban assets which have a surface of less than 5,000 square meters, must be previously approved by the Internal Affairs Secretary.

In order to obtain said approval, foreign companies must make a filing with the Internal Affairs Secretary, including certain forms provided by said governmental entity, certain corporate information (e.g. corporate bylaws, appointment of board members, latest financial statements, identification of shareholders), certificates of criminal

record of the board members and an investment project to be conducted in the real estate property to be acquired. The filing should be made by the investor.

The authorization is granted by way of exception and depends on showing that the investor (or its shareholders and officers) has not been convicted of crimes affecting national security and proposing an investment project for the development of the acquired real estate asset. The investment project is analyzed in the light of the following criteria: (i) that the project is declared of national, provincial or municipal interest by the competent authority; (ii) purports to the social and economic development of the region where it is located; (iii) it will be implemented in underdeveloped zones; and (iv) it mainly employs Argentine workers.

b) Protection of Rural Lands Ownership Act (Act 26,737) ("PRLO").

The PRLO limits the ownership or possession of rural land by foreign individuals or companies (which are referred to as Foreign Owners).

In December 2023, the PRLO was abrogated through Presidential Decree 70/2023. However, this has been challenged before the courts, and an injunctive relief has suspended the abrogation for the time being.

Rural Land is defined as any real estate asset located outside the limits of cities. It provides that all Foreign Owners cannot own or possess more than 15% of the total rural land of Argentina. Likewise, Foreign Owners cannot own or possess more than 15% of the total rural land in each Province or Administrative Department. Additionally, Foreign Owners of the same nationality cannot own or possess more than 30% of the rural land owned by Foreign Owners. Moreover, a single Foreign Owner cannot own more than 1,000 hectares in the core area or an equivalent surface in other locations to be determined by the governmental authority. Finally, Foreign Owners cannot hold an interest on rural land adjacent to bodies of water of certain importance. Moreover, any change in the composition of the corporate capital of local companies' owners of rural land should be informed to the authorities to verify compliance with the PRLO.

The PRLO considers the following to be Foreign Owners: a) Individuals of foreign nationality (although there are some exceptions for foreign nationals who have resided in Argentina for more than 10 years, or have Argentine children, or have been married to an Argentine national for more than 5 years); b) Companies, incorporated in Argentina or abroad, whose capital is owned in more than 51% (or a sufficient percentage to adopt decisions in shareholders' meetings) by foreign individuals or companies.

The regulations of the PRLO provide that in the case of usufruct and surface rights, it will only control the owner of the property and not the holders of said rights.

The PRLO has created a National Registry of Rural Land which oversees compliance with the PRLO.

The application of the PRLO is triggered when dealing with the acquisition of real estate assets or participation in

companies which own real estate assets which qualify as rural land. As noted, before, the PRLO bans the acquisition of rural exceeding 1,000 hectares in the core area, or adjacent to bodies of water of certain importance, or in excess of the 15% maximum of the rural land allotted to Foreign Owners at national, provincial, and municipal level.

Before the granting of the deed of acquisition of the rural real estate asset the intervening notary must procure with the National Registry of Rural Land a certificate of clearance, confirming that the above limits are not breached by the intended transaction. If the certificate of clearance is not obtained the transaction cannot be implemented.

c) "UVA" mortgage loans.

UVA mortgage loans are a new form of mortgage loans aimed at the purchase, repair, or expansion of real estate property. They are granted by both public and private banks and represent a comparative advantage over other forms of mortgage loans, since they offer a more convenient interest rate.

These loans are expressed in Purchasing Value Units ("UVAs"), which reflect the average construction cost of one square meter and are updated based on the Consumer Price Index. This is an exception to the general prohibition of making adjustments based on inflation.

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KALUS KENNY INTELEX

BUYING AND SELLING REAL ESTATE IN AUSTRALIA

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KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER AUSTRALIAN LAW

INTRODUCTION

The majority of land in Australia consists of freehold title. Registration of ownership of freehold title is recorded using the Torrens system. The Torrens system is a system of title by registration. This means that an interest will only be a legal interest if it is registered on title. Once the interest is registered, that interest is indefeasible and takes priority over all other interests. Both the vendor selling the land and the purchaser purchasing the land execute a legal document transferring ownership. Once settlement of the property has occurred, the transfer document is registered. Each State and Territory in Australia has its own register. The purchaser becomes the registered proprietor of the land, which is recorded on the Torrens title register. The registered proprietor is issued with a specific certificate of title for the property which contains a unique volume and folio number and a plan identifying the land, details of any restrictions (e.g. a covenant) affecting the land and details of any encumbrances (e.g. mortgage). Titles may comprise of land or spaces defined by a plan.

In recent years, property settlements and registration of interests on the Torrens system have been effected electronically through the Property Exchange Australia platform ("**PEXA**"). One of the key benefits of using PEXA is that registration of interests is effected immediately. Certificates of title were previously issued only in paper, but now titles can be issued electronically.

COMMON TYPES OF PROPERTY TRANSACTIONS

Land

In Australia you can sell or buy a vacant block of land. Developers commonly subdivide large blocks of vacant land into smaller blocks, which are then on-sold to purchasers. It is often a condition of the land contract that purchasers must commence and complete the construction of a dwelling on the land within a certain timeframe. The type of dwelling may be controlled by restrictions imposed by the vendor, or the planning authority (e.g. local council) such as a covenant, building envelope and/or design guidelines.

Residential Dwellings (Existing and Proposed)

Existing Dwellings

The purchase or sale of an existing residential dwelling is a common transaction. This involves the transfer of ownership of the land, including any fixed dwelling, improvements and other permanent fixtures on the property. The property is usually sold to a purchaser in its current condition and subject to all defects. It is important for purchasers to undertake their own due diligence enquiries concerning the property and to be satisfied with its state and condition. These enquiries should be conducted before a contract is signed. The contract of sale is prepared by the vendor. Purchasers are entitled to attempt to negotiate contracts in order to make them more even-handed.

Proposed Dwellings

Purchasing "off-the-plan" involves purchasing a dwelling that is yet to be built on a lot which is yet to be created. Settlement occurs once the subdivision has been registered (which creates a title for the lot), and construction of the dwelling has been completed. Off-the-plan contracts are complex, but commonplace. Both the land and what is being constructed on the land may be subject to changes by the vendor. Depending on the State and Territory, there can be stamp duty savings when purchasing off-the-plan. Settlement under an off-the-plan contract may take several years to settle, as the vendor has a

specified timeframe in which to register the plan and construct the dwelling. These types of contracts are typically drafted on a vendor favourable basis, with the vendor having flexibility regarding construction and broad termination rights, especially if the development does not proceed. A purchaser's right to terminate the contract is usually limited. Residential, commercial and vacant land can be purchased and sold "off-the-plan". Selling "off the plan", is possible because of a legislative regime which allows this.

Commercial Properties

Commercial properties include retail, industrial and office spaces. The purchase or sale of a commercial property may be in vacant possession or subject to a lease (i.e. tenanted). A property may comprise both commercial and residential spaces (e.g. commercial space at ground level, with adjoining residential space upstairs). If the property is leased and is sold to a purchaser subject to the terms of the lease, it is important for the purchaser to review the terms of the lease, especially if the purchaser is relying on the rent for income. The sale of commercial properties is usually a taxable supply and subject to the payment of a Federal Goods and Services Tax ("**GST**"). However, the sale of leased property can be GST free if the parties agree that it is the supply of a "going concern". To satisfy the going concern exemption, certain requirements must be met.

Retail Properties

When buying or selling a retail property in Australia, each state and territory has its own specific retail legislation, which governs retail premises, the lease provisions and disclosure documentation. If purchasing a leased property, it is important for a purchaser to review the lease documentation. A failure to do so could adversely affect the purchaser's rights as the future landlord to enforce the terms of the lease. Some leases have termination rights, or rights under the retail lease legislation for longer terms, and certain rent review methodology. The applicable retail lease legislation has a big impact on leases, so leases are not always what they seem to be.

DIFFERENT METHODS OF SALE

Private Sale vs Auction

Private Sale

A property can be sold privately through a sales agent or by private sale directly between a vendor and a purchaser. In most cases, a vendor will engage a real estate agent to sell the property, as this can be more efficient, and the vendor has the benefit of the real estate agent's brand, reputation and database of potential purchasers. In these situations, contracts may be negotiated and re-drafted to suit both parties and may include agreed conditions.

Auction

A property can also be sold at a public auction. This involves the engagement of a real estate agent, who is also an auctioneer. An auction date is set by the vendor and interested buyers can attend the property and submit their offers by placing a public bid. Each State and Territory has its own legislation which governs auctions. Sales of property by auction are unconditional. The contract is signed, and the deposit is paid after the auction has been concluded. Generally, the vendor controls the bidding by setting a reserve price, which is the minimum price a vendor will accept for the property. Sometimes, the bidding at a public auction does not reach the vendor's reserve price. When this occurs, the property is "passed in" and the highest bidder has first right to negotiate with the vendor at the reserve price. Generally, at auctions it is more difficult for a purchaser to negotiate the terms of the contract, so any

negotiations are normally held in advance of the auction.

Expression of Interest vs Tender

There are methods of gauging interest in a property without a public auction or directly negotiating with a purchaser straight away. Such methods may involve an expression of interest or a tender.

Expression of Interest

The vendor of the property invites potential purchasers to submit an expression of interest ("**EOI**"). This is a common method of sale for high end or more bespoke properties. The EOI form may be prepared by the real estate agent or by the vendor's solicitor. It contains details of the purchaser, price and terms such as the deposit, settlement period and special conditions. The terms of the EOI make it clear that the submission of an EOI does not create a contract for the sale of the property. It is not binding. Therefore, no legal rights or obligations except those contained in the EOI document are deemed to arise until a contract of sale is executed and exchanged and the full deposit is paid. The vendor may accept or reject any EOI in its absolute discretion without giving reasons and the vendor is not bound to accept the EOI with the highest price or any EOI received.

EOIs can be complying, or non-complying and a vendor is free to accept either. Once the parties are close to agreement on commercial terms, a contract of sale must be entered into to effect a binding transaction. With an EOI, purchasers can be more casual with their proposal.

Tender

The vendor invites offers from tenderers for the purchase of the property. The tender document, which is usually prepared by the vendor's solicitor, sets out the terms of the tender and attaches a copy of the contract of sale. The tenderer must deliver the tender to the tender box in a sealed envelope. The tender documents include the signed tender form, signed contract documentation, including guarantee and a cheque for the deposit.

The key difference between a tender and an EOI is that each tenderer who lodges a tender is deemed to have made an irrevocable offer to purchase the property for the tender price and on the terms and conditions of the tender and the contract of sale. The offer made by the tenderer remains open for acceptance by the vendor for a certain period and it cannot be revoked before that time by the tenderer. Tenders can be complying, or non-complying and a vendor is free to accept either. The vendor is under no obligation to accept any tender, which is not lodged in accordance with the terms of the tender and is not bound to accept the highest tender.

This method of selling is usually undertaken for large residential and commercial properties, like shopping centres, where the vendor prefers to keep the sale as private as possible. If a tender is accepted, there will be a binding contract between the parties.

DOCUMENTATION

Sale Documents to be in Writing

Each State and Territory has its own specific legislation, which requires that a contract for the sale or disposition of an interest in land must be in writing and signed by the person to be charged. Contracts of Sale are typically signed electronically.

Contract of Sale

Each State and Territory has available its own standard contract of sale which is in a form approved by the relevant peak body for lawyers (e.g. applicable Law Society or Law Institute) or real estate agents (i.e. the Real Estate Institute for the State or Territory) or both. The contract of sale includes among other things the parties'

details, the property (and any inclusions) to be purchased, the price and the settlement date. It is important for purchasers to obtain legal advice before entering into a contract of sale and for vendors when having a contract prepared.

Standard Conditions

Generally, a contract of sale will contain standard or general conditions of sale, with the ability for the parties to include additional conditions as "special conditions" or to amend the standard or prescribed conditions. In terms of priority, the special conditions of a contract will usually prevail over any standard or general conditions. When preparing a contract of sale for an off-the-plan purchase, conditions imposed by statute must be included. The requirements for each State and Territory vary.

Disclosure Requirements

The vendor disclosure requirements vary for each State and Territory. In some States, a vendor is required to disclose certain information about the property in the form of a vendor's statement or disclosure statement or by providing copies of certain prescribed documents (e.g. title search, plan, drainage diagrams, registered dealings on title and council certificates). In other parts of Australia, the disclosure regime does not exist or is very limited, with a requirement for the vendor to provide some statutory warranties about the property. It is important that a purchaser obtains legal advice and conducts its own due diligence enquiries and is satisfied in relation to all aspects of the property.

Statutory disclosure obligations provide some protection to purchasers. Non-compliance by a vendor with statutory disclosure obligations may give a purchaser the right to terminate a contract.

Negotiated Amendments

If a purchaser or vendor has concerns or issues regarding the property, then the parties can negotiate any required amendments to the proposed contract before it is signed and exchanged. For example, does the contract need to be conditional on the purchaser undertaking due diligence enquiries or certain works or obtaining reports which must be satisfactory to the purchaser? Is there a particular issue concerning the property (e.g. contamination) which needs to be in a special condition? Is the vendor obliged to carry out work before settlement?

Conditional Contracts

It is not uncommon for the contract of sale to be subject to certain conditions. An off-the-plan contract is one example of a conditional contract, as it is subject to the registration of a plan of subdivision. A contract could also be conditional on finance, the purchaser's due diligence enquiries (e.g. title and property searches, building and pest reports), either the purchaser or the vendor procuring a permit for the property or the vendor agreeing to complete certain works before settlement. It is important that the contract is included in and drafted carefully to ensure that the party relying on the condition can terminate the contract without penalty if the condition is not satisfied and is refunded any deposit monies paid.

Terms Contracts

A terms contract is a special type of contract. Except for Victoria and Western Australia, these types of contracts are referred to as instalment contracts. What constitutes a terms contract, or an instalment contract will vary depending on the applicable legislation of the State or Territory. Terms contracts can be created inadvertently. Care must be taken. Generally, a terms contract can arise when a purchaser is obliged to make multiple instalments of the

price under a contract, or the purchaser is entitled to possession or occupation of the property before settlement. In some States, the title to the property may be transferred before the purchaser has paid the full price. While in other States the use of these types of contracts is either prohibited, or their use is severely restricted. Where terms contracts or instalment contracts are permitted, the relevant statutory requirements must be strictly complied with to avoid creating a contract which is voidable by the purchaser. Terms contracts can impose restrictions on the vendor's ability to mortgage the property once sold. Depending on the State or Territory, the consent of the purchaser is required to any mortgage of the property. Terms contracts are not common but were used for the sale and acquisition of rural properties (e.g. farms). Legal advice should be obtained when you are dealing with a terms contract or instalment contract.

DIFFERENT TYPES OF OWNERSHIP

In Australia there are several distinct ways that property can be owned.

Sole Proprietor

If a property is acquired by an individual or by a single corporate entity, that individual or single corporate entity will be recorded on the certificate of title as the sole registered proprietor.

Co-ownership

If two or more parties purchase property together in Australia, those owners are co-owners. The two types of co-ownership are joint tenancy and tenancy in common. Careful consideration as to how property is owned is important as this can have implications for stamp duty, estate planning, finance and tax implications. The co-ownership of a property can be registered as joint tenants or as tenants in common or a combination of both.

Joint Tenancy

A joint tenancy means that all co-owners own the property jointly and equally and each co-owner is entitled to the whole of the property. This means that upon the death of any of the joint tenants, the ownership share of the deceased person automatically passes to the surviving joint tenant/s equally. It is the right of survivorship, which is the principal difference between a joint tenancy and a tenancy in common. It is important that legal advice be obtained when determining whether a property should be owned as a joint tenancy or as tenants in common. A joint tenancy form of ownership is commonly used by spouses/domestic partners. In certain circumstances, a joint tenancy can be severed and converted into a tenancy in common.

Tenants in Common

A tenancy in common allows two or more parties to record and specify the percentage in which they will own a share in the property. This form of ownership is used when the contribution to acquire the property is unequal or where the 'partners' are not spouses. For example, the transfer of land would refer to shares as proportions. This type of ownership allows each owner to separately deal with their respective share of the property as they require. This also includes transferring their share to a third party or bequeathing their share in the property under their will. This form of ownership is commonly used in business acquisitions.

DUE DILIGENCE CONSIDERATIONS

Vendor disclosure requirements

A purchaser should be satisfied in relation to all aspects of the property being purchased as most contracts will be vendor-biased and once signed a purchaser will have little in the way of rights, unless those rights are specifically negotiated. It is important that purchasers conduct their own

due diligence as the disclosure requirements imposed on vendors in Australia varies from each State and Territory. It is important that legal advice is obtained as early as possible in the process. It is important that a vendor obtains legal advice to ensure they comply with any disclosure requirements which are imposed by the applicable State or Territory legislation. Otherwise, a failure to comply may give a purchaser rights to terminate a contract before settlement.

Caveat Emptor

The doctrine of caveat emptor or "let the buyer beware" means that purchasers looking to buy property in Australia should undertake their own due diligence enquiries. Due diligence enquiries can be conducted before a contract is signed or the contract can be signed subject to the purchaser undertaking its due diligence enquiries and being satisfied with them within a specified timeframe. The extent of those enquiries will depend on the value of the property.

Title Search

Conducting a title search of the property is the first step. It is important to check that the vendor who is selling the property is actually the registered owner on title and to see a plan of the land being purchased. In Victoria, a person can sell land before that person has become the registered proprietor of the property. This can be achieved by providing a purchaser with evidence of the right to sell, such as the lodgement of a purchaser's caveat.

Restrictions /Encumbrances

A search of the title and plan will reveal information which is relevant for a purchaser. Such information will show if a property is mortgaged or if there are restrictions, easements or encumbrances (any registered interests or third-party agreements which affect or limit ownership or use of the land), which burden the property and potentially limit what a purchaser can do with the property. A title search will also reveal if any third parties have registered their interests, by a caveat or a mortgage. When a vendor sells and settles the property, the vendor must provide clear title at settlement to the purchaser. All mortgages and caveats must be removed by settlement. A vendor warranty to provide clear title is common in a contract.

Planning Checks

Purchasers should check the local planning scheme or planning restrictions for the property being purchased. This is important if a purchaser has a particular use for the property. In Australia such controls are achieved through legislation and planning policies and instruments. Each State and Territory has its own regulatory framework. Responsibility for implementing those requirements is usually with the State Government and the local councils. Contracts of sale often contain conditions which provide that a purchaser buys the property subject to all restrictions, including those under the relevant planning scheme. It is important that a purchaser is satisfied that they can use the property for the desired purpose. For example, is a permit required for the proposed use? In certain States, disclosure obligations will reveal the relevant zoning of a property, but full enquiries may be warranted.

Property Inspections

A physical inspection of the property by the purchaser is important. They may include expert building inspections and pest and termite inspections. A purchaser should check that the improvements to the property are sound and compliant with the applicable building legislation. A contract of sale will often include an acknowledgement that the purchaser accepts the condition of the property as at the day of

sale. It is equally common that the vendor needs only to deliver the property at settlement in the condition it was in on the day of sale. A contract can be conditional on the purchaser obtaining a satisfactory pest/termite inspection and if not satisfactory, then the purchaser can terminate the contract.

Survey

Purchasers should check the title boundaries of the property. Are all fences and improvements erected within the title boundaries of the property? If not, there could be issues in the future if the owner of a neighbouring property seeks to enforce its rights. The principle of adverse possession means that a person may claim land by long usage. The requirements for adverse possession claims vary from State to State. However, adverse possession claims are not part of the land law in the Northern Territory or the Australian Capital Territory.

Services

As the vendor disclosure regimes vary from each State and Territory, it is important that a purchaser is satisfied with the level and quality of the services (i.e. water, sewerage, electricity and gas) at the property. Do they exist? What is the state and condition of the services at the property? A failure to check for services could result in a purchaser incurring substantial costs if they need to be installed to the property and connected.

Environmental Checks

Each State and Territory has its own regime for dealing with contaminated land. Generally, the person who causes the contamination is responsible. However, if that person no longer owns the land, or cannot be found, then the relevant authorities may require the owner of the land to deal with any contamination issues. It is important for purchasers to check the environmental condition of the property, especially if they have a particular use in mind or if the property may be contaminated. Although this is less of an issue for existing residential land, it is a relevant consideration for industrial or commercial sites. If the land is contaminated, certain uses may be prohibited by the relevant planning regime, unless certain requirements are met (e.g. remediation of the land). If a purchaser is looking to use the property sensitively (e.g. residential or childcare), it is essential that the purchaser is satisfied with the environmental condition of the property. It is common in contracts of sale for a vendor to sell a property in its current condition and subject to any contamination. A vendor will seek a release and indemnity from a purchaser in respect of any claims which may arise from contamination. If a vendor has a contamination report, the report will often be disclosed to the purchaser, and the purchaser will be expected to purchase the property subject to that report.

Finance

If a purchaser requires finance to purchase the property, then the contract can be made conditional on the finance being obtained.

Land Tax and property taxes

When purchasing a property, it is important to understand what recurring annual outgoings are payable such as council rates, water rates, land tax and other taxes (e.g. the commercial property and industrial tax which is imposed in Victoria). Land tax is calculated as a percentage based on the value of land and is an annual charge. The purpose of land tax is to assess an owner of land on the aggregate value of all taxable land they hold in a particular State or Territory. Land tax is payable in each State and Territory in Australia except for the Northern Territory. The thresholds for when land tax is payable vary for each State and Territory and tend to be increased on an annual basis.

If the property being purchased is held on trust, a trustee surcharge may apply. New South Wales, Queensland, Victoria and South Australia have a trustee surcharge regime. Depending on the State, different tax-free thresholds apply for property held on trust. Land tax is not payable by an owner who uses the property as their principal place of residence. Foreign owners are obliged to pay additional absentee duty.

Leases

If the property is leased, then the sale of the property will be subject to the lease, unless the lease expires before settlement occurs. In some States and Territories, leases of a certain duration must be registered on title. If a property is leased, this means that vacant possession of the property will not be provided to the purchaser at settlement. The type of property (e.g. residential, commercial or retail) will determine the type of lease. For example, if the property is used for retail purposes (e.g. a shop), then the lease will likely be a retail lease and will be subject to the relevant retail tenancy legislation. Each State and Territory has its own retail tenancy legislation, which is very prescriptive. It is important for a purchaser to review the terms of the lease to ensure it is enforceable, the vendor has been complying with the retail tenancy legislative requirements and there are no tenant rights in addition to those contained in the lease.

GOODS AND SERVICES TAX

GST is a Federal tax of 10% introduced in Australia on 1 July 2000 under *A New Tax System (Goods and Services Tax) Act 1999* (Cth). It is similar to a value added tax, whilst the primary liability for GST is on the vendor, or supplier, a contract may transfer responsibility to the purchaser. GST is imposed on the supplier in respect of taxable supplies. Whether GST applies to a particular property transaction will depend on whether the supply is taxable.

Threshold Requirements

Whether a supply is taxable will depend on four threshold requirements:

- Consideration (monetary or otherwise, but not a gift);
- Australia (transaction must occur in Australia);
- Registered entity (supply must be made by an entity registered for GST); and
- Enterprise (supply must be made in the course of an enterprise).

Just because a vendor is not registered for GST, does not mean that GST is not payable on the transaction. GST can still be payable if the vendor is required to be registered for GST.

Whether Price Inclusive or Exclusive of GST

In property transactions, it is the vendor as the supplier of the property who is primarily liable to remit the GST to the Australian Taxation Office ("**ATO**"). If GST is payable, then purchasers should pay attention as to whether the price for the property is inclusive or exclusive of GST or GST free. If the purchase price is exclusive of GST, the additional cost of GST can be significant, depending on the price for the property.

If GST is payable on a property transaction (i.e. the four threshold requirements have been satisfied), then the supplier (i.e. vendor) must provide the purchaser with a tax invoice for the GST. A contract of sale is not usually a valid tax invoice. Stamp Duty is payable on the higher of market value and the purchase price for the property plus GST.

GST Free Supplies

Not all supplies of property will attract GST. Some supplies are treated as being GST free (i.e. no GST is payable). The following are examples of GST free supplies:

Sale of a farm

In order for the sale of a farm to be GST free, the property must have been used as a farm for 5 years before the sale.

Going Concern

The sale of leased commercial/retail or industrial property can be GST free. This is referred to as the "going concern" exemption. In order for the exemption to apply, certain criteria must be satisfied:

- The purchaser is registered for GST;
- The vendor and purchaser agree in writing that the supply of the property is that of a going concern;
- The vendor must supply everything necessary for the continued operation of the enterprise (i.e. the enterprise of leasing); and
- The vendor must carry on the business until settlement.

If the going concern exemption is not satisfied, it is critical that the contract contains a claw back provision for GST. The claw back provision will enable the vendor to recover the amount of GST from the purchaser. It is important for the claw back provision to remain enforceable after settlement has occurred for a certain period of time in case there is an issue. It is not uncommon for a claw back provision to remain enforceable for a number of years after settlement.

Input Taxed Supplies

The sale of existing residential property (i.e. not new residential property) is input taxed. This means that no GST is payable. Even if the property is owned by a company, provided the property has been used as residential premises, it will be input taxed. New residential premises, the sale of new residential or commercial residential property will attract GST if sold in the course of an enterprise.

Mixed Supplies

Certain supplies of property are considered to be a "mixed supply". That is, both taxable and nontaxable (i.e. input taxed) for GST purposes. An example of a mixed supply is the sale of commercial or retail property, which also has existing residential premises. It is important that the contract deals with the mixed supply issue. It will be necessary to apportion the price and determine what portion of the property constitutes the taxable supply and the non-taxable supply.

Margin Scheme

If GST is payable on a property transaction, the amount of GST payable can be reduced if the vendor can adopt the margin scheme. Developers prefer to apply the margin scheme (if it is available) to the calculation of GST. It is important to understand that the margin scheme is not automatically available. Certain criteria have to be satisfied before it can be applied. Generally, a vendor can only sell property using the margin scheme if they purchased the property using the margin scheme, or no GST was payable.

The application of the margin scheme will differ depending on when the property was acquired:

- If the property was owned by the vendor as of 1 July 2000 (i.e. was acquired before 1 July 2000 when GST was introduced); or
- If the property was acquired by the vendor after 1 July 2000 (i.e. after GST was introduced).

If the property was owned by the vendor as of 1 July 2000, then GST is calculated on the margin or difference between the valuation of the property as of 1 July 2000 and the sale price. If

the property was acquired by the vendor after 1 July 2000, then GST is calculated on the margin or the difference between the acquisition cost (i.e. what the vendor paid for the property) and the sale price (i.e. what the vendor is now selling the property for).

Assuming the margin scheme is available, the parties must agree in writing that it applies. Such agreement is usually contained in the contract, but it can sit outside of the contract.

GST Withholding Regime

In order to ensure that GST is properly remitted, purchasers of certain types of residential premises and potential residential land which are subject to GST are required to withhold GST from the settlement proceeds payable to the vendor and pay it to the ATO.

OTHER IMPORTANT CONSIDERATIONS

Cooling off

Generally, once a contract of sale for property has been properly entered into, it is binding on the parties. However, in Australia, certain States and Territories have legislation which provides a purchaser of residential property with a statutory right to "cool off" under a contract. The cooling off right means that subject to certain conditions being met, a purchaser may bring the contract to an end by notice in writing to the vendor. The cooling-off right has to be exercised within a specified period of time from when the contract of sale was signed (usually 3-5 business days).

Each State and Territory has their own statutory requirements, including the timeframe, the percentage of money to be forfeited and the notice requirements, except for Tasmania and Western Australia. Depending on the State or Territory, there may be some exceptions to the cooling off rights. Exceptions may include if the property is purchased at a public auction or within three days of auction or is over a specified size. It is important that legal advice is obtained if there is a statutory right to cool off and a purchaser wishes to exercise that right. If the cooling-off right is not exercised in strict compliance with the relevant legislation, then a purchaser will be legally bound under the contract.

Stamp duty payable on acquisition of land (or an interest in land)

If you acquire property in Australia, each State and Territory requires 'stamp duty' to be paid on the acquisition. Stamp duty is charged at a flat rate or an ad valorem rate (based on the value of the transaction). The rate of duty payable on a property acquisition varies between each State and Territory. It can also depend on whether or not you are an 'owner-occupier' or an investor. In some cases, the location and nature of the property (whether rural or suburban) can affect the rate of duty payable. The timeframe for paying stamp duty varies for each State and Territory and there are various stamp duty concessions and exemptions available. Generally, stamp duty is payable by the purchaser. It is important to understand how much stamp duty is payable in any property transaction and to obtain legal advice.

Depending on the State or Territory, you may be able to apply for a stamp duty exemption or reduction. This is generally where there is no change in the underlying ownership. In Australia, first home buyers can apply for a stamp duty concession and in some States, pensioners can also apply for a concession.

Higher rates of duty are payable on property acquisitions if you are a foreign purchaser. A higher rate of duty is also imposed on trusts with foreign beneficiaries who purchase property.

In some jurisdictions, the relevant State government has recently abolished stamp duty on certain types of properties and replaced it with a recurring annual commercial and

industrial property tax which is assessed annually on the site (unimproved) value of the land.

Landholder duty

Each State and Territory has its own landholder duty regime, which imposes duty on certain acquisitions of interests in companies and unit trusts that own land.

Economic entitlements

A person who acquires an economic entitlement (defined broadly to include the entitlement to participate in the income, rent or profit of the land, proceeds of sale or capital growth) in relation to land is taken to have acquired a beneficial ownership of the land. If the arrangement does not specify the percentage of economic entitlement, it is deemed that the person has acquired a 100% interest in the relevant land and duty will be payable on the full value of the interest.

Verification of identity

It is a requirement of the land titles office in each State and Territory that the identification of the parties in a property transaction be verified (**VOI**"). VOI checks are intended to protect against identity theft and fraudulent land title transactions. This VOI requirement applies to individuals as well as corporate entities. The existence of the company must be confirmed and the identity of the persons signing on behalf of the company must be verified. If an attorney has been appointed under a power of attorney, the attorney's identity must also be verified.

Solicitors are required to certify to the relevant land titles office that the VOI checks have been completed. This verification process is particularly important due to property transactions in Australia now being settled online using PEXA. Verification checks are usually completed by a solicitor for the party or Australia Post. "Reasonable steps" are required to verify the identity of a party. The Australian Registrars National Electronic Conveyancing Council has issued a "verification of identity standard" ("**Standard**"). If the Standard is followed, then that person is deemed to have taken reasonable steps. If a person resides overseas, the VOI check can be undertaken by a notary public who certifies that they have verified the identity of the party and provides certified copies of the identity documentation (e.g. passport and driver's licence). The VOI documentation is considered valid for 24 months and can be relied upon across multiple conveyancing transactions.

Adjustments at settlement

In addition to the payment of the price and GST (if applicable) by the purchaser to the vendor at settlement, there is an adjustment of certain annually payable outgoings. Subject to the terms of the contract, certain outgoings are apportioned between the vendor and purchaser. The vendor is usually responsible for all outgoings up to and including the day of settlement and the purchaser is responsible for all outgoings from settlement. The outgoings which are commonly adjusted are council rates, water rates, land tax (unless prohibited as is the case in some jurisdictions), owners corporation fees/levies and rental income (as applicable).

Settlement – using PEXA

PEXA is an electronic lodgement platform that enables legal practitioners, conveyancers and financial institutions to prepare, lodge and register land registry documents and effect property settlements online in real time. Using PEXA has led to a significant reduction in the manual processing of paperwork by allowing land registry documents to be lodged electronically. PEXA also facilitates the transfer of funds in real time.

Agents

It is common to engage a real estate agent when selling property in Australia. Real estate agents must be licensed and will require the vendor to execute a sales authority or agreement. Each State and Territory has its own legislation which governs the real estate industry. If a real estate agent is engaged, the vendor will be required to pay the agent a commission as agreed in the sales authority or agreement. A common structure can be negotiated. The trigger for payment of the commission is usually when the contract becomes unconditional. The vendor will also be required to pay advertising and marketing costs associated with the sale of the property.

Consultants frequently engaged

The types of consultants commonly engaged in property transactions from time to time include builders, building surveyors, land surveyors, environmental and geotechnical consultants, town planners, valuers, feasibility analysts, architects and engineers. In addition to these consultants, it is also important to obtain legal and accounting advice.

Capital Gains Tax

Generally, tax is payable on the capital gains made from selling property. However, this does not apply to gains made from the sale of a principal place of residence.

Death duties

Australia does not have a death duties regime.

Windfall Gains Tax

In some jurisdictions, a windfall gains tax (WGT) will apply to land that is rezoned resulting in a capital improved value uplift of more than $100,000. The WGT is 50% or 62.5% depending on the value of the uplift. The liability to pay WGT is incurred by the landowner when the rezoning occurs. However, payment of the WGT can be deferred until the earlier of:

- a dutiable transaction (e.g. a transfer of the land affected by the WGT);
- 30 years after the rezoning; and
- a relevant acquisition in relation to a corporate or unit trust landholder.

IMPORTANT FOREIGN INVESTMENT CONSIDERATIONS

Foreign resident capital gains withholding

Foreign resident capital gains withholding applies to vendors who sell certain taxable property. The tax rate is 15% of the market value of the property. It imposes an obligation on purchasers to withhold 15% of the price at settlement and to remit it to the ATO if the vendor is a foreign resident.

Foreign Investment Review Board – foreign purchasers

The *Foreign Acquisitions and Takeovers Act 1975* (Cth) ("**FATA**"), *Foreign Acquisitions and Takeovers Regulations 2015* (Cth) and the Australian Federal Government's specified Foreign Investment Policy provide the framework for dealing with a "foreign person" or a "foreign government investor" who propose to purchase property in Australia. Depending on the type of property being purchased, if you are a "foreign person" for the purposes of FATA, you must apply for foreign investment review board ("**FIRB**") approval prior to the property being transferred. This means that contracts of sale for property by a "foreign person" are typically conditional on the purchaser obtaining FIRB approval within a specified time. If FIRB approval is not obtained, then the contract can be terminated.

A "foreign person" not only includes an individual who is not ordinarily resident in Australia, but it also includes:

- a corporation or the trustee of a trust in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest; and
- a corporation or the trustee of a trust in which 2 or more persons, who together hold an aggregate *substantial interest*, are:

  (a) not ordinarily resident in Australia;

  (b) a foreign corporation; or

  (c) a foreign government entity.

A "substantial interest" for the purposes of the above means an interest of 20% or more in the relevant company or trust.

There are certain restrictions imposed when dealing with the purchase of residential and commercial property by "foreign persons". Although previously a temporary resident was able to purchase existing residential dwellings, under certain laws, foreign persons are unable to purchase existing residential dwellings until at least 31 March 2027. Foreign non-residents have the ability to purchase 'new dwellings' within Australia. A new dwelling is defined as being a dwelling that has not been previously occupied or a dwelling within a development that has not been occupied for more than a total of 12 months. These parameters aim to encourage the creation of jobs within Australia and also increase the number of new residences being developed.

There is no monetary threshold for the purchase of residential property, but there is a threshold for the purchase of developed commercial property.

If you are a permanent resident in Australia or if you are from New Zealand, exemptions apply and FIRB approval is not required prior to acquiring an interest in Australian property. If you are a temporary resident, it is likely that you will be granted FIRB approval to purchase vacant land or a residential dwelling off-the-plan, however, the approval is likely to be subject to conditions.

The overarching policy objective behind the FIRB's regulation of foreign investment into Australian companies and businesses is to ensure that any proposed foreign acquisitions are not contrary to Australia's national interest.

OWNERSHIP STRUCTURE

When looking to acquire property in Australia, it is important to consider the most appropriate legal structure in which to own the property. The key issues will be asset protection, taxation issues, stamp duty, land tax, estate planning, complexity and cost. It is important that specific legal and accounting advice is obtained before deciding upon what is the most appropriate structure for ownership of the property. The most common structures are individual, company, trust, partnership and joint venture. It is also possible to buy an interest in a property by buying shares or units in the ownership structure.

Individual

Ownership by an individual is the simplest option. It means that all debts and liabilities attached to the property will be the responsibility of the individual. The individual will have sole control of the property. An advantage of an individual is that if the property is held as an investment and it is subsequently sold and a capital gain is made, the individual will be able to take advantage of the 50% capital gains discount. The capital gains tax is a Federal tax imposed on the capital gains realised from the sale of assets. To take advantage of the capital gains discount, the property must be held by the individual for 12 months or more. If the property is held by a foreign resident individual, the 50% discount is removed or reduced on capital gains made after May 2012. The main

disadvantage with individual ownership is that it does not offer any asset protection. The individual's creditors will have the right to claim against the personal assets of the owner, including the property.

Company

A company is a legal entity and has the same rights and obligations as an individual person but is subject to regulation by the *Corporations Act 2001* (Cth). This means that a company can incur debt, can sue and be sued and it is taxed as a separate legal entity. One of the advantages of using a company to own the property is that the liability of the owners of the company (i.e. shareholders) to third parties is generally limited to the amount (if any) which is unpaid on their shares. There are public companies and proprietary companies (i.e. private). A proprietary company is simpler and less expensive to administer than a public company. The process for incorporating a proprietary company in Australia is a relatively straightforward process and inexpensive. A company can be registered within a couple of days. One disadvantage with using a company structure is that if the property is sold and a capital gain is made, the company cannot claim the 50% capital gains discount on any resulting capital gain.

Trust

Under a trust structure, the trustee (who may be an individual or company) holds all income and capital (e.g. the property) on trust for the beneficiaries. The beneficiaries can be individuals, trusts or companies. The trust is created by a document called a trust deed. The trust is governed by the terms of the trust deed, State or Territory legislation and the common law.

Whilst the trustee must be a legal entity, the trust is not a legal entity. It is merely a body of rules around ownership, management and control. The Torrens system of recording ownership of land in Australia struggles to recognize the existence of a trust as only the trustee is registered on title. No particulars of any trust are recorded in the register, which provides anonymity, and also some flexibility.

There are three main types of trusts.

Discretionary Trust

A discretionary trust means that the trustee has the discretion to distribute the income and capital of the trust to a range of beneficiaries. Discretionary trusts (also known as a family trust) commonly have specified beneficiaries, as well as classes of general beneficiaries (which may include the family members of a named beneficiary and associated companies and trusts). Under a discretionary trust, the trustee can but is not obliged to make distributions, which take into account the beneficiaries' individual tax circumstances. A discretionary trust may also provide a reasonable level of asset protection as the beneficiaries of the trust are generally not entitled to income or capital until the trustee decides to make the distribution. Another benefit of using a trust is that a trust can take advantage of the 50% capital gains tax discount if the trust holds the property for at least 12 months before it is sold, and the capital gain is distributed to an individual or another trust.

Unit Trust

Under a unit trust, the beneficiaries (which are referred to as unit holders) subscribe for units in the trust. Each unitholder has a fixed interest in the capital and income of the trust that corresponds with the proportion of units they hold. Units can be bought and sold. Unit trusts have the benefit of conferring a clearly defined entitlement and are considered to be more appropriate than a discretionary trust for non-family ventures.

Fixed Trust

Unlike a discretionary trust, a fixed trust is a trust where beneficiaries have a fixed entitlement. The trust deed fixes the proportion of income and capital that each beneficiary is entitled to throughout the income year. With a fixed trust, the trust can take advantage of the 50% capital gains discount if there is a sale of the property where a capital gain has been derived and the property has been held for 12 months or more.

Joint Venture (with or without nominee)

A joint venture is another example of a structure which may be considered when dealing with property. A joint venture is when two or more parties come together in order to undertake a specific project. For example, the acquisition and development of a property.

The parties usually enter into a joint venture agreement which contains the rights and obligations of each joint venture party. Each party is treated individually or separately for tax purposes, so each party can use their own preferred tax structure. In this type of joint venture, a nominee is often used to hold the joint venture property as bare trustee. The nominee can provide a corporate identity for the joint venture and also act as the operator of the joint venture.

Partnership (with or without nominee)

Another alternative structure to consider when dealing with property is a partnership. Unlike a joint venture, a partnership is an arrangement between two or more entities to carry on a business together with a view to a profit. Except for certain professional partnerships, business partnerships cannot have more than 20 partners. A partnership is created by an agreement among the partners, which is usually documented in writing. The partnership is regulated by the terms of the partnership agreement (if there is one), the common law and the relevant partnership legislation, which applies to the applicable State and Territory.

A partnership is not a separate legal entity, and each partner is jointly and severally liable for the debts of the partnership. Partners also share in the profits of the partnership. Limited partnerships can also be established in some states under specific state legislation. Limited partnerships allow some partners to limit their liability for debts. Limited partnerships are generally taxed as companies.

It is common for a partnership to operate through a nominee company. The nominee's role is usually very limited with no control or decision-making powers in relation to how the partnership should be conducted. It is the partnership rather than the nominee which actually carries on the business. The nominee provides a corporate identity for the partnership.

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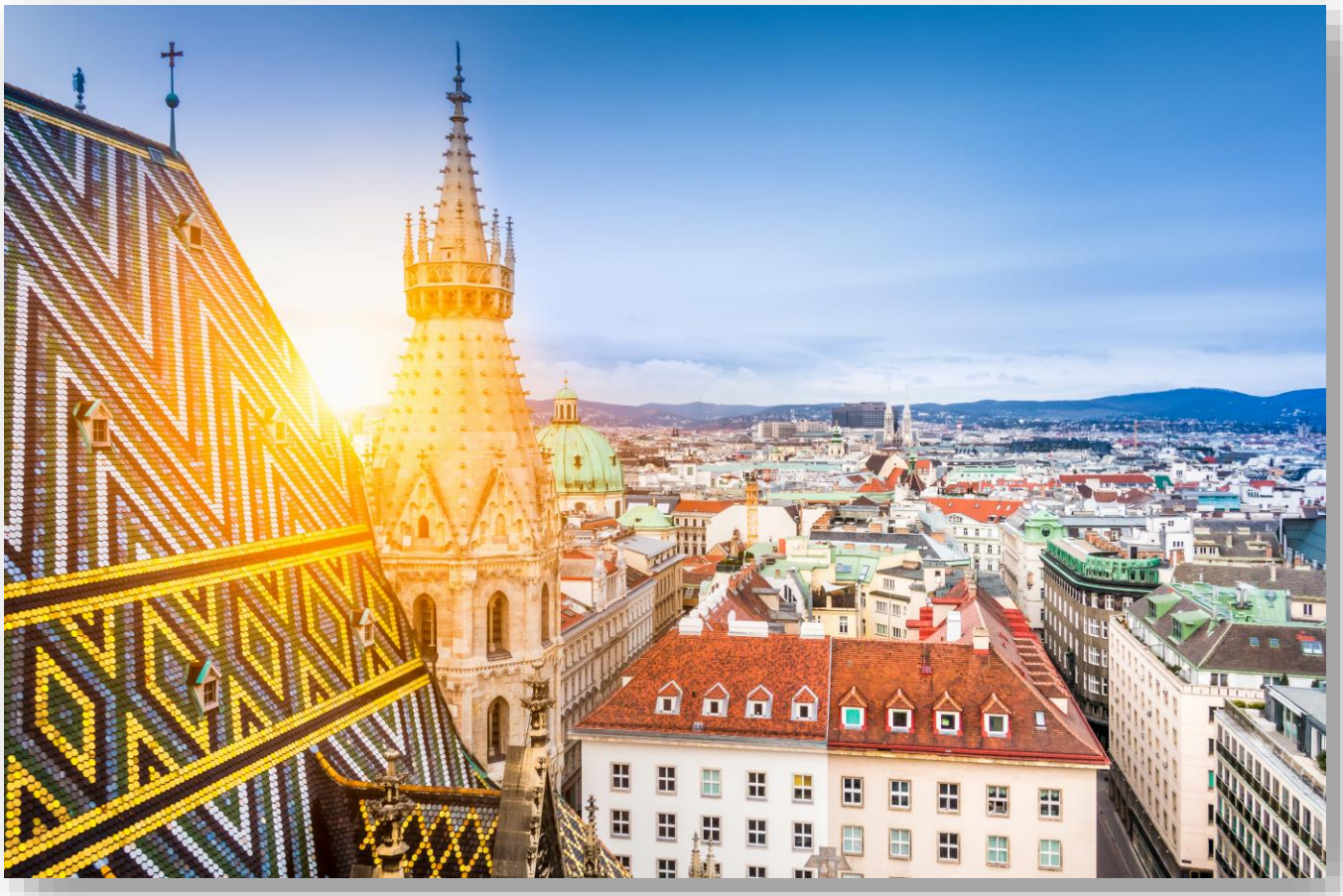
INTERNATIONAL LAWYERS NETWORK



BRAUNEIS KLAUSER PRÄNDL RECHTSANWÄLTE

BUYING AND SELLING REAL ESTATE IN AUSTRIA

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER AUSTRIAN LAW

I. Introduction

There are many considerations that a buyer/ seller of real estates should make before buying or selling a property. The following article is intended to give a brief overview of the most important "Must-Knows" when selling or buying real estate in Austria.

II. Preliminary clarifications for the buying or sale of real estate

- What type of property should be bought or sold and what special features need to be considered?
- Who draws up the sales agreement?
- How is the purchase financed? Must banks or third parties be involved?
- Do I need official approvals?
- What are the risks and who has to take them?
- What do I have to pay special attention to when buying / selling the selected property?
- How can I protect myself best?

III. Most important types of property acquisition

In the Austrian market, following typical types of real estate transactions may be described:

- **Purchase of an undeveloped plot of land**

  Plots of land are often bought for the purposes of construction. In this regard, first and foremost the relevant Austrian zoning and construction rules should be checked, to ensure that the desired building may indeed be developed on the given land.

- **Purchase of a developed plot of land:**

  As a rule, buildings located on a plot of land are considered part of the land and treated as part of the land plot. This means that, in general, with the purchase of the land, the purchaser automatically acquires the building(s) as well (so-called “superficies solo credit”).

- **Purchase of a condominium property:**

  Condominium ownership is the right granted to the owner or an ownership partnership to exclusively use and dispose of an independent apartment, other independent premises, or a parking space.

  The transfer of ownership of real estate may also be administered in the form of a donation (see below), an exchange agreement or in the course of an inheritance.

IV. Formal Requirements

It is necessary to conclude a valid contract of sale (purchase), i.e., an agreement between the contracting parties on the object of purchase and the purchase price.

However, for the necessary execution of the agreement in the land register a written contract is required; the signatures on this agreement have to be certified by a notary public or a court.

V. Central issues in a purchase agreement

The following points should in any case be part of a property purchase agreement:

a. The contracting parties;

b. the purchase price and the payment terms;

c. accurate description of the property, i.e., the plot of land (including registration details in the land register), any inventory, fixtures and fittings and equipment of the building or apartment as well as existing easements, mortgages etc;

d. date of the handover to the buyer;

e. real estate tax + court registration fee;

f. warranties on the object of purchase;

g. declaration of citizenship and/or conditions for the granting of a land transfer licence;

h. confirmation of the owner/seller that the transfer of ownership may be registered in the land register („Aufsandungserklärung“);

i. Handover and takeover of the object of purchase, including the date for the transfer of risks and recklessness, benefits, burdens, and advantages to the buyer;

j. Energy certificate: When selling buildings or objects for use (i.e., houses, flats, or business premises), an energy certificate must be presented and issued. The obligation lies with the seller.

VI. Austrian Land Register

The Austrian Land Register (Grundbuch) is a public registry administered by the Austrian Courts where all land plots and existing rights in rem are recorded. The person who is registered in the land register is legally considered as its owner. The entry in the land register is the mode of acquiring ownership of real estate and rights similar to real estate in Austria. The entry in the land register thus assumes the function of ownership in the context of immovable property.

Since the land register is public extracts can be requested by all citizens for a small fee.

The land register consists of three main parts:

- **“A Sheet”**

  This section lists general data, and, for example, easements connected with the property.

- **“B Sheet”**

  This section provides information about the ownership of the property.

- **“C Sheet”**

  In the C sheet of the land register, all encumbrances (e.g., liens) of the individual property objects are listed.

VII. Transfer of Ownership

The purchase contract contains a so-called “Aufsandungserkläung” (declaration of transfer of ownership) by the seller, with which the change of ownership may be carried out in the land register.

To ensure that the purchase price is transferred to the seller after the registration of the ownership in favour of the buyer, the contracting parties mostly agree on a fiduciary deposit of the purchase price with a trustee (attorney-at-law or a notary public). The contracting parties therefore conclude a trust agreement with the trustee according to which the trustee is obliged to transfer the purchase price after the fulfilment of all conditions stated in the purchase contract / trust agreement, which usually include the encumbrance-free recording of the buyer's title in the land register as well as the payment of any taxes and court fees.

Note a special rule in Vienna: Since July 1st, 2000, Viennese attorneys-at-law are obligated to process the trust funds entrusted to them exclusively via electronically secured escrow accounts. These accounts may only be used after the Vienna Bar Association has given its (electronic) "seal of approval". Other dispositions (especially cash withdrawals) are excluded and technically not possible. There are similar security safeguards for accounts held by other Austrian lawyers and notaries.

VIII. Financing

The usual way of financing real estate in Austria is through a bank loan/mortgage for at least part of the purchase price. In this case, the bank usually insists on a lien as collateral which is to be entered in the land register at the same time as the registration of ownership of the purchaser.

IX. Condominium ownership („Wohnungseigentum“)

A special rule applies to condominium ownership. Here, the owners of a property or owner partnerships (each consisting of two natural persons) acquire the right to exclusively use and solely dispose of independent apartments or other independent premises or parking spaces for vehicles in an apartment building or other building complex.

The basic law on condominium ownership is called the „Wohnungseigentumsgesetz - WEG“. The WEG contains detailed regulations on the establishment and administration of condominium ownership. For its establishment, a written agreement of all co-owners of a building complex is required. The exclusive right of use (condominium ownership) of the co-owners comes into existence upon registration in the land register.

As far as the management of the general parts of the property is concerned (e.g., staircase, garden), the condominium owners together form the community of owners (“Wohnungseigentümergemeinschaft”). This community of owners is a separate legal entity under private law that can act on behalf of the individual owners of one apartment building.

X. Setting a right to build (”Baurecht“)

A building right (“Baurecht”) is the right to establish a building on another person's property. The purpose of the building right is the utilisation of the property without the owner having to relinquish his ownership rights. The owner of the building right has to pay an agreed monthly or yearly fee for the use of the property (“Bauzins”) to the property owner.

The so called “Baurecht” is created by registration in the land register of the property and may be granted for a term of not less than 10, but not more than 100 years. If the building right expires, the building reverts to the owner of the real estate and any lien on it (the building) is transferred to the property.

XI. Buildings on third-party land (“Superädifikate“)

Buildings erected on land owned by others (“Superädifikate”) are structures (buildings) placed on another person's land with the intention that they should not remain on said land indefinitely. This lack of intention to firmly attach the building to the ground and leave it there indefinitely allows a building to belong to the builder and not to the landowner (this is a similar situation as the before mentioned “Baurecht”).
Example: Someone rents/leases a plot of land on a lake and builds his own bathing hut on it. This so-called “Superädifikat” is one of the exceptions to the principle that the landowner automatically also owns everything that is built on his land plot. In this case, therefore, ownership of the land and ownership of the building are separate.

XII. Tax Effects

The purchase of real estate is subject to Austrian Real Estate Transfer Tax (“Grunderwerbsteuer”) at a tax rate of generally 3.5% of the purchase price. Furthermore, a court registration fee of 1.1% of the purchase price is charged for the registration of new ownership rights in the land register.

On March 20, 2024, the Austrian government passed a resolution to temporarily waive the

fees for registering ownership rights and liens in the land register when purchasing residential property. The fee exemption is limited to two years (until 2026) and can only be claimed under certain circumstances. In particular, the purchased property must serve to satisfy an urgent housing need of the purchaser.

The prerequisite for the registration of the ownership right in the land register is, in addition to the already mentioned documents, the proof that the real estate transfer tax has been paid to the responsible tax office (so-called clearance certificate). The processing with the financial authorities is regularly carried out by the trustee (attorney-at-law or notary public) who draws up the purchase contract.

Since April 1, 2012, earnings from the sale of private real estate are subject to the Austrian Real Estate Income Tax ("Immobilienertragsteuer" - ImmoESt). The taxation is not based on the regular income tax rate, but on a special 30% tax rate (there are exceptions to this taxation, for example if the own residence is sold). For the purposes of real estate income tax, the term "property" refers to land and buildings, condominiums, and rights equivalent to real estate property, such as building rights.

Due to the Budget Accompanying Act 2025 ("Budgetbegleitgesetz 2025"), a corresponding rezoning surcharge of 30% of the positive (operating and non-operating) income from the sale of rezoned land is now planned, which will result in higher taxation of rezoning gains in future. This new regulation affects properties that have been rezoned after 31 December 2024 and that have been sold since July 1, 2025.

Under the previous legal situation, share deals were only subject to the 0.5% real estate transfer tax if at least 95% of the shares in a company were united to one shareholder/group of companies ('share consolidation/Anteilsvereinigung') or if at least 95% of the capital shares in a partnership were transferred to new shareholders within five years ('qualified share acquisition/ qualifizierter Anteilserwerb').Due to the Budget Accompanying Act 2025 ("Budgetbegleitgesetz 2025"), the acquisition of 75% of the shares now leads to this tax situation. At the same time, the relevant period is extended from previous five years to seven years.

Of particular significance is the planned increase in the tax rate for share combinations in so-called real estate companies ("Immobiliengesellschaften") to 3.5% of the fair market value of the property.

"Non-real estate companies" ("Nicht-Immobiliengesellschaften") continue to be subject to the reduced tax rate of 0.5% of the property value within the meaning of the Property Value Ordinance ("Grundstückswertverordnung").

Another tax benefit should be highlighted: if a share consolidation or reorganisation takes place exclusively within the family circle (e.g. spouses, parents, children, grandchildren), the real estate transfer tax is only 0.5% of the property value, even if it is a real estate company ("Immobiliengesellschaft").

The rule that changes in the shareholder structure of at least 75% within seven years trigger land transfer tax shall not apply to listed companies ("börsennotierte Gesellschaften"/ „Börsenklausel").

The new regulations are to apply to purchases made after June,30 2025.

XIII. Additional Costs

If a broker was involved, the broker's fee;

Attorney and/or notary fees: the purchase contract is usually drawn up by a lawyer or a

notary who normally also apply for the registration in the land register.

In most cases the attorney / notary also acts as trustee. The amount of the lawyer's or notary's fees is approximately 1-3% of the purchase price. In addition, it is possible to agree a lump sum.

Costs for authentication of signatures: In order to register the new ownership in the land register, it is necessary that the signatures on the purchase contract and (if applicable) on the mortgage deed for the mortgage loan are certified by a court or notary public.

XIV. EU and other countries

In general, EU/EEA citizens and entities are allowed to freely purchase and sale real estate in Austria, while non-EU/EEA citizens and entities may only purchase Austrian real estate with the permission of the competent government office. In this case, a corresponding application must be made to the authority that approves the acquisition.

In tourist zones there may be further restrictions for the purchase of real estate property.

XV. Donation

The donation of a property (land, apartment, etc.) constitutes a contract that the donor and the donee (recipient) conclude with each other. The donation must be accepted by the donee. Thereby, certain formal requirements must be observed: The gift without immediate transfer requires according to Austrian Law a written contract in form of a notarial deed. If the property is handed over to the donee immediately, the signatures of all parties must be certified by a notary public for the transfer of ownership to be recorded in the land register.

From a tax point of view a donation and the purchase of real estate are quite comparable, but since the gratuitous transfer does not result in a capital gain of the seller, the donation generally does not incur Real Estate Income Tax. However, caution is required in the case of a so-called "mixed gift", i.e., if an - even if symbolic - consideration is paid for the property.

On the other hand, the donation of real estate is subject to Real Estate Transfer Tax as well as to a court registration fee. The basis of assessment for the Real Estate Transfer Tax in the case of donations is the property value which is generally determined by an expert or through a government approved real estate price index. The tax rate is then graduated according to the value of the gift.

XVI. Our Law Firm

This Memorandum is for information purposes only and reflects Austrian law in October 2025.

This Memorandum does not constitute legal advice and cannot replace personal consultation on a case-by-case basis. If you have any further questions about real estate in Austria or need general legal advice, please contact Dr. Andreas Bauer, bauer@brauneis.law, +43 1 532 12 10.

Brauneis Rechtsanwälte is one of the leading business law firms in Austria. We are specialized in consulting in all areas of business law with a distinctly international orientation. We assist our clients in the long term and find sustainable ways to achieve their desired objective.

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Buying and Selling Real Estate in Brazil

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER BRAZILIAN LAW

1. OVERVIEW OF BRAZILIAN HISTORY

Brazil is a federative republic and the largest country in both South and Latin America. It is also the world's fifth-largest country by area and seventh by population. In the Americas, it is the only country where Portuguese is the official language.

Bordered by the Atlantic Ocean on the east, Brazil has a coastline of 7,491 kilometers (4,655 mi). It borders all other South American countries except Ecuador and Chile and covers 47.3% of the continent's land area. The Amazon is a world-renowned vast tropical forest, home to diverse wildlife, a variety of ecological systems, and extensive natural resources spanning numerous protected habitats. This unique environmental heritage makes Brazil focal point of significant global interest and debate regarding foreign ownership of rural land, deforestation, and environmental protection.

Explorer Pedro Álvares Cabral claimed the area for the Portuguese Empire in 1500. Brazil remained a Portuguese colony until 1808, when the capital of the empire was transferred from Lisbon to Rio de Janeiro. In 1815, the colony was elevated to the status of kingdom upon the formation of the United Kingdom of Portugal, Brazil and the Algarves. Independence was conferred in 1822 with the creation of the Empire of Brazil, a unitary state governed by a constitutional monarchy and a parliamentary system. The ratification of the first constitution in 1824 led to the formation of a bicameral legislature, now called the National Congress and also marked the introduction of the real property registry system. The country became a presidential republic in 1889 following a military coup. A military junta came to power in 1964 and held power until 1985, after which civilian rule was reinstated. Brazil's current constitution, formulated in 1988, defines it as a democratic federal republic.

The federation comprises the union of the Federal District of Brasília, 26 States, and 5,570 Municipalities. The legal system of all States and the Federal District is governed by the Civil Law system, derived from the French Napoleonic Code, as reflected primarily in the Civil Code.

In practice, this means that just Brazilian State regulations on notarial and conveyancing matters, together with the municipal ordinances on urban property taxation bring over 5,597 different enacted provisions into consideration when acquiring real estate in Brazil!

2. DIFFERENT TYPES OF REAL PROPERTY

Although the right of individuals and private entities to own a real estate property in Brazil is guaranteed by the Brazilian Federal Constitution, ownership rights are not absolute since it is subject to restrictions on land use and to the principle of 'social function of property' (in Portuguese, Função Social da Propriedade).

The concept of 'social function of property' in Brazilian law refers to the principle that property rights must be exercised in a way that serves the broader interests of society and support economic and environmental sustainability.

In practical terms, this means that private property must fulfill certain social obligations, such as ensuring productive use,

avoiding speculation, and respecting labor and environmental standards. Property owners are required to manage their property in a manner that benefits not only themselves but also the community at large, contributing to social cohesion and equitable development. The property not used in accordance with its social purpose is subject to expropriation procedure by relevant authorities.

In Brazil, the ownership of a real estate property is formalized by the land title, which must be duly registered with the Real Estate Registry Office responsible for its specific territorial jurisdiction. Consequently, if the transfer of title is not registered as required, the acquirer cannot be declared its legal owner and is considered merely a possessor.

Properties can be primarily classified depending on their location or intended use. There are two main types of property:

a) Rural property.

b) Urban property.

The classification of a property as urban depends on its inclusion within the urban perimeter established by municipal planning regulations. A property located outside the urban perimeter, or one that, despite being within the urban perimeter, is used for rural activities, will be classified as rural.

Urban properties can be classified as residential, commercial, and industrial. The ownership of urban property may be classified as fractional ownership, joint ownership in a condominium building or a co-ownership in an ordinary condominium.

The importance of identifying a property as rural or urban lies in the fact that each classification is subject to distinct legal frameworks, particularly concerning aspects such as land use, land tenure, environmental regulations, registration, taxation, and restrictions on acquisition or leasing by foreigners.

3. TYPES OF REAL ESTATE DEVELOPMENTS

Brazil law basically recognizes the following types of land development:

a) Urban properties:

a.1) Allotment - the division of a plot of land into lots with the installation of the necessary infra-structure, i.e. serviced lots (e.g. streets, water, sewage, electricity for transfer to public agencies upon conclusion) prepared and ready for sale, ruled by Law no. 6,766/79.;

a.2) Land division - the division of a plot of land into lots without the installation of infrastructure (because the plot already has access to the necessary infrastructure);

a.3) Real Estate Development - real estate developments are regulated by Law 4,591/64, which stipulated the division of a parcel of a property into several individual and private units. The division establishes a register for each unit. Additionally, for the development and sale of hotel units including hotel and lease management, it is also necessary to comply with the Securities Commission's Normative Ruling nº 602/18;

a.4) Plots under the condominium regime - regulated by Federal Law no 13,465/17, this type of condominium entails division of plots into lots, without improvements, created/developed as individual

units with the remaining areas registered as communal property.

b) Rural properties:

b.1) Subdivision - rural subdivision refers to the division of a larger rural property into smaller parcels, typically for agricultural, forestry, or similar uses. This process is governed by specific legal and regulatory framework that ensures such divisions adhere to environmental, land use, and zoning laws applicable to rural areas. Rural subdivisions must also adhere to specific guidelines that aim to protect natural resources and maintain the sustainable use of the land. This type of subdivision is distinct from urban subdivisions primarily in its purpose and the regulatory standards it must meet, focusing on rural and agricultural productivity and sustainability.;

b.2) Land division - same concept as above.

The development of urban real estate projects in Brazil typically occurs through a sales process that begins prior to construction of the project where buyers purchase units 'off-plan', i.e. based on architectural plans and models.

A typical urban real estate project would comprise the following stages:

a) Land Analysis. Mainly involves the calculation of the:

a.1) Maximum amount of built area that could be constructed on the land, as prescribed by local zoning and use category legislation;

a.2) Unit sale price, which varies according to project and the property location, its distinctiveness, as well as the characteristics of the units on which the analysis is based;

a.3) The cost of the project, which primarily comprises construction costs, marketing costs, brokerage expenses and taxes;

a.4) Environmental and zoning requirements pursuant to local regulations (Federal and State regulations) might be also applicable);

a.5) Due Diligence – Legal and Technical due diligence involves the examination and evaluation of all legal documents and technical aspects related to a property. This audit aims to ensure that the property complies with all relevant laws and regulations, and that there are no legal encumbrances or issues that could affect the project development. It includes reviewing the title, zoning compliance, permits, and any legal disputes or liens associated with the property. Additionally, the technical audit assesses the physical condition of the property, checking for structural integrity, compliance with building codes, and any potential environmental hazards. This process helps potential buyers make informed decisions and mitigate risks associated with property acquisition.

b) Project approval. Any real estate project must be approved by the relevant Municipality prior to the commencement of the project.

c) Project development and Financing. Registration of the Project Development at the Real Estate Registry Office and obtaining financing through the financial system or capital markets. This process requires an in-depth analysis of the financing mechanisms available and the security measures that can be put in place to assure lenders. It's essential to assess the viability of different financing options, including loans, bonds, or equity offerings, and understand the legal and regulatory requirements for each. The study also involves evaluating the types of collateral that can secure the financing, such as mortgages, pledges, or other assets, to ensure the interests of all parties are safeguarded and the project can proceed smoothly.

d) Project Launch. The beginning of the units' sale. It is permitted to start selling the units of a real estate project only upon securing obtaining the necessary permits as previously mentioned and following the registration of the project development with the relevant Real Estate Register Office.

e) Construction.

4. TYPES OF *IN REM* RIGHTS IN BRAZIL

a) ownership;

b) surface rights;

c) use;

d) easement;

e) enjoyment;

f) habitation;

g) right to acquire;

h) pledge;

i) right of floor slab ("Direito de Laje", which roughly translates to the Right of the Floor Slab, allows to obtain a distinct title to construction on top of or under another building even though it sits on the same land);

j) special concession of use for housing purposes (granted by the Government);

k) concession of use (also granted by the Government);

l) mortgage;

m) fiduciary lien;

n) antichresis;

o) seizure.

5. GUIDELINES AND MAIN STEPS IN THE PROCESS OF REAL PROPERTY ACQUISITION

Acquisition of a real estate property in Brazil, whether urban or rural, essentially involves the following steps:

- ✓ Finding a property for sale, possibly with the assistance of a real estate broker/realtor, whose assistance is not mandatory. The broker's fee and payment thereof, which is negotiable between the parties and broker, and may be up to 6% of the purchase price.
- ✓ The purchaser, whether an individual or company, must have a Brazilian Tax Registration Number issued by the Federal Revenue authority. The registration procedure is straightforward and can be carried out by a third party (attorney–in-fact).
- ✓ Execution of a private sale and purchase agreement. This is not a mandatory step but is recommended given that such an instrument entitles the parties concerned to not only establish all the conditions to be met to conclude the real property acquisition, but also to outline all the obligations with respect to the

formalities to be complied with prior to the acquisition, among which, notably, due diligence.

- ✓ Property legal due diligence. It is highly recommended that a legal due diligence on the property is conducted by a lawyer appointed by the purchaser, which would include a detailed audit of the rights of the seller and his/her predecessors, as well as research on any encumbrances that may be registered over the property (mortgages, claims, etc.). The Brazilian Notaries do not have the authority to conduct a legal due diligence, and the certificates and documents required for signing the deed of sale are not the same as the documentation necessary for the audit. Despite this, it is important to note that under the Law any claims, encumbrances or liens (with some exceptions) will impact the sale of a real property only if they have been duly registered in the property ownership records at the relevant Real Estate Registry Office. The ownership record, essential for executing the real property sale deed, must include these details. However, given that the law exempts some situations and is relatively recent, conducting a legal due diligence remains highly recommended.
- ✓ Technical (e.g. engineering, geological or archeological) and environmental due diligence. It would also be recommended, depending on the status of the property, its historical data or the prior (or future) use of the property.
- ✓ Execution of the purchase deed before a Notary Public. In Brazil, the acquisition of any real estate property occurs solely by virtue of a notarial deed (save for certain exemptions). The Notary Public is usually chosen by the purchaser, who also pays the notary fees. Both the seller and the purchaser may (i) appear in person before the notary to execute the deed or appoint attorneys-in-fact to do so in their name and on their behalf by virtue of a notarized Power of Attorney; or (ii) choose for the digital signing, which will be done by a videoconference held by the Notary Public. The deed must be drawn in the Portuguese language only. The Notary Public will read the deed aloud to the parties. Therefore, a non-Portuguese-speaking party (if attending the execution of the deed in person) will need to appoint and have a translator present. Regarding the digital signing, it is important to mention that electronic signatures in Brazil are regulated through Provisional Measure No. 2200-2 / 2001 ("MP 2200-2"), which created the Brazilian Public Key Infrastructure ("ICP-Brasil"), the national system of digital certification. Therefore, to properly execute a digital deed, the parties must have an ICP-Brasil digital certificate. The issuance of an ICP-Brasil digital certificate requires: (i) a taxpayer registration in Brazil ("CPF"); (ii) a face-to-face meeting before a Certification Authority to collect biometric (fingerprint and face).
- ✓ Payment of the property ownership transfer tax. In general, the property ownership transfer tax (a Municipal tax) must be paid upon the execution of the deed, but the rules on the payment of this tax and its rates vary in accordance with the applicable rules imposed by the municipal authority where the property is located.
- ✓ Registration of the deed of sale with the relevant Real Estate Registry Office (in

contrast with the choice of Notary Officer, who may be chosen by one of the parties, the Real Estate Registry Office's jurisdiction is defined by State Law and, therefore, cannot be selected by either party). Under Brazilian law, a purchaser of real property only becomes the property's rightful owner after the notarial purchase deed is duly registered with the competent Real Estate Registry Office, as indicated in the real property ownership certificate.

6. FEES AND EXPENSES RELATED TO THE ACQUISITION OF REAL PROPERTY

Notarial and Real Estate Registry Office fees vary from State to State and are regulated by State law. In each State, the same fees will be charged by every Real Estate Registry Office and Notary Public practicing in that State.

Lawyer's fees can be negotiated and are established by the Brazilian Bar Association in its main fee guidelines. Under the law, a lawyer does not need to be present at the execution of the deed of sale; however, to ensure the validity of negotiations and compliance with the relevant legal formalities, it is advisable to have a lawyer present. Furthermore, the presence of a lawyer also serves to ensure the accuracy of the deed's content in relation to the description of the property, the description of the succession of rights of the seller and his/her predecessors, in addition to other legal requirements.

Depending on circumstances, other costs might be applicable, such as the *laudemium*, applied to marine land (properties located on islands or properties that fall under an occupancy regime or a permit issued by the Federal Government).

7. FINANCING

The most common way to finance the purchase of a real estate property is through a bank loan. To grant a loan, Brazilian banks examine the purchaser's credit history and financial situation in addition to having the current commercial value of the property appraised.

Upon payment of the purchase price - loaned amount - directly to the seller, the bank secures its interest over the property by registering a guarantee with the Relevant Real Estate Office to guarantee the loan (commonly a mortgage or a fiduciary lien).

At present, it is also possible to secure financing through credit instruments linked to the capital markets, particularly when the acquired property is designated for real estate development purposes. This financial approach leverages market-driven tools to support and enhance investment in property projects, aligning with specific legal and financial frameworks conducive to real estate expansion.

8. SPECIFICITIES WITH RESPECT TO RURAL LAND - PROPERTY BOUNDARIES DESCRIPTION AND ITS ENVIRONMENTAL DATA

Brazilian Law prescribes particular provisions in relation to rural land, and anyone with the intention of acquiring rural land must be aware of (i) specific rules/regulations with respect to the description of the boundaries of rural land that detail satellite geo-referenced coordinates in accordance with the proper topographical rules established by the National Institute of Colonization and Agrarian Reform ("INCRA"), and (ii) specific rules/regulations with respect to demarcated preservation areas on such properties and cadaster thereof with the

State and the federal environmental agencies.

It is important to note that the description of rural properties by way of satellite geo-referenced coordinates must be certified by INCRA. This certification is a prerequisite for accurately documenting the property's details in the ownership record file, which is integral to the property regularization process. In addition, for the valid execution of a deed of sale involving rural land, not only is INCRA´s certification necessary, but registration with the relevant Real Estate Registry Office is also mandatory for properties exceeding 25 hectares in extent.

It is also important to note that the registration of rural property data with the State and the Federal environmental agencies is a further requirement for the execution of deed of sale of rural land, coupled with its registration with the relevant Real Estate Registry Office.

In addition to the Rural Property Registration Certificate (CCIR) before INCRA, the rural property must also be registered with the Federal Revenue, since the property must have an identification number ("CIB") before the Rural Real Estate Registry (Cadastro de Imóveis Rurais – CAFIR) controlled by the Federal Revenue.

Nowadays the National Rural Real Estate Registry (Cadastro Nacional de Imóveis Rurais -CNIR) comprises integrated data from the INCRA's National Rural Real Estate Registry (SNCR) and the Federal Revenue Service's Rural Real Estate Registry (CAFIR).

9. RESTRICTIONS ON REAL PROPERTY ACQUISITION BY FOREIGNERS

Brazilian law does not impose restrictions on urban real property ownership by foreign entities or persons.

However, the acquisition and leasing of rural properties by foreign individuals and entities are subject to specific restrictions aimed at controlling foreign ownership of agricultural land. These regulations, codified in Law No. 5,709/1971, stipulate that foreign entities and individuals must obtain approval from INCRA or the Congress (depending on the size of the property) before purchasing or leasing rural land. The law sets limits based on the size of the property and its geographical location, often requiring that such acquisitions align with national security and development goals. Furthermore, amendments and interpretations of the law over time have introduced additional complexities, such as distinctions between foreign individuals residing in Brazil and foreign corporations established under Brazilian law, further tightening control over how and where foreigners can invest in Brazil's rural real estate

It is important to mention that there are two ongoing lawsuits in the Brazilian Supreme Court debating the application of the law and its restrictions. The outcome of this judgment, which is currently suspended, could potentially alter the scenario and how the law is applied.

10. With the edition of the INCRA's Normative Ruling nº 88/2017, the exigence of INCRA's pre-approval on rural real properties acquisition by foreigners was pacified, however, changes on this issue are still expected, considering that the aforementioned regulation does not establish deadlines for the public authorities to review approval requests, which creates a significant level of uncertainty in transactions involving rural properties. **IMPORTANT PROVISIONS TO BE CONSIDERED AT TIME OF**

PURCHASE/ACQUISITION OR LEASE OF A REAL PROPERTY

Right of first refusal: A provision stipulating that in the event of a sale, sale commitment, assignment, or commitment to the assignment of rights in connection with a leased real property, the tenant has the right of first refusal to acquire the leased real property, and that the landlord must bring the transaction to tenant´s knowledge. Further, in case of joint ownership, members of the condominium also have the right of first refusal.

Validity Clause: A type of clause, which if included in a lease agreement and registered at the Real Estate Registry Record, grants the right to a tenant to see out the lease for the entire term should ownership be transferred to a third party.

Restraint of mortgage/Non-encumbrance clause: This type of clause prohibits the encumbering of a property with a mortgage; only applied on specific circumstances.

Non-communio bonorom clause: This type of provision prevents the property from becoming part of a joint estate due to marriage or union, regardless of the regime governing the union or marriage.

Inalienability clause: This clause restricts the owner's faculty/ability/capacity to dispose of the property.

11. NOTES/OBSERVATIONS ON TAXATION

Real property transfer tax varies between municipalities and, therefore, depends on where the property is located. It is important to note that in case of donation of a real property, Municipal transfer tax shall not be levied, but State Donation and *Causa Mortis* Tax shall be the payable tax instead.

Urban Real Estate Property Tax ("IPTU"). All urban real estate property in Brazil owned by individuals or legal entities as at January 1st of each year, is subject to Urban Real Estate Property Tax payable to the municipality within whose jurisdiction the property is located. IPTU is the main annual tax imposed on urban real estate properties, and the surface area of the real estate property, its location, the value of its constructions etc. are used to calculate such tax.

Rural Real Estate Property Tax ("ITR"). All rural real estate property in Brazil owned by individuals or legal entities as at January 1st of each year, is subject to Rural Real Estate Property Tax, payable to the Federal Government. Calculation of ITR is based on information provided by the property owner to the Federal Revenue (information includes the surface area, the purpose of its use, extent of preserved native forest, agricultural production, among several other considerations).

Tax on income from property rental, or the sale of property (capital gain tax), pursuant to federal tax provisions, apply on real property leases or sales. Given the frequent amendments to tax legislation, it is highly advisable that all property related taxes are revisited and re-calculated as necessary.

12. NOTES ON THE REAL ESTATE REALTOR ACTIVITIES

Under Brazilian law, a Real Estate Realtor must be registered with the relevant agency ("CRECI"). A broker's participation in a transaction is not mandatory but if a broker has been hired, even if the broker is not responsible for the effective conclusion of the transaction, regardless of whether the transaction is duly concluded, the realtor's fees would still be due. The parties may (and should) agree to incorporate a provision in

the deed of sale stipulating effective conclusion of the transaction as a prerequisite to the payment of realtor's commission.

A realtor's commission may vary in accordance with the arrangement between the party and the broker, with an upper limit of 6% per cent of the purchase price, established by law in general/standard/conventional cases.

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BUYING AND SELLING REAL ESTATE IN CANADA - ONTARIO

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER CANADIAN (ONTARIO) LAW

INTRODUCTION

Canada, a bijural country, utilizes both common and civil law. Except for Québec, a civil law jurisdiction, the common law operates in all remaining provinces and territories. Real estate transactions conducted in Ontario are governed by laws and rules that are specific to the province. This requires buyers and sellers to remain considerate of the Province's particularities when transacting. This guide will provide a brief overview of important considerations when buying or selling property in Ontario.

I. PURCHASE AND SALE AGREEMENT

All real estate sales in Ontario require a formal written contract between the buyer and seller in order to comply with the *Statute of Frauds* and must contain the elements of a binding contract including offer, acceptance, consideration and the meeting of the minds. The purchase agreement outlines all the obligations, responsibilities and procedures in accordance with contract law. It also must accurately identify and describe the real property being purchased and usually includes both the municipal address and the legal description.

Buyers and sellers are typically bound to certain terms and conditions upon agreeing to make the purchase. For instance, a buyer who makes an offer cannot then revoke it until a specified period of time has elapsed. Within that time period the seller can accept, reject or make a counteroffer. If no counteroffer is made, and the seller accepts the buyer's offer, the offer becomes a legally binding agreement. A deposit is security for the performance of the buyer's obligations and is usually held in the seller's brokerage's or lawyer's trust account. It is not a limitation on damages in the case of a default by the buyer unless expressly stated as so in the purchase agreement. On closing, the deposit is credited to the buyer as partial payment of the purchase price.

The agreement of purchase and sale may contain conditions in favour of the buyer and/or seller. For example, a buyer may have a defined period of time in which to arrange suitable financing, conduct due diligence of the property and to be satisfied with their investigations of the property. If so satisfied, the buyer may waive their conditions, and the agreement would then be legally binding. If the conditions are not waived, the agreement may terminate, and any deposits paid returned to the buyer in accordance with the terms of the agreement.

The agreement of purchase and sale may contain a clause on the right to assign the contract to a third party. If the agreement is silent on the right to assign, then under contract law, either party's "benefits" can be assigned without the other party's consent, but not their "burdens." The buyer may need flexibility for tax planning, liability reasons or compliance with the *Planning Act* and so if the need to assign the agreement is important, it should be included as a term to the purchase agreement.

The Ontario Real Estate Association ("**OREA**") is most commonly known for providing the standard forms for the purchase, sale, and leasing of residential and commercial properties. Each local real estate board within Ontario has adopted the standard OREA forms which may be used for residential and commercial real estate transactions. While these forms may be typically used, especially in a residential transaction, they are not mandatory and

other forms of agreements and sales may be drafted. The standard forms may also be easily amended by adding a schedule with further clauses that are tailored to the particular transaction. The type of property being purchased also needs consideration such as freehold, leasehold or condominium. Great care must be undertaken when drafting the purchase agreement to accommodate local requirements in addition to the needs of the party the lawyer represents.

Commercial

Many similar principles apply to a commercial real estate transaction as to a residential real estate transaction, although the dollar figures are usually larger. Additional considerations are required by the nature of the property, such as tenants and their leases, service contracts and employment contracts of salaried workers, future revenues from the property and future development plans for the property.

The commercial buyer normally requests in the purchase agreement that pertinent due diligence materials be provided by the seller such as realty tax records and appeals, environmental reports, surveys, building engineering reports, copies of all tenant files including leases, maintenance contracts, development files, etc. so that it can evaluate the property, its financial feasibility and intended use. The commercial buyer may need to evaluate cost sharing arrangements, easements, zoning and environmental issues. The due diligence conditions and other conditions, if any, and timing of same are negotiated with the seller and must be detailed in the purchase agreement. The buyer's lender may also have due diligence requirements, such as an appraisal and satisfactory environment reports. The buyer should ensure these are met prior to any waiver of conditions. Closing documents that will be required and if the seller or buyer are responsible for drafting, same is also listed in the purchase agreement.

Since commercial properties come in a variety of forms such as vacant land, commercial, retail, industrial, mineral, agricultural property, tailoring the transaction to satisfy the buyer and seller, based on the type of business that was being conducted on the property or the buyer's intended use of the property, is an integral part of the purchase agreement.

II. BROKERS AND AGENTS

The Trust in Real Estate Services Act (TRESA), 2023 replaced the *Real Estate and Business Brokers Act*, 2002 which is consumer protection legislation governing the conduct of real estate agents and brokerages trading in real estate in the province of Ontario. It allows a seller, via their brokerage, to share the contents of competing offers if the seller directs it. A brokerage can now appoint a specific salesperson or broker to act solely for each client, instead of the entire brokerage representing everyone involved in the deal. Each designated representative owes full fiduciary duties to their own client, while the brokerage itself stays neutral. Whenever a registrant deals with a consumer who has no agent, they must give that person RECO's mandatory "Self-Represented Party" information form before providing any assistance beyond basic facts. This single, province-wide form replaces the patchwork of previous brokerage-specific disclosures.

In Ontario, a real estate agent will have obtained the minimum mandated education, have passed a set of tests required by OREA,

and be registered with RECO. To become a broker, in addition to the requirements to become an agent, an individual will have completed the Real Estate Broker Program and have been registered as a salesperson for at least 24 months. It is not mandatory to use a real estate agent or broker on a transaction.

Listing a property in Ontario is making it known to potential buyers that the seller is looking for offers. The listing agreement is a contract between a seller and a real estate agent or brokerage. The agreement will specify a time period in which the brokerage will have exclusive access to list the property - usually 90 days. The price, while being stated on the agreement, will only be an estimate. The commission, often a percentage of the sale price to be given to the brokerage for its services, is also listed in the agreement and is often paid by the seller. If the buyer and seller have separate agents, the commission is typically split between the agents as may be set out in the agreement of purchase and sale or the listing agreement. Additionally, if the brokerage intends on collecting a flat fee or a finder's fee, this must be stated in the listing agreement. A *holdover clause* is a clause that sometimes allows a brokerage to collect its commission after the expiry of its listing period if the brokerage introduced a buyer to a seller and such a clause can be stipulated in a listing agreement.

III. BUYER'S INSPECTION

Residential

When purchasing a home or commercial property the seller is required to the disclose some, but not all, physical defects. Patent defects are defects that can be easily detected though reasonable inspection and ordinary vigilance. If a buyer fails to detect a patent defect, '*caveat emptor*' - buyer beware prevails. Conversely, latent defects are defects that are not detectable through reasonable investigation. In Ontario, sellers are only liable for not disclosing latent defect if the property they sold is later found to make (1), the property unfit for habitation or poses future danger and (2), if the repair would be so expensive that it would severally reduce the property value. Failure by the seller to disclose latent defects when the aforementioned criteria are met may constitute fraud.

The buyer's lawyer will examine title to the property for items such as mortgages (which are to be paid out by the seller or assumed by the buyer if agreed-upon in the purchase agreement), restrictive covenants and easements. The buyer's lawyer may also determine whether there are government work orders or deficiency notices against the property, confirm if the present use as specified may be lawfully continued and if there are any arrears of realty tax or utilities that may form a lien. The buyer will also confirm if fire insurance can be obtained for the property. Any issues arising from title and off-title searches are called requisitions and are submitted to the seller's lawyer in a requisition letter by the requisition date as stipulated in the purchase agreement.

Most acquisition transactions are financed with a lender. The buyer will typically obtain a loan from a bank or other lender and agree to register a charge or mortgage in favour of the lender against the property on closing. If the purchase agreement contains a condition for the buyer to arrange financing during the due diligence condition period, the buyer will be responsible to ensure all terms of the lender's conditions, such as an adequate appraisal, are met prior to the waiver date.

In a heated real estate market, a buyer may submit an unconditional offer to the seller to gain an advantage over other prospective buyers. However, the buyer should be aware of the risks, including potential damages if the buyer cannot complete the transaction on closing, of such an offer as the offer becomes a binding contract if accepted by the seller.

Commercial

A buyer of a commercial property will conduct searches regarding the physical integrity of the building and soil, legal searches relating to title, executions, zoning and work orders, property tax and utility arrears, reviews of surveys (if available), similar to residential transactions. The buyer will evaluate the pertinent due diligence materials provided by the seller as aforementioned. The commercial buyer should assess all leases and related tenant files, and do off-title searches which may comprise of assessing zoning and work orders, development and cost sharing agreements, Phase 1 and 2 environmental reports, and fire and health department documents, etc. In other words, a buyer has the additional responsibility of ensuring the commercial feasibility of the property.

For a leased property, a tenant acknowledgment, also known as an estoppel certificate, is routinely obtained from the commercial tenants prior to closing. These are not usually obtained for an apartment building as the rental income in usually less significant and parties do not want to disturb the residential tenants. The tenant acknowledgement confirms the material facts about the lease, including, but not limited to, any outstanding landlord work, arrears of rent, rent amounts (including additional rent), square footage, the existence of any amendments to the lease, the lease term, expiry date, renewal rights, escalations in rent, deposits, prepaid amounts and that there are no disputes or rights of set off, or if there are, details of such claims. The tenant acknowledgement is important as it confirms the lease information but may limit the potential for disputes post-closing with the buyer as the tenant will be estopped from later asserting a different interpretation of the lease terms. It is important for the buyer and seller to assess and determine what the consequence will be if the seller is unable to provide the estoppel certificates, or if the certificates materially differ from the leases and disclosures made by the seller. Examples may include termination of the transaction without either party being liable for damages, an abatement of the purchase price or a temporary hold-back.

Since commercial properties come in a variety of forms, it is prudent to hire professionals such as engineers, planners, appraisers and surveyors to assist in the transaction who have expertise in the type of property being sold or purchased, and to determine if the intended future use of the property is allowed. In some instances, the professional may have to contact various third parties, such as utility providers, conservation authority, fire department, building department, and municipal zoning departments to determine if encumbrances that are not registered on title exist or if historical environmental violations exist. The carriage of business on the property warrants a higher level of scrutiny for commercial real estate transactions than for residential transaction.

IV. HOLDING TITLE

There are several ways in which title to a property can be held. Consideration should be given to the *Planning* Act, liability and tax planning. A buyer should consult with its counsel and tax advisors prior to determining how title will be held.

When multiple parties are registered owners on title, the ownership can be as "joint tenants" or "tenants in common." Joint tenancy is used when the owners want that if one of them dies, the survivor(s) become the owner(s) by right of survivorship. Joint tenancy is frequently used by spouses for their matrimonial home. Tenancy in common means each owner owns a percentage of the registered title. If one owner dies, that owner's share is then an asset of the deceased owner's estate and may eventually be transferred to the heirs of the estate in accordance with the deceased's will or intestate laws of their jurisdiction.

Individuals contracting regarding property must be 18 years old, not be incapable, and not be an undischarged bankrupt. If the party does not have such capacity, legal representatives such as estate trustees, attorneys under power of attorney, the Public Guardian and Trustee, the Office of the Children's Lawyer and others may be required to be a part of the transaction.

Corporations must be authorized by resolution of its directors and, if required, shareholders. The purchase agreement and closing documents must accurately set out the names of offices of the signing officers.

Real property in Ontario must be held by a legal person or corporation. Partnerships are not a legal person and therefore cannot hold registered title. Limited liability partnerships are formed under the *Limited Partnerships Act.* In limited partnerships, the only entity legally capable of holding title to the real property is the general partner. Alternatively, partnerships can use a nominee, as discussed below.

A nominee or trustee, usually a corporation, may hold registered title to a property on behalf of a beneficial owner. A nominee agreement or declaration of trust would stipulate the terms on which the nominee or trustee holds the property. Nominee companies offer flexibility when there are multiple beneficial owners of real estate as it allows for a single legal title holder and, for example, new joint venturers can acquire an interest in the nominee without having to register changes at the land registry office. This is also sometimes used for privacy reasons.

It is mandatory for most buyers to fill out an information form disclosing beneficial owners, their citizenship/PR status, whether title is held as trustee/nominee, whether the property will be leased, and certain other information in connection with the purchase of residential and agricultural properties. The completed form is submitted electronically to the Minister of Finance and is not made public.

V. TITLE INSURANCE

In both residential and commercial transactions, title insurance is a contract with a title insurer that may protect the buyer and mortgagee from possible financial losses such as:

- title to the estate or interest insured being held other than as shown in the policy;
- any title defect and charge, lien or encumbrance on the title, including defects that may have been disclosed by an up-to-date survey;

- unmarketability of title;
- certain types of fraud; and
- lack or a right of access to and from the land.

Separate owner and lender policies are available. Owner policies are generally a one-time purchase and protect a buyer for as long as they, or their heirs, hold title to the property. Similarly, a lender policy is usually a one-time purchase and effective while the mortgage loan is outstanding. An owner is not covered by a lender's policy as only the mortgagee's interest is insured. Title insurance can be beneficial in that it allows buyers and lenders to "insurer over" selected problems and may reduce legal fees as certain searches may be waived by the title insurer.

It is imperative that the buyer's lawyer discuss the benefits and limitations of a title insurance policy with their client, including, but not limited to, whether the buyer has a knowledge of a title defect, their intended future use of the property and the usefulness of a current survey of the property.

VI. RECORDING REAL ESTATE DOCUMENTS

In Ontario, the Land Titles system has replaced the old Registry System, although approximately 30,000 properties have not yet been converted to Land Titles. The Land Title system is a mandatory electronic registry housing all private property ownership information in Ontario and is accessed through Teraview. It contains official records of title, deed, mortgage and other land documents. Under the Land Titles system, search results are certified by the government, with no requirement to look any further into prior registrations of the property, with certain exceptions. More complex instruments are certified manually by staff at the land registry office, while other more standardized instruments are certified digitally. The Land Titles system provides a statement of title. Each separately owned piece of land is called a "parcel", and each parcel has an assigned number or a "PIN".

On closing, the transfer of the property is usually registered electronically by the buyer's lawyer, along with any related instruments such as a mortgage.

VII. THE PLANNING ACT

The purpose of the *Planning Act* is to regulate how land can be developed and used, and impose a process for how development and land use decisions are made. In June 2025, Bill 17, *the Protect Ontario by Building Faster and Smarter Act*, 2025 was passed. It amends several statutes including the *Planning Act* to accelerate home construction and simplify approvals. The changes introduce standardized municipal timelines for development approvals, reduced red tape and removal of barriers to building and construction.

At a more detailed level, section 50 of the Planning Act governs property transactions by imposing restrictions on the subdivision of large parcels of land into smaller lots and prohibits an owner from selling, transferring, or mortgaging a property if they retain ownership of adjacent lands, unless certain statutory exemptions apply. Any conveyance of real property must be carefully reviewed for compliance with the *Planning* Act as a breach can render the transaction void, meaning that no legal interest in land is transferred. It is essential for a buyer's lawyer to search the chain of title and investigate ownership of adjoining lands to confirm whether the seller holds abutting

lands, and if so, whether an exemption under the *Planning Act* applies.

A few years ago, a significant amendment introduced through S.50(22) of the *Planning Act* allows for optional statement to be included in the transfer document by the seller and their solicitor and by the buyer's solicitor regarding compliance with the *Planning Act*. When these statements are completed, any prior contraventions of the subdivision control provisions of the *Planning Act*, that would otherwise have voided the transfer, are deemed to be no longer and never to have had this effect, effectively curing the breach. Because these statements are not mandatory by default, it is advisable to include a requirement for them as a term in the agreement of purchase and sale to ensure they are completed during the transaction.

VIII. CONSTRUCTION LIENS AND WRITS

Construction Liens are governed by the *Construction Act*. When work is performed or materials are supplied to the property, the party doing so, which can include contractors, and sub-contractors can place a construction lien on title against the property if they are not paid. A construction lien acts as an encumbrance to the title, giving aggrieved parties a right to be paid and a right to sue under the *Construction Act*. The buyer of the property may be liable to pay if the lien is not removed from title upon transfer.

IX. WRITS OF EXECUTION

An execution search is automatically conducted against the vendor by the electronic registration system prior to the registration of a transfer. In a lawsuit, the successful party is awarded a judgement in its favour against the other party. The successful party can then obtain a writ to be filed against the unsuccessful party in any district in which the other party owns property pursuant to the Execution Act. The writ of execution allows for the seizure and sale of real property, amongst other rights. Buyers should not close the purchase of lands if the registered owner is subject to a writ of execution, as the property will be noted as being subject to the writ of execution.

X. THE ONTARIO NEW HOME WARRANTIES PLAN (ONHW) ACT

Defects in newly built homes are subject to the *Ontario New Home Warranties Plan Act.* The *Act* was implemented to protect new home buyers from defective and faulty construction by the builder. All builders and all new homes have to be registered under the *Act*. The Home Construction Regulatory Authority (HCRA) licenses and regulates builders/vendors while Tarion , a not-for-profit corporation administers the warranties and is responsible for indemnifying new buyers in case of loss.

XI. HST

The Harmonized Sales Tax ("**HST**") is a 13% tax on the sale of all goods and services across Ontario, with certain exemptions. HST does not apply to used housing (i.e., any residential home where the buyer is not purchasing a new build.) However, HST is payable for the purchase of new homes and substantially renovated homes, where 90% or more of the interior has been renovated and was inhabited for less than one year. Since May 7, 2022, HST is also applicable to all assignments of agreements of purchase and sale for new houses and condominium units and is chargeable by the assignor and payable by an assignee on the portion of the assignment purchase price representing the assignor's profit, over and above what the

assignor agreed to pay the vendor, but excluding the reimbursement of deposits by the assignee to the assignor.

HST applies to most commercial transactions, subject to some exceptions. The purchase agreement stipulates whether HST is included in the purchase price or not. If the buyer is an HST registrant, the buyer may self-assess, claim input tax credits and remit any HST owing to the Canada Revenue Agency ("**CRA**") directly. The seller will require an indemnity from the buyer on closing to protect the seller from the buyer's failure to remit the tax. The seller should confirm the buyer's HST registration number with CRA prior to closing.

On May 27, 2025, the First-Time Home Buyers' GST Rebate was tabled by the Federal government which eliminates the goods and services tax (GST) (or the federal component of the harmonized sales tax (HST)) on the purchase of newly constructed homes and condominiums valued at up to $1 million by eligible first-time home buyers. The amount of the rebate will be gradually phased out for first-time home buyers who purchase eligible homes valued between $1 million and $1.5 million.

XII. RESIDENCY STATUS OF THE SELLER

Residential property that is designated as a primary residence of seller who is not a non-resident of Canada is usually exempt from income taxes with CRA.

Section 116 of the *Income Tax Act* imposes liability on both the seller and buyer during the property transaction. The seller is responsible for potential tax liability for profits earned from selling the property. This section imposes the same liability on the buyer if a non-resident, as defined in the *Income Tax Act*, fails to remit the tax to CRA.

The buyer is obligated under the *Income Tax Act* to make reasonable inquiry as to the residency of the seller. A statutory declaration from the seller confirming the seller is not a non-resident is obtained on closing and delivered to the buyer. This is usually sufficient to protect the buyer from the tax liability. However, if the seller has signed the documents outside of Canada or provides an address outside of Canada for service, further inquiries must be made, or the buyer may become liable for the tax amount owing. If the buyer has actual notice that the seller is a non-resident, the buyer cannot rely on the statutory declaration.

If the seller is a non-resident, the seller must provide a "certificate of compliance" (CRA form T2062, often referred to as a "compliance certificate" or "s. 116 certificate") on closing certifying that all tax has been paid to CRA or security has been given for payment. If the certificate of compliance is not available on the closing date, the buyer's lawyer must withhold in trust from the sale price the maximum amount of the tax liability for which the buyer could be responsible for if the seller failed to pay the tax (currently 25% of the sale price) until receipt of the certificate of compliance is received. In practice, if a large tax amount is owing, the seller may need to use the holdback to pay the tax liability and will apply to CRA for a certificate of compliance. When CRA sends a tax statement/letter to the seller's lawyer or accounting stating that upon its receipt of the unpaid tax it will issue a certificate of compliance, the buyer's lawyer will issue payment to CRA of the unpaid tax from the holdback. The seller's lawyer usually undertakes to deliver the certificate of compliance upon its receipt of same.

XIII. CLOSING COSTS

In addition to legal fees and disbursements and title insurance policy premiums paid by the buyer, purchase transactions in Ontario are subject to land transfer taxes as set out below. The seller is typically responsible for their own legal fees and the agent/brokerage commission, if applicable.

Land Transfer Tax

A buyer in Ontario is required to pay a land transfer tax on the registration of any transfer/deed. For commercial properties, the tax is currently calculated at the following rates:

- one-half of 1% on the first $55,000 of the purchase price;
- 1% on the balance of the purchase price up to and including $250,000;
- 1.5% on the balance of the purchase price up to and including $400,000; and
- 2% on the balance of the purchase price at $400,001 and above.

For residential properties, the tax is calculated at the same rates as for commercial properties, except where the land contains one or two single-family dwellings and the property is valued at more than $2,000,000. For such transactions, the 2% tax rate only applies from $400,001 up to and including $2,000,000, and a 2.5% tax rate applies to the balance of the purchase price for the property.

In the City of Toronto, a municipal land transfer tax is also due on the registration of a transfer/deed in addition to the provincial land transfer tax. This municipal land transfer tax is calculated as follows:

- for properties containing at least one but no more than two single-family residences:

Value of Consideration	MLTT Rate
Up to and including $55,000.00	0.5%
$55,000.01 to $250,000.00	1.0%
$250,000.01 to $400,000.00	1.5%
$400,000.01 to $2,000,000.00	2.0%
Over $2,000,000.00	2.5%
Over $3,000,000 and up to $4,000,000	3.5%
Over $4,000,000 and up to $5,000,000	4.5%
Over $5,000,000 and up to $10,000,000	5.5%
Over $10,000,000 and up to $20,000,000	6.5%

Over $20,000,000	7.5%

- for all other properties, one-half of 1% on the first $55,000 of the purchase price, 1% of the balance of the purchase price up to and including $250,000, 1.5% of the purchase price up to and including $400,000, and 2% on the balance of the purchase price at $400,001 and above.

First-time homebuyers (buyers that have not owned real estate anywhere else in the world) may be eligible for a refund of all or part of the tax, up to a limit of $4,000 for the Ontario provincial rebate and $4,475 for the municipal Toronto rebate. Certain transfers, such as between spouses for no consideration, may be exempt from the tax.

Non-Resident Speculation Tax

Effective April 21, 2017 as a 15% tax on transactions , and recently amended to 25% on October 25, 2022, , the non-resident speculation tax (NRST) is a province wide tax imposed on the purchase or acquisition of an interest in a residential property located in the Province of Ontario by an individual or corporation controlled by a person who is not a citizen or permanent resident of Canada or by foreign corporations and taxable trustees. The NRST applies to the transfer of "designated land", which is considered land that contains at least one and no more than six single family residences.

The NRST is owed in addition to the land transfer tax in Ontario and Toronto, if applicable, and applies to the value of the consideration for a transfer of residential property. The transfer contains statements identifying whether the transfer is subject to the NRST and applicable explanations.

Effective January 1, 2025, the City of Toronto implemented a Municipal Non-Resident Speculation Tax (MNRST) of 10% imposed on foreign purchasers of designated residential properties in Toronto, adding on top of the provincial NRST.

XIV. CLOSING DOCUMENTS

Some examples of commonly used documents on the closing of the residential transaction are:

1. *Transfer/deed of land*

   This document transfers ownership of the real property to the buyer, lists the consideration paid and contains the land transfer tax affidavit completed by the buyer. If the seller is an individual, the transfer must contain *Family Law Act* statements, which are designed to protect spousal rights of the matrimonial home. If a party is selling the matrimonial home and the spouse is not listed on title, the non-titled spouse must give consent to the transaction. *Planning Act* optional statements may also be included in the transfer. The buyer will advise the seller how it is taking title.

2. *Statement of adjustments*

   The statement of adjustment is prepared by the seller for the buyer, and calculates the amount of money the buyer owes the seller on the closing date and will show the purchase price due to the seller and credits for any deposits already paid by the buyer. It should include an adjustment all ongoing expenses and revenues, such as property taxes, rents and damage deposits from tenants, condominium strata fees, etc.,

that are due or paid by the seller prior to closing. It includes all costs up to the day before closing for the seller, and the day of closing for the buyer. An undertaking from the buyer and seller to readjust the statement of adjustments after closing for any errors discovered post-closing or for a recalculation of realty taxes once the final tax bill is issued post-closing is commonly included in the closing documents.

3. Document Registration Agreement ("DRA") – To accommodate electronic registration, the DRA outlines the terms of escrow under which the transaction is completed, including the transfer of funds and registration of documents.
4. bill of sale – to be delivered when chattels are being transferred to the buyer along with buildings and land;
5. vendor take-back mortgage, if applicable;
6. vendor direction as to funds;
7. vendor declaration of possession;
8. buyer's direction re: title;
9. vendor's certificate or statutory declaration pursuant to s. 116 of the *Income Tax Act*;

Commercial transactions would also use the above-noted documents, but may also require the following documents, and other documents specific to the terms of the transaction:

10. assignment and assumption of leases;
11. notice and direction to tenants;
12. assignment and assumption of warranties and guarantees;
13. assignment and assumption of contracts;
14. mortgage assumption agreement, if applicable;
15. tenant estoppel certificates (pre-closing), if applicable;
16. general conveyance;
17. purchaser's covenant to self-assess, pay HST and indemnify vendor.

XV. ANNUAL PROPERTY COSTS

Property owners in Ontario can expect to incur the following annual costs:

1. Realty taxes – Each property's value is assessed for municipal tax purposes under the *Assessment Act,* and the local municipality determines the tax rates to be paid based on the assessed value. Realty taxes can be comprised of local and regional amounts, school amounts, and special assessments.
2. Insurance - Not mandatory but is typically obtained to cover property damage and liability. If the property has a mortgage, the lender will require insurance as an ongoing condition of the loan.
3. Strata fees if a condominium; and
4. Operating expenses, such as utilities, maintenance and repairs.

XVI. PROHIBITION ON THE PURCHASE OF RESIDENTIAL PROPERTY BY NON-CANADIANS ACT

Introduced in the 2022 federal budget, the *Prohibition on the Purchase of Residential Property by Non-Canadians Act* was passed by the Parliament of Canada on June 23, 2022, and came into effect on January 1, 2023, along with the *Prohibition on the*

Purchase of Residential Property by Non-Canadians Regulations (the "**Regulation**").

This Act prohibits non-Canadians (including individuals and individuals using corporations) from purchasing certain residential property anywhere in Canada, for a period of 2 years, with certain exceptions for persons who enjoy protected status or are married to a Canadian. In its 2022 Budget, the Federal Government confirmed that the Act only applies to residential properties in either a "census agglomeration" (area of a core population of 10,000 or more people) or a "census metropolitan area" (metropolitan area with total population of 100,000 or more).

Contraventions of this Act may result in the residential property being sold by court order, and/or imposing a fine of up to $10,000 on offenders and those that counsel, induce, aid or abets in the contravention of this Act.

On March 27, 2023, the Federal Government announced *Regulations Amending the Prohibition on the Purchase of Residential Property by Non-Canadians*, which came into force immediately. In particular and of note:

- Vacant land can be purchased by non-Canadians and used for any purpose including residential development.
- Residential property can be purchased by non-Canadians for development purposes.

The federal ban on the purchase of residential property by non-Canadians was extended two years to January 1, 2027, by regulation in February 2024.

XVII. RESIDENTIAL PROPERTY FLIPPING RULE (ANTI-FLIPPING TAX)

On January 1, 2023, a new residential Anti-Flipping Tax Rule came into force in Canada. Under the rule, an individual who sells a residence within 12 months of acquiring it will be taxed on the profits from a "flipped property" as business income. Prior to the introduction of this Anti-Flipping Tax Rules, an individual who sold a home which was designated as their principal residence was exempt from paying taxes on any gains, and properties sold that qualified as capital property were taxed at the capital gains inclusion rate. No principal residence exemption is available to reduce the anti-flipping tax. A “flipped property” is defined as a housing unit located in Canada, or a right to acquire a housing unit located in Canada which was owned by the taxpayer for less than 365 consecutive days prior to its disposition. Notably, the right to acquire a housing unit and disposition would apply to an agreement of purchase and sale to buy a pre-construction home which is assigned to another purchaser.

Exemptions to the Anti-Flipping Tax Rule apply to Canadians who sell their home within 12 months due to life circumstances, such as disability, death, a new job, the birth of a child, or the breakdown of a relationship. The Federal Government has expressed that exemptions will be set in rules that will be presented for consultation in draft legislation.

1. UNDERUSED HOUSING TAX ACT

Effective January 1, 2022, the Underused Housing Tax Act was introduced by the Government of Canada. This act requires individuals who are not Canadian citizens nor permanent residents of Canada who

own residential property in Canada on December 31 of a calendar year, and which property is vacant or "underused" – to file an annual tax return and pay a tax of 1% of a residential property's value (the "**UHT**"), annually.

Under the UHT legislation, a residential property includes detached, semidetached, townhomes and similar separate residential dwellings. Generally, a residential property is considered underused if it is not continuously occupied for 180 days or more in a calendar year. Exemptions can include vacation property in rural areas held for personal use for a minimum of 4 weeks/year, and not suitable or accessible for year-round occupancy; property uninhabitable due to disaster or hazardous conditions; property undergoing major renovations; property held in the year of death; or property acquired during the calendar year.

On June 20, 2024, proposed amendments to the Underused Housing Tax Act came into force. In particular and of note:

- specified Canadian partnerships, trusts, and corporations will be considered "excluded owners," for the purposes of UHT. Consequently, these taxpayers will be exempted from filing UHT returns for the 2023 calendar year onwards.
- the "vacation property" exemption is limited to only one residential property for a calendar year, effective for 2024 onward.
- unitized (condominiumized) apartment buildings are excluded from the definition of "residential property", and therefore exempt from UHT, effective for 2022 and subsequent years.

XVIII. VACANT HOME TAX (TORONTO, OTTAWA & VANCOUVER)

Toronto and Ottawa introduced new vacant home taxes which began to take effect in January 2023, and which developed after the empty homes tax regime implemented in Vancouver in 2017. Unlike the federal *Underused Housing Tax Act*, the vacant home tax payments are not limited to owners who are non-citizens or non-permanent residents of Canada, but rather apply to all owners of residential properties in Toronto and Ottawa.

In Toronto, the Vacant Home Tax (VHT) is an annual tax that will be imposed on vacant Toronto residences. A property will be considered vacant if it was not used as the principal residence by the owner(s) or any permitted occupant(s), or if it was not occupied by tenants for a total of 6 months or more during the previous calendar year.

Similarly in Ottawa, there is a Vacant Unit Tax (VUT) which applies to non-principal residences vacant in 2022 for at least 184 days. A unit will be considered vacant if it was not used as a principal residence and has been unoccupied for more than 184 days in the previous calendar year. Notably, the tax applies only to properties in the residential tax class – excluding commercial, industrial, and multi-residential properties.

Effective January 1, 2024, Toronto announced that it would increase the VUT to 3 percent per year – from 1 percent. For example, the owner of a $2 million property that is determined to be vacant for more than six months during the previous year would be required to pay $60,000 under the increased VUT, unless the property qualifies for an exemption Possible exemptions include: the death of a registered owner, repairs or renovations, principal resident is in care,

transfer of legal ownership, occupancy for full-time employment, court order, vacant new inventor.

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INTERNATIONAL LAWYERS NETWORK

ROBINSON SHEPPARD SHAPIRO LLP

BUYING AND SELLING REAL ESTATE IN CANADA - QUÉBEC

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER CANADIAN (QUÉBEC) LAW

Unlike the other Canadian provinces and territories, which are all common law jurisdictions, Québec is a civil law jurisdiction. It is governed by the *Civil Code of Québec*, originally inspired by the French Napoleonic Code, and therefore quite distinct from other Canadian legal systems. In Québec, real estate is categorized as being immovable (real) property, as opposed to movable (personal) property. Both lawyers and notaries handle Québec real estate transactions, but only notaries may receive deeds creating encumbrances (hypothecs, known as liens or mortgages in other jurisdictions). Québec notaries are not analogous to notaries public in other jurisdictions; they receive the same legal training as lawyers but are members of the Chamber of Notaries and graduate from its distinct post-university program, specializing in real estate matters.

I. STANDARD FORMS OF AGREEMENTS

Residential Transactions – Pre-Sale Documents

All Québec licensed real estate brokers governed by the *Real Estate Brokerage Act* (Québec) and its Regulations are required to use the following forms provided by the *Organisme d'autoréglementation du courtage immobilier du Québec* (OACIQ) when preparing brokerage contracts as well as the following agreements for the purchase, sale, and lease of immovables:

- Exclusive brokerage contracts for the sale or purchase of:
  - (i) Chiefly residential immovables containing fewer than 5 dwellings excluding co-ownership
  - (ii) Divided co-ownership – Fraction of a chiefly residential immovable held in divided co-ownership
  - (iii) Undivided co-ownership – Share of a chiefly residential immovable held in undivided co-ownership
  - (iv) Residential lease
  - (v) Sale of a mobile home located on leased land
- Lease documents
  - (i) Promise to lease
  - (ii) Counterproposal
  - (iii) Lease amendments
- Sale / Purchase documents
  - (i) Promise to purchase
  - (ii) Counterproposal to a promise to purchase
  - (iii) Amendments
  - (iv) Waiver of conditions (*e.g.*, financing, inspection)
  - (v) Annex F – Financing
  - (vi) Annex R– Residential Immovable
  - (vii) Annex RC – Remuneration and Costs
  - (viii) Declarations by the seller of the immovable (land and buildings, appurtenances, dependencies)
  - (ix) Declarations by the seller of the immovable - Divided co-ownership
  - (x) Enhancements prior to acceptance.

Pursuant to the *Charter of the French Language* (Quebec), all such documents must be prepared and tendered to the parties in French but may be signed in English if both parties agree after receiving the French versions.

Commercial Transactions – Pre-Sale Documents

In commercial purchases and sales, either party may prepare the offer to purchase or sell (as the case may be). These are often highly negotiated and tailored documents, which generally set out the legal description of the immovable property, the sale terms including price, deposit, conditions to be met to the satisfaction of the purchaser (such as financing, title search, environmental and other due diligence inspections), representations and warranties of the vendor, the outside closing date and the date and time by which the offer must be accepted, failing which it will be null and void.

Purchase and Sale Agreement

In both residential and commercial sales, the purchase and sale agreement takes the form of a deed of sale, signed by both parties, which sets out all of the terms and conditions of the transaction, including the date of occupancy, the warranties provided by the seller (*e.g.,* title, condition of the property, seller's matrimonial regime in the case of individuals, seller's tax residency), the purchase price and payment terms, as well as the 5% federal goods and services tax ("GST"), 9.975% Québec sales tax ("QST") and mutation taxes due on the transaction. The deed must be signed before a Québec notary if there is a balance of price or if the buyer is assuming an existing encumbrance; otherwise, it may be signed either in notarial form (which is the general practice) or under private signature before two witnesses, who must also sign. The deed must be published in the Index of Immovables for the applicable registration division to establish title opposable to third parties.

II. BROKERS AND AGENTS

Real estate brokers and agents are governed by the *Real Estate Brokerage Act* (Québec) and its Regulations. All brokers are licensed real estate agents, but not all agents are licensed brokers. Real estate agents work for a broker or brokerage firm, either as salaried employees, on commission or both, and the broker is legally responsible for its agents. Agents or brokers in Québec may act for the seller or the purchaser (although the latter is less common). As noted above, the brokerage contract is a prescribed form in residential, but not commercial, land sales. Under Québec case law, even if the seller retains the broker or agent, they are still obligated to deal honestly with both parties and may not mislead the buyer. Where the broker or agent acts only for the seller, the seller pays the commission; where both parties are represented by brokers or agents, the two brokers or agents typically share the commission. The obligation to pay the commission is governed by the brokerage contract, but generally in order to trigger the obligation to pay a commission, the broker or agent must have introduced the buyer and seller. There is usually a clause in exclusive brokerage contracts protecting the rights of the agent(s) to collect a commission if the property is sold within a specified period (generally 90-180 days) after its expiration to a party introduced to the property while it was in effect.

III. BUYER'S INSPECTIONS

Residential

Most offers are made conditional upon inspection and/or financing, although in a heated real estate market, a buyer who is prepared to make an offer without conditions may have an advantage if there are competing bids. The buyer will typically engage a licensed building inspector, who will visit the property and check for interior and exterior structural issues, verify the heating, ventilation, plumbing and electrical systems and the type and state of the roof, underground storage tanks, etc. and generally identify any issues which should be rectified, and which could influence the value of

the property (and therefore potentially reduce the price).

The buyer's notary will conduct a formal title search on the property to establish the chain of title and to identify any hypothecs, prior claims, other encumbrances, servitudes (easements), concurrent or priority rights of ownership, and any other right or charge reducing the value of ownership of the property. The notary will also obtain and verify an up to date (not more than 10 years old) certificate of location (survey) to be provided by the seller (and which will be required by the buyer's lender if the purchase is being financed). Finally, the notary will verify the zoning and any permits for renovations to the property, as well as payment of the property taxes (municipal, school, water, etc.), any right of tax authorities to claim arrears of property taxes, any prior claim in their favour, any registration of a notice of sale of the property for non-payment of the property taxes, any consequential sale of the property, and the registration of a notice of legal hypothec by the tax authorities or by any contractor who has worked on the property. The notary will, in preparing the deed of sale, also prepare any adjustment of taxes, charges, utilities, etc. and confirm that the buyer has insurance coverage for the property in place as of the date of transfer of ownership.

Commercial

In addition to the inspections performed by residential buyers, commercial buyers also generally obtain at least a Phase 1 environmental review (with a Phase 2 follow-up where the Phase 1 report raises concerns), and a use and zoning/permitting analysis, particularly if the buyer is planning any renovations to, or a particular usage of, the property.

If the property is leased, the buyer's due diligence should include a thorough review of all leases and related documents, including the term, any options to renew, an assessment of the rentals stipulated compared to current market conditions, as well as all maintenance and other contracts relating to the operation of the property.

Title Insurance

In both residential and commercial sales, any title issues which cannot easily be resolved prior to the sale may be covered by the issuance of a title insurance policy, generally applied for by the buyer as beneficiary, but at the seller's expense.

IV. FORMS OF OWNERSHIP

Residential property is commonly held in an individual's personal name (or both spouses' names in the case of a couple) but may also be held in a family trust or by a holding corporation. A family trust is created by signature of a notarial trust deed naming three trustees, at least one of whom must be independent (*i.e.,* neither the settlor nor a beneficiary), which identifies the beneficiaries and defines the trustees' powers.

Commercial property may be held in a variety of ways, including directly in the name of the owner, or through a corporation, partnership, limited partnership, unlimited liability company or trust. It may also be held in emphyteusis for up to 99 years, in which case the beneficial and legal (or "bare") ownership, which would otherwise be united in a single owner, are divided among one or more individuals or entities.

V. REGULATION AND DISTINGUISHING FEATURES OF EACH TYPE OF OWNERSHIP

Corporations

Canadian corporations may be incorporated federally, under the *Canada Business Corporations Act* (the "CBCA"), or under the corporate statute of a particular province or

territory (in Québec, the *Business Corporations Act* or "QBCA"). A federal corporation "carrying on business in Québec", which definition includes owning immovable property, must register with the Québec Register of Enterprises (the "REQ"), and update that information at least annually, as well as within 15 days of any change. One disadvantage to incorporating federally is therefore the requirement to file 2 annual returns and pay 2 annual filing fees, whereas only 1 return and 1 annual filing fee are required for a Québec corporation. Additionally, 25% of a CBCA's corporation's directors must be Canadian residents; there is no residency requirement for Canadian provincial corporations (other than Manitoba).

All Canadian corporations which are not publicly traded are required to maintain "a register of individuals with significant control over the corporation" (an "ISC"). This is defined as any individual who, as registered holder or beneficial owner, controls any number of shares carrying 25% or more of the voting rights attached to all of the corporation's outstanding voting shares or equal to 25% or more of all of the corporation's outstanding shares measured by fair market value. Two or more individuals can each be considered an ISC if they have joint ownership or control of 25% or more of the shares in votes or value.

The federal and provincial statutes oblige the corporation to keep information pertaining to, amongst other things, the shareholder's name, date of birth, jurisdiction of residence for tax purposes, address for service (or residential address, if no address for service has been provided), the day such individual became an individual with significant control over the corporation, as well as a description of how such individual is an individual with significant control over the corporation.. One point of distinction between the federal and provincial acts is with respect to who may access the information on the register and for what purpose. For example, both Ontario's corporate legislation and the CBCA permit certain law enforcement officials, tax investigators and other regulatory bodies/officials to access the register. However, the CBCA permits shareholders and creditors of the corporation to access the register whereas the Ontario statute does not.

This information must be confirmed, and updated, if necessary, at least annually and may be maintained at the corporation's registered office or at any other place in Canada designated by the corporation's directors (such as the law firm where the minute books are maintained). The information is accessible to shareholders and creditors of the corporation or their personal representatives upon request during the corporation's usual business hours, and they may obtain an extract from the register on payment of a reasonable fee. The information may not be used by any person except in connection with (i) an effort to influence the voting of shareholders of the corporation (*e.g.*, a proxy solicitation); (ii) an offer to acquire securities of the corporation; or (iii) any other matter relating to the affairs of the corporation. Failure by the corporation as well as its directors and officers to establish or maintain the register without reasonable cause, the recording or provision by a director or officer of false information, and the failure by a shareholder to reply accurately and completely to a corporation's request for information are all punishable by fines and a maximum of 6 months' imprisonment.

Under the CBCA, the information sent in the ISC Register must be sent to the Director of Corporations Canada (the "DCC") on an annual basis, and within 15 days of any change filing, The DCC may provide all or any part of this information with any investigative body, including without limitation the police, the Canada Revenue Agency and the Financial

Transactions and Reports Analysis Centre of Canada (FINTRAC - Canada's financial intelligence unit and anti-money laundering and anti-terrorist financing supervisor). The DCC may also exchange this information with any provincial or territorial government department or agency responsible for corporate law matters in that province or territory. Finally, the DCC is not required to keep or produce any information for more than 6 years after it was filed with the DCC.

Unlimited Liability Company ("ULC")

ULCs, which are similar to American limited liability companies (LLCs), can currently be formed only under the laws of the Provinces of Nova Scotia, British Columbia, and Alberta; however, they can hold property in Québec if they register with the REQ. These entities permit flow-through treatment for profits and losses to their shareholders, although tax treaties may impact the ability to use this. However, Canadian ULCs do not provide limited liability protection, and it is therefore common practice to interpose a single purpose holding corporation between the ULC and its shareholder(s).

Partnerships / Limited Partnerships

These are formed under provincial/territorial law by the agreement of the partners in the case of a general partnership, or the general and limited partners in the case of a limited partnership.

General partnerships do not usually require any other formality in order to be created, whereas a limited partnership generally exists only from its registration date. The partnership agreement or limited partnership agreement, as the case may be, takes the place of the certificate and articles of incorporation and by-laws, and will govern the issuance of partnership units and the operations of the entity.

Typically, in a limited partnership, the general partner (which is often a shell corporation) is responsible for all the obligations and liabilities of the limited partnership. The liability of the limited partners is restricted to the amount of their respective contributions, provided that they do not become involved in the management of the limited partnership. To retain limited liability protection, the limited partner must remain a passive investor rather than an active participant in the operation of the limited partnership.

Both general and limited partnerships formed under Québec law or carrying on business in Québec must register with the REQ and provide information analogous to that required of a corporation.

Trusts

A trust carrying on a commercial enterprise, such as a business, investment, or real estate trust (whether or not profitable), which is not managed by a registered trustee (such as a trust company) must also register with REQ in the same manner as a sole proprietorship, partnership, or legal person (corporation) within 60 days of beginning operations.

All trusts having tax years ending after December 31, 2023 must disclose the name, address, birth date (in the case of individuals), country of residence and social insurance or other tax identification number of all trustees, settlors, beneficiaries and controlling persons (*i.e.*, persons having the ability, through the trust terms or a related agreement, to exert influence over trustee decisions regarding the appointment of income or capital of the trust).This includes trusts which own residential properties both within and outside Canada, and those which own shares of private companies that are not currently paying dividends (both of which were previously exempt from the trust filing requirements).

Bare trusts employed to hold registered title to real estate or other assets belonging to third parties, which may not be reflected by a formal trust deed, and which previously did not have to file tax returns, are currently exempted from these rules but the government has signaled that the rules will be extended to them as well in the near future.

The failure to file an annual Canadian income tax return could result in penalties for each missing year of up to 5% of the fair market value of the trust's assets, plus interest.

Nominee or prête–nom agreements

Nominee or "prête-nom" agreements are commonly used in real estate transactions to register property in the name of a nominee corporation, which holds legal title only, with the beneficial ownership retained by the true owner(s). Nominee corporations are often used to collect rent and pay expenses, or to acquire family assets such as a residence. Even if already disclosed in the taxpayer's tax return, all Québec taxpayers must file prescribed form TP-1079.PN disclosing all nominee agreements:

- Signed on or after May 17, 2019, on the later of (i) 90 days following the date of signature and (ii) December 23, 2020; or
- Signed before May 17, 2019, but having income tax consequences continuing on or after May 17, 2019 (*e.g.,* deduction of expenses, attribution of rental income, imposition of a capital gain, principal residence exemption claims, creation of tax attributes such as adjusted cost base, etc.) by or before December 23, 2020.

Nominee agreements signed before May 17, 2019, but not having income tax consequences on or after that date need not be disclosed.

The information to be disclosed includes the date and a copy (if in writing) of the nominee agreement or other document evidencing same, the identity of the parties, a full description of the transaction (or the series of transactions) covered by the nominee arrangement and the identity of any person or entity for which there are resulting tax consequences. Disclosure by one party to the nominee agreement is deemed to be disclosure by all parties.

Failure to disclose a nominee arrangement can result in an initial penalty of $1,000 plus an additional daily penalty of $100 (up to a maximum total penalty of $5,000). Also, Revenu Québec can suspend the taxpayer's tax assessment period, such that prescription (limitation period) does not begin to run on any tax claims for that period.

VII. CLOSING COSTS / ADJUSTMENTS

Mutation ("welcome") tax

The buyer must pay the mutation or transfer tax (colloquially referred to as the "welcome tax") to the Québec Minister of Revenue under the *Mutation Tax Act* (Québec) within 31 days of issuance of the first tax bill, subject to certain exceptions for transfers between related parties (*e.g.,* two spouses, a parent and child, or a corporation and its shareholder, provided the shareholder holds at least 90% of the shares and the buyer does not re-sell or "flip" the property within 24 months of the initial exempt sale).

Mutation tax rates are calculated on the higher of the purchase price and municipal evaluation of the property (both of which are identified in the deed, as is the amount payable, even where an exemption applies). The 2022 rates are as follows: (i) 0.5% of the first portion of the taxable amount up to $52,800; plus (ii) 1% of the portion of the taxable amount between $52,800 and $264,000; plus (iii) 1.5% of the portion of the taxable amount between $264,000 and $500,000; plus (iv) 2% of the taxable amount between $500,000 and $1,000,000; plus (v) 2.5% of the taxable amount in excess of $1,000,000. Québec municipalities are entitled to impose a

surcharge of up to 3% for properties having a purchase price or municipal evaluation over $500,000. This is the case in many cities including Montreal, its suburbs, and surrounding areas. For example, Montreal charges (i) 0.5% on the portion of the purchase price up to $53,200; plus (ii) 1.0% of the portion of the purchase price between $53,200 to $266,200; plus (iii) 1.5% of the portion of the purchase price between $266,200 and $532,300, plus (iv) 2.0% on the portion of the purchase price between $532,300 and $1,064,600; plus (v) 2.5% on the portion of the purchase price between $1,064,600 and $2,059,000; plus (vi) 3.5% of the portion of the purchase price between $2,059,000 and $3,000,000; plus (vii) 4% on the portion of the purchase price in excess of $3,000,000.

Even where an exemption applies, the city has the right to charge a supplemental tax as follows: none if the taxable value is less than $5000, 0.5% of the taxable value between $5000 and $40,000, plus a fixed amount of $200 if the taxable value exceeds $40,000.

Non-residents

As of January 1, 2023, non-Canadian residents were barred from directly or indirectly purchasing a Canadian residential property for a period of 2 years. The Canadian government recently announced its intention to extend this ban for an additional 2 years, expiring in 2027. These properties include (i) a detached house or similar building containing up to 3 dwelling units; (ii) a part of a building that is a semi-detached house, row house unit, residential condominium unit, or similar premises that is intended to be owned apart from any other unit in the building; and (iii) vacant land zoned for residential or mixed uses in a Census Metropolitan Area or Census Agglomeration, but excludes recreational properties outside of Census Metropolitan Areas or Census Agglomeration.

Prohibited purchasers include individuals who are not Canadian citizens or permanent residents of Canada, corporations that are not incorporated in Canada, and corporations controlled by foreign corporations or individuals who are not Canadian citizens or permanent residents of Canada. While the Regulations are not yet finalized, the threshold will probably be either direct or indirect ownership of 3% or more of the value of equity or voting rights of a corporation, or control in fact.

This prohibition does not apply to (i) the acquisition by an individual of an interest or a real right resulting from death, divorce, separation or a gift; (ii) the rental of a dwelling unit to a tenant for the purpose of its occupation by the tenant; (iii) the transfer under the terms of a trust that was created prior to the coming into force of the Act; (iv) the transfer resulting from the exercise of a security interest or secured right by a secured creditor; (v) a non-resident spouse or common-law partner of a Canadian resident where they buy the property together; (vi) refugees; and (vii) temporary residents who meet certain prescribed conditions set out in the Regulations (which may include students and certain foreign workers).

Adjustments

The buyer and seller generally adjust for taxes, utilities, and other prepaid expenses as at the date of transfer of ownership. In addition, in the case of commercial property, adjustments are also made for rents, third party operating expenses and common area maintenance expenses.

Typically, the offer and deed will provide that the buyer chooses the notary and pays the notarial fees, including the cost of publication and the provision of notarial copies to both parties. If the purchase is financed, the lender will choose the notary to receive the deed of hypothec (mortgage), who will ideally also

handle the sale, and the buyer will assume those costs. If there are existing encumbrances on the property (*e.g.*, the balance of a hypothecary loan) to be paid out at closing, the notary will obtain a payout letter from the lender, arrange for payment from the sale proceeds and have the prior lender's security radiated, all at the seller's expense. If the purchase is financed, either by a seller take-back or a bank financing, the notary must prepare and publish a deed of immovable hypothec against the property in the Index of Immovables to protect the lender's security in the immovable property, which include any movable (personal) property on the premises, as well as any rents in the case of a commercial property.

Sales Tax

The sale of a new residential property, or of an existing property that has undergone major renovations, from the builder / developer is subject to the GST and QST, with a partial rebate available for individuals only. If the purchase price is between $350,000 and $450,000, then up to 36% of the amount of GST not exceeding $6300 is refundable. If the purchase price is between $200,000 and $300,000, then 50% of the amount of QST not exceeding $19,950 is refundable.

The sale of an existing residential property which is occupied by its owner and not rented property is not subject to GST or QST; however, if the owner of the property resides in part of it and rents the rest (*e.g.*, a duplex or triplex), the portion not used by the owner as a residence, determined on a prorated basis, will be taxed in the same manner as the sale of a commercial property.

The sale of a commercial property is subject to both GST and QST, unless both parties declare in the deed that they are registered for both taxes, provide their respective tax numbers and file an election to have the transaction be treated as non-taxable.

It is the buyer's obligation to collect and remit the GST and QST, so the seller's tax numbers should be verified; if they are invalid, the buyer will be liable to pay these amounts to the tax authorities.

If the seller is not a Canadian resident, the buyer must withhold 25% of the gross proceeds in trust (typically with the officiating notary) until the Canada Revenue Agency confirms the amount to be paid and issues a certificate of compliance ("tax clearance certificate") when the tax has been fully paid, at which time any excess funds may be released to the seller. A buyer who fails to withhold and remit the required tax could be held liable for the entire amount, plus penalties and interest.

VII. RECORDING REAL ESTATE DOCUMENTS

The Québec land register traces all real estate transactions carried out in Québec since its creation in 1830. The overall system is known as the Cadastre du Québec, and the province is divided into various registration divisions, each one of which has its own registry office.

Title can be searched electronically via the Index of Immovables, using the lot number. The municipal evaluation is also generally accessible on-line, depending on the municipality, using the civic address, which will also yield the lot number(s). Copies of the registered deeds may also be ordered on-line.

Leases under Québec law are a personal, rather than a real, right. However, notice of the lease may be published against title. This protects the tenant by ensuring that if the property is sold, the new owner must respect the balance of the term of the lease, including any renewal options. If the lease was not published before the sale, the new owner is only obliged to continue it for the shorter of the balance of the term (not

including renewals) and 12 months from the date of the sale. This puts the tenant is a very precarious position, particularly if the premises are desirable and the rental is below market, if the tenant cannot easily find replacement premises, or if the tenant has made significant improvements and cannot recoup their cost.

Since November 8, 2021, all documents to be published at the Land Registry may only be submitted electronically. A digital inscription may be submitted by land surveyors and bailiffs, in addition to lawyers and notaries, even if they did not prepare the underlying document.

VIII. CHARTER OF THE FRENCH LANGUAGE

The *Charter of the French Language* (Québec) makes French the exclusive official language in the Province of Québec, although other languages (such as English) may be used in certain circumstances and under certain conditions.

All contracts which are imposed by one party on the other and are not negotiable are considered adhesion contracts and must be presented to the party on whom they are imposed (the adhering party) in French, after which the adhering party may agree to receive and sign an English version.

Since September 1, 2022, regardless of the date of their signature, all deeds and other documents (example, a notice of lease) submitted for publication at the Québec land registry office must be filed exclusively in French,; if filed in a language other than French, they must be accompanied by a certified French translation, failing which they will be rejected.

A contract for the sale or exchange of part or all of a chiefly residential immovable of fewer than 5 dwellings, or of a fraction of a chiefly residential immovable that is the subject of an agreement or declaration of co-ownership must be drawn up in French but may be prepared exclusively in another language if all parties expressly so agree.

However, the promise to enter into such a contract, as well as the preliminary contract required to be entered into between a builder or developer and an individual purchaser of an existing or planned residential immovable, and the memorandum required to accompany it if the immovable is to be held in co-ownership (i.e., a condominium), must be prepared exclusively in French.

Furthermore, all supporting documents accompanying a registration request (for example, proof of service of a notice or judgment, a certificate of death, etc.) must be in the French language, or if drafted in another language, must be accompanied by a French version certified by a licensed translator.

In addition, the Charter of the French Language regulates signage outside a building, as well as signage inside the building which is visible from the outside. Generally speaking, English trademarks (whether registered or common law) may be used without a French equivalent, provided that a French trademark has not been registered, but must be accompanied by a Frenc generic term describing the nature of the goods of services offered (ex., Café Second Cup). Furthermore, the French non-trademarked text must be twice as prominent (generally twice as large) as the English version.

IX. CANADIAN COMPETITION ACT

There have been significant modifications to the Canadian Competition Act (the "**CA**") between 2022 and 2025 which impact the real estate landscape in Canada. These amendments include modifications to abuse of dominance provisions, an expanded civil agreements provision, an enlargement of the definition of "anti competitive" act and increases in the penalties for violation of these provisions.

The various amendments to the CA provisions on the abuse of dominant position define an "anti-competitive act" as being "one that is intended to have a predatory, exclusionary or disciplinary negative impact on a competitor or to have an adverse effect on competition" The list of anti-competitive acts detailed in the CA was also amended to include "a selective or discriminatory response to an actual or potential competitor for the purpose of impeding or preventing the competitor's entry into, or expansion in, a market or eliminating the competitor from a market;" and "directly or indirectly imposing excessive and unfair selling prices. However, the CA does not elaborate on what in fact constitutes a "selective or discriminatory response" or "excessive and unfair prices."

Furthermore, the Competition Tribunal (the "Tribunal") must now meet fewer conditions to issue a prohibition order. More specifically, if the Tribunal determines that person(s) substantially or completely control(s) a class or type of business throughout Canada or any area thereof, it may make render an order prohibiting such person(s) from engaging in conduct if it determines that the person(s) has engaged or is engaging in (a) a practice of anti-competitive acts; or (b) a practice that had, is having or is likely to have the effect of preventing or lessening competition substantially in a market in which that person(s) has a plausible competitive interest, and the effect is not a result of superior competitive performance. The CA now also provides a list of factors to be considered by the Tribunal in determining whether conduct in question has the effect of "substantially lessening competition in the market."

The monetary penalties which the Tribunal may impose pursuant to the CA under the abuse of dominance provisions have been significantly increased. The amendments now also permit private parties who are directly and substantially affected by the abuse of dominance to apply to the Tribunal for relief.

The amendments also enlarge the scope of reviewable agreements by extending the provisions of the CA dealing with agreements or arrangements that prevent or lessen competition substantially to agreements not between competitors if a significant purpose of any part of the agreement is to lessen competition in any market.

On October 7, 2024, the Competition Bureau (the "Bureau") issued draft guidelines on how the Bureau intends to enforce competitor property controls (namely, restrictions on the use of commercial real estate) under the CA (the "Guidelines"). The Guidelines focus on two primary types of property controls: exclusivity clauses and restrictive covenants, taking the view that property controls insulate firms from competition by preventing new entrants from accessing prime commercial locations. The Bureau acknowledges that limited use of property controls may be justified if they are necessary to permit a firm to make investments that increase competition, such as to enter a market. However, the Guidelines provide that such controls must be as limited as possible to be justified. The Guidelines also provide a list of questions to be considered by businesses when using competitor property controls to ensure that they comply with the CA. It is therefore important to exercise prudence and caution in the use of property controls such as restrictive covenants and exclusivity clauses in applicable agreements.

X. ANNUAL COSTS FOR PROPERTY OWNERSHIP

In addition to the purchase price, a buyer must typically budget for the following annual expenses of property ownership:

A. Property Insurance (including boiler and machinery, fire, damage and liability).

B. Property Taxes (municipal, school, water, special assessments); if all or part of the property is rented out, the rental income will be subject to income tax in the hands of the landlord.

C. Operating expenses, such as utilities, maintenance, and repairs.

CONCLUSION

Real estate is an area of interest for most people, regardless of their profile and focus, whether as an owner, tenant, landlord, or merely someone who keeps an eye on the economy, as fluctuations in the real estate market are often seen as a reliable barometer of its state and condition.

In addition to demanding a deep understanding of the ever-changing real estate market and conditions, the field covers a vast landscape of legal issues, such as leasing, commercial and corporate law, litigation (including arbitration, mediation, and other forms of dispute resolution), financing, construction, tax, co-ownership and condominium law, municipal law, bankruptcy and insolvency and environmental law, many of which come into play in any real estate transaction.

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INTERNATIONAL LAWYERS NETWORK

GAMBOA, GARCÍA, ROLDAN & CO.

Buying and Selling Real Estate in Colombia

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER COLOMBIAN LAW

1. Standard Forms of Agreements to buy and sell Real Estate:

Despite the existence of several types of agreements to implement real estate transactions in Colombia, the most common forms of agreements used to acquire real estate properties are the promise to sale and purchase agreement and the sale and purchase agreement.

a. Promise to Sale and Purchase Agreement (Promesa de Compraventa)

Considering that there are some formalities to acquire real estate properties in Colombia andthe need of the parties to be bound by a legal document swiftly, regularly the parties enter first into the promise to sale and purchase agreement (the "Promise"). Under this agreement, the parties set the terms and conditions agreed by them to do the transaction of sale and purchase of the property, and the buyer paid a percentage of the price agreed as a down payment of the transaction. Under the Promise, the seller promises to sell, and the buyer promise to purchase the property when some conditions are fulfilled, usually when a specific date arrived, depending on the complexity of the transaction.

The following are some legal requirements to make valid and enforceable the Promise: (i) the agreement must be done in writing; (ii) the object of the agreement should not be prohibited or invalid by law; (iii) it must include the specific date or condition that sets the date to celebrate the sale and purchase agreement which must be done by public deed. In relation to this requirement, as stated by case law, it is also necessary to indicate the Public Notary and the time where the sale and purchase agreement public deed will be executed; (iv) the agreement must determine the sale and purchase agreement, in such a way that to proceed with the closing of the transaction, only the formalities or the legal means to transfer and delivery the property are missing.

The last requirement mentioned above refers to the necessity to include in the agreement on one hand, a full description of the property, among others, its identification name, address, boundaries, registration number, tax identification number and, those of the condominium, if applicable, including the public deeds by means of which the property was submitted to the condominium regime. On the other hand, the price agreed by the parties and its form of payment.

Some conditions are included in the Promise to assure its fulfillment, which means the execution of the promised sale and purchase agreement by the parties, the transfer of the property by the seller and the payment of the price by the buyer. Among others, it is common to agree to the inclusion of penalty clauses equivalent at least 20% of the price, escrow accounts, banking letters of credit or, the indication of the down payment amount as a confirmatory payment or prepaid penalty in case of breach of the contract by any of the parties, as applicable.

b. Sale and Purchase Agreement (Contrato de Compraventa)

The sale and purchase agreement (the "SPA") is the regular form of agreement used to acquire real estate properties. When it is preceded by a Promise, the SPA usually replicates the terms and conditions agreed on the Promise, unless the parties agreed to

modify some of those terms. Under the SPA, the seller sells, and the buyer buys the property specified in detail in this agreement for the price set therein, just as it was mentioned before in relation to the Promise.

When the SPA is used to instrument a real estate transaction, it must be done in writing by a public deed executed by the parties before a Public Notary. The SPA by public deed itself constitutes only the title by means of which the transaction is done, however, according to Colombian law, in order to transfer the property title to the buyer it is required the registration of the public deed under its registration number at the Registration Office to which the property is linked (according to its geographic location). Only when the public deed is duly registered, the property can be considered transferred, and the main object of the SPA is fulfilled.

The same conditions indicated to guaranty the Promise may be included under the SPA. Those guarantees are included to secure, particularly, the registration of the public deed, any breach of the contract in relation to its reps and warranties or the existence of hidden flaws (*vicios ocultos o redhibitorios*) that could not be detected beforehand under a due diligence process but that may affect the property title after its acquisition.

2. Due Diligence:

In order to have certitude about the legal situation of the property at the time of the transaction, it is highly recommended to proceed beforehand with a due diligence process over the property. Such process should include the revision of the property titles, the urban applicable regulations or a land use analysis, when needed.

a. Revision of Property Titles:

The revision of the property titles is conducted mainly to determine that the seller is the entitled owner of the property and to rule out the existence of circumstances that affect or may potentially affect the ownership right over that property in case of acquisition (e.g. encumbrances, limitations to the property rights or registered lawsuits). In relation to residential properties, it is important to highlight the existence of some legal figures to protect family housing, such as the Family Housing Assignment ("*Afectación a vivienda familiar*") and the Unattachable Family Assets ("*Patrimonio de familia inembargable*") which are indeed encumbrances to the ownership right.

The aforesaid revision refers to those legal acts in relation to the property that are duly registered under the registration number of the property, which are reported under a no liens' certificate (*certificado de tradición y libertad*). Such certificate should have an issuance date no longer than ten previous days and, in any case, before the execution of any agreement, a new one should be requested and revised to prevent the appearance of recent unknown acts registered after the completion of the due diligence process.

Depending on the criteria used by the legal expert in charge of the due diligence, the revision could refer to the registered acts of the property since the beginning of the transference chain of the property, the last twenty years, or the last ten years. However, such acts that are part of the titles chain referring to encumbrances and property limitations, that have not been duly cancelled or those that reveal some inconsistencies under the certificate, must

be revised in detail.

Some other documents are revised under this part of the due diligence process. For instance, proof of payment of property taxes at least of the last five years, its cadastral certificate to verify and compare the information of the property based on the information managed by the public entities.

b. Urban or Land Use Analysis:

An urban or land use analysis pretends to verify, according to the applicable urban law, which kind of constructions can be built on the real estate property, or which limitations are imposed over the property in relation to its development or use destination. If this analysis is performed over a property that has already a building, it will determine if the construction complies with the planning regulations applicable at the time of its construction and if the building can have its current or intended destination.

Some of the documents revised in this due diligence are the construction permits and all the urban licenses and urban legal documents of the property, as well as its specific applicable regulations.

3. Forms of Ownership in Colombia:

In Colombia, the ownership is the legal right of a person to use, enjoy and dispose over a thing (including real estate properties), without violating the law or the rights of other people. Nevertheless, there are some special forms of ownership in Colombia that are relevant to mention herein.

a. Fiduciary Trust Property:

A fiduciary trust is a legal vehicle whereby a settlor transfers the property to a trustee in exchange for fiduciary rights according to the terms of a private trust agreement signed between the settlor and a trust company. The trust property is governed by the terms set forth in the trust agreement. Usually, but not always, the settlor is at the same time the beneficiary of the Trust. This legal vehicle is usually used for the development of construction projects, but it can also be used as a form of simple ownership. Trust property simplifies the transfer of real estate assets, as the seller is able to assign his fiduciary rights to the buyer by a private agreement, without granting a public deed and, therefore, without the need for registration in the Registration Public Office. Once the fiduciary rights of the trust have been assigned by the seller, the buyer can dispose of them and of the real estate that integrates the trustee under the terms of the trust agreement. It also represents a guarantee for real estate transactions, as the trust property is managed by a trust company that must fulfill the fiduciary obligations and the trust instructions of the settlor.

b. Real Estate Investment Funds and Private Equity Funds:

A real estate investment fund is a legal and financial vehicle (mutual fund) which mainly invests in real estate properties, in order to generate long-term income and asset valuation which become financial returns for its investors. The real estate investment funds are managed by professional ant its investors have their investment represented in participation titles of the fund. The real estate investment funds are highly regulated by the Colombian financial authorities.

c. Condominium Regime:

There is a special ownership type called Condominium Regime (*Regimen de propiedad horizontal*) in which exclusive property rights over private property and co-

ownership rights over common areas of the property concur, to guarantee the security and peaceful coexistence of the co-owners. This kind of ownership is very usual in the residential or commercial buildings. The main purpose of this type of property is the maintenance of the common areas of the housing or retail project. It constitutes a limitation to the ownership right and generates the owners of private properties the obligation to contribute to the maintenance of common property areas, through a monthly administration fee which is paid to the condominium administration.

d. Joint Ownership:

Joint ownership consists of two or more people owning the same property. This joint ownership is allocated in each person according to the percentage determined in the public deed by means of which they are acquiring the ownership right over the property. If it is not indicated in the public deed the participation percentage of ownership to which each person is entitled , it is understood that the ownership right is distributed in equal percentages.

e. Usufruct:

There is an ownership retaining usufruct, that consists in the kind of ownership in which the owner conserves the right to dispose over the property but not the right to use and enjoy the property, which is given to another person. The usufruct title is an example of this ownership form.

f. Rural Property:

In relation to rural property is important to mention that the acquisition of these kinds of properties must take into account the accomplishment of legal requirements related to the statutory limitations to acquire rural property in Colombia according to the Colombian agrarian legislation.

4. Notarial Aspects:

As it was mentioned before, the transfer of real estate in Colombia must be done with the formality of a public deed held before a Public Notary. Similarly, when fiduciary contracts involving transfer of real estate are constituted, the formality of a public deed must be complied, even though the transfer of fiduciary rights over them can be made by means of a private document. The public deed content is public which means that anyone can access the information of a real estate transaction.

The process to prepare a public deed begins when the interested party approaches any Public Notary office in the country, since there is freedom of choice except when dealing with transactions in which the state participates as a party, because there would apply a distribution system to select among notaries. Once the request is made, the officials of the pubic notary will inquire which legal transaction is going to be held and request the documents required for each specific deal; in the case of the sale and purchase agreements, the required documents are: (i) No liens' certificate (*certificado de tradición y libertad*) of the properties involved in the transaction; (ii) Documents of existence and legal representation of the parties; (iii) Proof of payment of property taxes of the last five years; (iv) No debts certificate issued by the applicable tax authorities in relation to the properties; and, (v) No debts certificate issued by the administration when the properties are subject to the condominium regime.

The deed process takes approximately 5 business days, and the notary fees are regulated by decree for the entire national territory. Afterwards, the public deed must be registered at the Registration Office to which the property is linked.

5. Registration Aspects:

Public deeds in Colombia must be registered to considering transferred the property, because without registration there is no transfer of ownership rights. The registration offices are divided into registry circles that are distributed according to the location of the real estate properties. The purpose of the registration is to give knowledge to everyone about the transactions and legal acts that have been carried out or that may affect the property.

The registration process takes about 15 business days and its fees to register are set by the authorities at the national level, however, registration taxes must be paid as well, and they are set by each municipality government, so they may vary among municipalities. To register a deed, the first copy of the document issued by the Public Notary must be taken to the Registration Office of the circle to which the property belongs with the proof of payment of the applicable registration fees and registration taxes. Once the Registration Office receives the documents, it proceeds with the registration after checking that everything was made accomplishing the applicable laws, if not, the Registration Office can make return notes indicating the motifs of such return and/or those aspects that must be corrected before presenting them again for registration.

6. Costs related to Real Estate Property:

a. Property tax (Impuesto Predial):

It is a tax that municipalities charge annually to real estate properties. In general, the tax authorities set the tax amount to be paid, however, sometimes there is a form of self-assessment in which the owners declare the value of the real estate to set the property tax to be paid, and the tax authority may present or not an objection to such value.

b. Valuation contribution (Contribución por Valorización):

It is a tribute that eventually the municipalities charge when they are going to carry out publicworks that may increase the value of a property. For the State, it is a financing mechanism, and it is usually used to finance the construction of city infrastructure, among others, roads, bridges and public spaces.

c. Added value tax (Participación en Plusvalía):

It is a tax charged when by means a public action the municipality generates the possibility that in a property the construction index raised, the destination of the land changed to a moreprofitable one or, the land is incorporated from urban-to-urban expansion. This tax is set onlyonce by each municipality, and the law defines when its payment becomes enforceable to the property owner.

d. Administration Fees:

The administration fees are the amount charged to each private property under a building ora group of buildings subject to the condominium regime. Such amount is intended to cover administration costs such as surveillance, cleaning, equipment maintenance or replacement,public utilities of the building, among others.

e. Stamp Tax

Since 2023, the collection of a national tax called stamp duty for the sale of real estate with a value defined by the National Tax Directorate was reactivated, a rate that is marginal and progressive.

This tax must be financially assumed by the parties or by only one of them (according to what the parties establish) since the law

does not establish an express form of distribution of the percentage to be paid

7. Brokerage:

The real estate brokerage contract has as object to put potential buyers and sellers in contactto enter a sale and purchase transaction over real estate. Brokerage is a partially regulated activity in Colombia; however, a license is not required to operate as a real estate broker.

Commission rates are freely agreed by the parties but generally the commission is equivalentto 3% of the sale price of the property when located in urban areas and 5% when located in rural ones.

It is not necessary to have a real estate agent; it is simply an additional activity. However, real estate agents serving under this kind of transactions may help to find the best property and to save time to complete it.

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This memorandum is for information purposes only and reflects the existing regulations as of July 2025.

Under no circumstances can it be considered as either a legal opinion or advice on how to proceed in particular cases or on how to assess them.

If you need any further information on the issues covered by this memorandum, please contact Mr. Daniel García Piñeros (dgarcia@gclegal.co) or Juan Ignacio Gamboa (jigamboa@gclegal.co)

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INTERNATIONAL LAWYERS NETWORK

CORDERO & CORDERO ABOGADOS

Buying and Selling Real Estate in Costa Rica

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER COSTA RICAN LAW

General Framework

In Costa Rica, real estate transactions are primarily governed by the Civil Code, which establishes the rules for buying, selling, and transferring property. All such transactions must be recorded with the Real Property Registry of the National Registry. The Registry's primary purpose is to provide transparency: once a deed, mortgage, lien, or any other document is registered, it becomes public record. This crucial step allows anyone to verify a property's legal status, thereby promoting transparency, protecting buyers, and ensuring certainty in real estate transactions.

Integral to this process is the Notary Public, who plays an essential role in real estate transactions. A notary is required to formalize most property transfers with a public deed, which must be signed by the parties involved and subsequently recorded. Notaries in Costa Rica are attorneys entrusted with public trust, ensuring the legality and proper execution of these transfers.

Non-Resident Ownership Rights

Regarding ownership, the Costa Rican Constitution robustly protects property rights. Expropriation is permitted only for public necessity and always requires fair compensation. Both foreigners and Costa Rican citizens enjoy equal property rights, with only a few specific exceptions. Consequently, natural persons and legal entities, regardless of nationality, may buy, sell, rent, mortgage, encumber, or otherwise use property in accordance with the country's land-use laws and regulations.

Land Use Planning and Regulation

Local governments, commonly referred to as "*Municipalities*," are responsible for managing land use, collecting property taxes, and issuing permits for construction and renovations. They develop specific zoning and regulatory plans that dictate building types, density, and height within their jurisdictions. In areas where municipalities have not yet established such plans, construction is governed by the Costa Rican Construction Code and regulations from the National Institute of Housing and Urban Planning. It is essential to note that specific municipal bylaws supersede broader rules, such as those outlined in the Construction Code.

Title Registration Process

All real estate in Costa Rica **must be registered** in the Real Property Registry, which meticulously records ownership details, boundaries, and any encumbrances (such as mortgages, easements, or liens). A registered land survey or map must also accompany each property.

The transfer process itself must be conducted in front of a notary public, who is responsible for preparing the deed, supervising signatures, collecting transfer taxes and fees, and ultimately filing the document with the Registry. To streamline procedures, the Registry now requires electronic filings.

A significant update occurred on March 24, 2025, with the implementation of a new General Regulation of the Real Property Registry (Decree 44647-MJP). This decree modernizes filing requirements, updates registry review criteria, and improves interoperability with the cadastre, aligning data handling between the cadastre and registry.

Taxes on Real Property

Understanding the various taxes is crucial for real estate acquisitions in Costa Rica:

Annual Real Estate Tax: Municipalities impose a yearly real estate tax of 0.25% of the declared property value, payable quarterly. Property owners are legally required to update their

property valuations every five years. Failure to comply may lead to fines, interest, liens, and, in severe cases, foreclosure.

Transfer of Real Estate Costs: Real estate transfers in Costa Rica involve three primary costs:

Transfer Tax: A 1.5% tax is charged based on the higher of the fiscal value or the purchase price.

Registration Fees: These are administrative charges of 0.9% for recording the transaction in the National Registry. Together, the Transfer Tax and Registration Fees total 2.4% of the property's value and must be paid before registration is completed. Additionally, notary fees typically amount to around 1% of the property's value.

Capital Gains Tax: Since July 1, 2019, capital gains on property sales are taxed at 15%. However, for properties purchased before this date, sellers have the option to pay 2.25% of the sale price instead of the 15% tax on the gain. For non-resident sellers, buyers are required to withhold and remit 2.5% of the sale price as a final and definitive tax. Starting October 6, 2025, a new 2% withholding tax is applied to sales involving residents. The buyer is also the withholding agent.

Clarification: It is important to note that both the transfer tax and the capital gains tax may be applicable in the same transaction. The transfer tax is levied when ownership is transferred, while the capital gains tax is applied to the seller's profit. Furthermore, real estate transfers are exempt from VAT, but professional services associated with these transfers (such as those provided by notaries, brokers, and legal services) are subject to a 13% VAT.

Indirect Transfers: The transfer of more than 50% of a company's ownership (where the company owns real estate) triggers a 1.5% indirect transfer tax. This is in addition to any applicable dividend, capital gains, or income tax obligations.

Luxury Home Tax: High-value residences may be subject to the "luxury home tax," which is assessed every three years based on revised valuation criteria. Rates for this tax vary from 0.25% to 0.55% of the assessed value, and the tax threshold is updated annually by the tax administration.

Shoreline Concessions

The Maritime Zone Law governs the 200-meter strip of land extending inland from the low-tide line, with certain exceptions. The first 50 meters of this zone are designated as public land and cannot be sold, leased, or privately owned; this area must remain open for public use and environmental protection. The subsequent 150 meters are classified as a "Restricted Area or Zone." Private occupation within this restricted zone is only possible through a concession granted by the local municipality, subject to the approval of the Costa Rican Tourism Institute (ICT). It is crucial to understand that concessions do not transfer ownership; the land remains public, but concessionaires obtain the right to use and develop it under the specific terms of the concession contract. All concessions must comply with local zoning and regulatory plans.

Key aspects of shoreline concessions include:

- **Term**: General concessions are typically granted for periods ranging from 5 to 20 years, with renewal possible if requirements and fees are met.
- **Limitations**: Concessions cannot be granted to foreigners without five years' residence, bearer-share companies, foreign corporations, or entities majority-owned by foreigners.
- **Fees**: Concession holders are required to pay annual concession fees to the respective municipalities.

Special Regime: Gulf of Papagayo Tourist Development Project

Bahía Culebra was declared an area of public interest in 1979, which led to the establishment of the Papagayo Gulf Tourist Project. This initiative focused on developing tourism infrastructure, including hotels, residences, golf courses, and marinas. All projects within this special regime must adhere to the Master Plan and applicable restrictions. Concessions in this area are granted for longer terms, typically ranging from 10 to 50 years, and are renewable if the requirements are met.

In this type of Special Regime, the limitation of ownership above-mentioned for concessions does not apply.

Condominium Property

The Condominium Property Law specifically regulates developments organized under the condominium regime. This law divides a master property into individual units, each of which is registered with an "F" designation.

- **Areas**: Condominiums are characterized by both common areas (shared by all owners) and private areas (exclusive to each unit).
- **Rights**: Owners hold exclusive rights over their individual unit and proportional rights over the common areas.
- **Governance**: The Owners' Assembly serves as the highest authority within a condominium. It appoints an administrator (who can be either an individual or a company) responsible for fee collection, maintenance, and legal representation. These functions must be clearly defined in the internal regulations.

Condominiums in Concession Areas

It is also possible for condominiums to be established in concession areas within the Maritime Zone, provided the concession is validly granted and registered in accordance with applicable laws. In such cases, concession-related obligations (e.g., annual fees) are shared proportionally among the unit owners. The condominium administrator then assumes responsibility for ensuring compliance with both the concession contracts and maritime zone law.

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INTERNATIONAL LAWYERS NETWORK

LLPO LAW FIRM

ESTABLISHING A BUSINESS ENTITY IN CYPRUS

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER CYPRIOT LAW

A. General

1. Introduction

Cyprus is a common law jurisdiction, and its legal system is based on the UK one. It is a clear and robust system which leaves no uncertainty as to the ownership status of real estate in Cyprus. The Land Registry Office in Cyprus (with district offices in each of the major towns of the island) records and maintains up to date records of ownership and interests over land. In parallel, Cyprus' immovable property law, the cornerstone of real property ownership and transactions related to land, regulates the transfer of title, tenure, registration, disposition, and valuation of immovable properties in Cyprus and the creation of securities, charges, and interests over the same.

2. Land Registry Department

The Land Registry Department was established in 1858 based on the model. It is said to be one of the most reliable and trustworthy worldwide. All rights, interests, and easements (for example mortgages, long leases, rights of way) associated with immovable property, cartography, registration, and of course transfer of title to immovable property, are monitored and registered by the Land Registry Department.

Accordingly, purchasers of real estate property in Cyprus can have full knowledge of the status of the property they are interested to buy, as the information related to their potential purchase can be traced from Land Registry records prior to the completion of the transaction. Their purchase transaction would be registered at the Land Registry.

B. Standard forms of Agreements

The acquisition of a real estate property could be concluded with the following forms of agreements:

Reservation Agreement. Usually this effected by a "reservation agreement" whereby the seller grants to the buyer an option to purchase the property within a certain period in consideration of a reservation fee. After paying the reservation fee the property is removed from the sale and reserved for the buyer. The paid amount of the reservation fee is included in the cost of the purchased object.

Sale and Purchase Agreement. The sale and purchase agreement include the final terms and conditions of the agreement between the buyer and the seller. The contract contains important information about the transaction such as the payment structure. Usually an amount of around 20%-30% of the agreed sale/purchase price is payable with the signing of contracts and the balance is payable on the completion date. The completion date is the date on which the seller (or his power of attorney) and the buyer (or his power of attorney) will meet at the Land registry to finalize everything (transfer the title deed receive the balance of sale price hand over keys). The Sale and Purchase Agreement must be must duly stamped in accordance with applicable law and must be submitted to the relevant District Land Registry where the property is situated.

New Amendment in relation to Sale of Property (Specific Performance) Law 132(I) 2023. The revised Sale of Property (Specific Performance) Law (132(I)/2023), effective December 12, 2023, strengthens protections for real estate buyers by simplifying the process of specific performance.

This amendment ensures that once contractual obligations are fulfilled, the property will be transferred to the buyer, with particular attention to cases involving properties with existing mortgages.

Assignment Agreement. This is typically when the property is a resale, and the separate title deed did not issue yet. The assignment of a contract of sale has the purpose of assigning the existing legal and equitable rights of the property in question over to the new buyer. By assigning the rights to the new buyer, the ownership of the property is effectively transferred to the assignee, who shall henceforth have all rights, including the issuance of the title of the property in his name. The said assignment agreement must be duly stamped in accordance with applicable law and must be submitted to the relevant District Land Registry where the property is situated.

Stamp Duty: The sale contract or the assignment agreement must be stamped by payment of the applicable stamp duty calculated on the purchase price (at a rate of 0.15% for €5.001 - €170,000 and 0.2% from €170,001 and over). Stamp duty is customary to be paid by the purchaser.

C. Real Estate Agents

It is common for real estate agents to be involved in real estate transactions. The estate agent profession is regulated in Cyprus and under the law the existing estate agents' fee cannot exceed 5% of the sale price plus VAT. The customary is for the agent's fee to be paid by the seller (except where agreement exists for other arrangement).

D. Buyer's Inspections – Property Due Diligence

Prior to closing, buyers retain the right to inspect the property with their consultants. The buyers may also employ qualified engineers to carry out structural or surveyor to verify the market value of the real estate. It is strongly advisable to conduct a due diligence on the ownership status of the property. Among other checks, the process includes review of a recent official Recent Land Registry search certificate, and copies of the planning and building permits. Where the property purchased includes a building, expert opinion (from architect or civil engineer), is also advisable to be obtained.

E. Forms of Ownership

Real estate in Cyprus may be owned by a single person, or more persons collectively, it may be leased, and it may be placed under a trust.

Ownership of the whole

Where one single person owns real estate property, that person is registered with the Land Registry as the sole owner of the whole of the property. The Land Registry issues a separate title deed in the owner's name showing him as owner of the whole 1/1 share in the property.

Ownership of shares

Where real estate property is owned collectively by more than one person, they are registered with the Land Registry as co-owners of the whole of the property, with each of them as owner of a specified share in the property (e.g., 1/2, 3/4, 4/56 as they case may be Separation/allocation agreements are possible to be concluded, to designate and regulate the co-owners' rights over the different parts of the property. The co-owners can together lease or sell the property. Each of them has the right to mortgage or sell his share, subject to the rights of first refusal provided under the law for the other co-owners.

Leasehold Ownership

Leasehold Ownership confers on the Leasehold title deed holder those rights which are provided in the lease which is deposited with the Land

Registry. Such leasehold title deeds can be issued for long leases i.e., 15 years or over and subject to the provisions of the lease, can be sold, transferred, or mortgaged at the holder's option.

F. Types of Business Entities

The most common forms of business entities established in Cyprus are (a) limited companies; (b) partnerships; and (c) alternative investment funds. Non-Cypriot investors and high net worth individuals also commonly form further Cyprus international trusts.

Private Company limited by shares

Cyprus companies are registered under the Companies Law, Cap 113 as amended. The private company limited by shares is the most common form of entity established in Cyprus. It has legal personality separate and distinct from its shareholders with the liability of shareholders limited to the unpaid amount of their subscribed shares. There is no requirement for a share capital and generally there is no restriction as to its availability to carry on business activities even where its share capital is small.

Public Company limited by shares

A public limited liability company is similar to a private company in terms of its features. It must have at least seven shareholders and a minimum share capital of Eur. 25.629. Unlike a private company, a public company is permitted make offerings to the public and can be listed on the stock exchange upon satisfying certain criteria.

Partnerships

Partnerships are regulated by the Partnerships and Business Names Law Cap 116, as amended, and they may form either as general partnerships or limited partnerships. In general partnership all partners have unrestricted liability for all obligations of the partnership. In a limited partnership at least one partner is treated as a general partner and has unrestricted liability for the partnership's obligations with the other partners having limited liability up to the amount contributed (or remaining unpaid) by them to the partnership.

Fund

With the enactment of the Alternative Investment Funds Law of 2018, Cyprus has modernized its legal framework regulating the registration and operation of alternative investment funds (AIF's). The Law permits the registration of AIFs which are self – managed (by their board of directors) or externally managed by a fund manager and may be registered with unlimited number of persons or with limited number of persons, or as "Registered" AIFs. An AIF may be formed as a company with a fixed capital, a company with variable capital, a common fund or as a limited liability partnership with or without legal personality.

Trusts and Beneficial Ownership

The concept of "trust" is recognized under Cyprus law, and it is regulated by both statute and common law principles. Accordingly, real estate property can be made part of the trust estate and afford to the beneficiaries the rights that the settlor provides in the trust instrument. Trusts can be registered with the Land Registry Office over the real estate to which they relate to. The beneficiaries do not hold title over the real estate, as title is registered in the name of the trustee to hold it under the terms of the trust. The settlor appoints trustees. The trustees' main duties are to administer the trust property prudently and to comply strictly with the terms of the trust. The general rule is that the trustees do not have the power to vary the terms of the trust under any circumstances.

The Cyprus International Trust (CIT)

The Cyprus International Trusts Law has been coming in force in 1992 and the last amendment

made in 2013. This legislation ranked the Republic of Cyprus as one of the best jurisdictions for the creation of an international trusts due to their advantages compare to other jurisdictions. The duration of the CIT may continue perpetuity. As provided in the legislation a CIT is deemed irrevocable. It may revoke only if it is clearly provided for such an option in the trust deed.

Advantages

Some of the advantages of the CIT are the exemption of the tax, for instance, income, gains, and profits from non-Cyprus sources are exempt from income capital gains tax, special defence contribution, or any other taxes in Cyprus. Additionally, worldwide income, profit and gains are taxable in Cyprus only where the beneficiary is a Cyprus tax resident; beneficiaries who are non-residents of Cyprus are taxed only on Cyprus sourced income in accordance with the Cyprus income tax laws. Dividends received by a CIT are not taxable and not subject to withholding tax in Cyprus. Also, there is no estate duty or inheritance tax in Cyprus.

It is worth to mention that the CIT may be used to protect assets from risks arising in tort, contract or otherwise in relation to transactions entered by the settlor.

Confidentiality and reporting

The registration of the CIT is necessary, but confidentiality of the beneficiary is safeguarded. There are no reporting requirements in Cyprus for the CITs other than registration of its existence.

Complicated family structures – family wealth management and estate planning

This scheme is ideal for high-net-worth individuals with somehow complicated family structures.

Another form of beneficial ownership is the life interest reservation. This confers on the beneficial owner the right to possess or exploit the tenement for the period of his life while the title is in the name of another. This is usually a course adopted by parents when transferring their land to their children.

G. Forms of Deed

The Deed of Transfer of Immovable Property in Cyprus constitutes the formal legal instrument through which title to real estate is transferred from seller to buyer. Governed primarily by the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, the process is effected before the District Lands Office, where both parties (or their duly authorised representatives) appear to execute the transfer. The transaction must be preceded by a duly stamped-written agreement, in compliance with Contract Law, Cap. 149, and supported by requisite tax clearance certificates, including capital gains tax and municipal dues. Upon satisfaction of all legal and financial obligations including the payment of stamp duty under the Stamp Duty Law, Law No. 19/1963, and transfer fees (where applicable) the Land Officer registers the transfer, and a new Title Deed is issued in the buyer's name.

H. Closing Cost – Completion

Transfer of property in buyer's name. The property is transferred in the name of the buyer at such time and upon such terms as stated in the sale contract. It is important to note that for the transfer of the property to be possible (a) the seller must obtain a Tax Clearance Certificate; and (b) Transfer Fees must be paid.

Transfer fees are calculated by the Land Registry on the value of the property (as valued by the Land Registry) as follows:

Value	Rate	Current rate of 50%
€0 - €85.000	3%	1,5%

€85.000,00 – €170.000	5%	2,5%
€170.001 and above	8%	4%

I. Recording Real Estate Documents

The submission of the Contract of Sale or the Assignment Agreement at the District Land Registry. creates in favour of the purchaser a real interest (akin to an encumbrance) over the property and gives to the purchaser the right of "specific performance" of the contract.

J. Annual Costs for property ownership

Property Insurance: Usually, property owners insure their properties. The cost for insurance varies depending on size and condition of the property.

Communal Expenses: This refers to the properties that are consisting part of a unified complex that entails common areas. The cost for communal expenses varies widely depending on location, size of property and the communal area management company.

Local Authorities Taxes: Property owners fall under either a Municipality's or a village council's jurisdiction. Taxes and rates vary depending on which municipality/council the property is located. Taxes roughly range from about €85 to €256 annually, depending on the size of the property. These usually entail sewage, refuse collection, street lighting and other local expenses.

Immovable Property Tax: This tax was payable by owners of property to the Inland Revenue up until the end of 2016. Since 2017, this tax has been abolished.

K. TAX

The main types of tax that may be relevant to a real estate sale and purchase transaction, are VAT and Capital Gains Tax.

VAT: VAT may apply at the existing rate of 5%, 19% or it may not apply at all (depending on the type of the property purchased, the intended use by the purchaser and the condition (new or used) of the property.

Capital Gains Tax: It is imposed on the seller and is calculated where there is a "gain" from the sale (e.g., where the seller has purchased the property at a lower price and sells it at a higher). Generally, Capital Gains Tax is imposed at the rate of 20% subject to exemptions which may apply to reduce or exclude it.

New Tax Announcement: The Parliament has passed a new law levying on a 0.4% tax on all sales of immovable properties. In accordance with the amended legislation all transfers of immovable property as defined in the Immovable Property (Tenure, Registration and Valuation) Law Cap 224 and shares of a company which are not listed on any recognised Stock Exchange and that directly or indirectly owns immovable property, a tax of 0.4% will be paid by the seller of the property or shareholder. It is considerable to mention that the tax is not imposed in case of a company reorganization as defined in Income Tax Law and in case of a restructuring of a non-performing loan as defined in the Capital Gains Tax Law.

Inheritance Tax: It is abolished in Cyprus since 1/1/2000.

Taxes in relation to renting a property: The rental income received from a property which is located in Cyprus is considered for tax purposes as a Cypriot sourced income and as a result is subject to personal income tax and General Healthcare System contributions, irrespective of the owner is tax resident in Cyprus. Depending on the tax residency and domicile status of the owner, rental income may also be subject to Special Defence Contribution.

It is advisable to consult with a tax expert before concluding a real estate transaction.

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Buying and Selling Real Estate in Czech Republic

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER CZECH REPUBLIC LAW

I. Types of Real Property Transactions

a) Purchase of an undeveloped plot of land;

b) Purchase of a developed plot of land;

c) Purchase of a building (that is not a part of a plot of land);

d) Purchase of an apartment;

e) Purchase of a right to build;

f) Purchase by way of a share deal through a corporation that owns the real estate.

Note: The right to build is a *right in rem* related to a plot of land consisting in a right to have an above ground or underground structure on that plot of land, regardless of whether such a structure has already been built or is yet to be built. Under Czech law, a right to build is as an immovable asset.

II. Essential Contents of the Purchase Agreement

a) The contracting parties, as well as the purchase price and the payment terms.

b) Exact description of the real estate, i.e., the land, any fixtures and fittings of the building or apartment and existing appurtenances, easements, pledges, etc. Czech law expressly prescribes how the land and buildings ought to be described in order to be successfully included in the Land Registry. The Land Registry contains all of the necessary components of the description required for the registration; it is thus advisable to extract the required information therefrom.

Note: A thorough review of the information lodged with the Land Registry is of major importance when gathering information on the realities of the seller's title to the property, existing mortgages, and possible ongoing proceedings the property may be subject to. The register also contains records called "notices" which convey important information regarding the registered property or its owners or people holding any other rights to the registered property, for instance – information regarding dispossession, ongoing enforcement proceedings, prohibition of disposition, and prohibition on the establishment of a pledge.

c) Description of the necessary repairs or other regulations the seller/buyer has to comply with.

d) Date when the property was handed over to the buyer or the agreed upon date of transfer of ownership of the property (N.B. the ownership of the property is transferred on the day of registration in the Land Registry retroactively on the day of the filing of the request).

e) The conditions of the change of ownership.

f) Potential charges on the property.

g) A declaration regarding the mandatory municipal permits, such as, for instance, the occupancy permit determining the permitted purpose of the use of the real estate.

h) Detailed representations and warranties regarding the current rights and titles to the property; substantial characteristics of the property such as access thereto, access to utilities (gas, electricity, etc.)

i) The Energy Performance Certificate of the building must be obtained by the seller and handed over to the purchaser; it is thus recommended to include it in

the purchase agreement as an annex thereto.

Note: The parties may choose to include several collateral provisions in the purchase agreement, which may be constituted as rights in rem and registered in the Land Registry. Such collateral provisions may facilitate the negotiation of the sale of property by ensuring both parties' specific requirements are satisfied. The parties may choose to include the following collateral provisions in the purchase agreement: (i) reservation of ownership right, (ii) reservation of repurchase, (iii) reservation of resale, (iv) pre-emption right, (v) purchase testing or (vi) reservation of a better buyer. A detailed description of these stipulations exceeds the scope of this article, however, their inclusion in the purchase contract may prove very practical in individual cases. We will gladly provide more detailed information upon request.

III. Conclusion of the Purchase Agreement

a) The purchase agreement has to be concluded in writing, and the signatures of both parties must be on one document. As the Land Registry office investigates the authenticity of the parties' signatures on the purchase agreement, it is advisable that the parties officially certify their signatures. For the purpose of the registration in the Land Registry (i.e., for the filing of the application for the permission to enter a record into the Land Registry), it is not required that the parties to the contract prove their identities by their officially certified signatures.

IV. Transfer of Ownership

a) The parties are advised to stipulate in the purchase agreement which party is to apply for the registration in the Land Registry. In most cases, it is stated that the seller has to apply for the registration in the Land Registry within a certain period of time from the conclusion of the purchase agreement. To ensure that the purchase price is paid to the seller after the registration of the ownership of the property in favor of the buyer, the parties usually escrow the purchase price at a notary, attorney-at-law, or bank. The parties to the contract thus usually also conclude an escrow agreement with the bank, notary, or attorney-at-law, along with the purchase agreement. Under run-of-the-mill escrow agreements, the bank/notary/attorney-at-law is obliged to transfer the purchase price after the fulfilment of the conditions stated in the escrow agreement, which typically is only the registration of the buyer in the Land Registry as the owner of the transferred property.

V. Agents

a) The Buyer or Seller may employ the services of a real estate broker. The contract with the broker is most often concluded as an exclusive agreement.

b) The real estate broker's commission is generally determined by the market situation and is usually between 3 and 5 % of the purchase price.

VI. Forms of Ownership

a) In general, all individuals and legal entities can invest into and own real estate assets.

b) It is irrelevant whether the owners and

purchasers are residents or non-residents, or which country they come from. However, it is important that the Czech Land Registry recognizes the legal personality of any foreign company or individual.

c) Recently many international sanctions were and are still being imposed by the USA and European Union on various entities and individuals. Property transactions with most people and entities subject to sanctions are not allowed in the Czech Republic. Therefore, counterparties must be checked diligently from this perspective and appropriate approach is chosen case by case.

VII. Acquisitions

a) Properties can be acquired by way of an asset deal or a share deal. The legal entities involved in a share deal are mostly organized as limited liability companies or joint stock companies.

A. Residential Property

Residential property is most often owned by natural persons. Most frequent forms of ownership of residential property by natural persons are:

1. **Sole ownership:** The owner is the only person authorized to control and dispose of the property in question.
2. **Co-ownership:** More than one person owns an undivided share of property. Each co-owner is entitled to dispose of their share.
3. **Community property:** Each of the spouses is entitled to the assets which comprise the community property, but neither is entitled to dispose of the assets independently, i.e., without the consent of the other spouse.

Legal entities, however, often own residential property as well.

B. Commercial Property

Commercial property is usually owned by private legal entities. Joint-stock companies (a.s.) and limited liability companies (s.r.o.) are the most common forms of legal entities used for the purpose of owning real estate (or for any entrepreneurial aim, for that matter) in the Czech Republic.

1. **Limited Liability Company – s.r.o.**
   - **a.** Most widely used legal form for corporations.
   - **b.** Highly flexible, with relatively few obligations.
     - **a) Legal Entity**
       - **a.** A legal entity acts autonomously, represented by executive director(s). Subject to taxation independently of its members (shareholders).
       - **b.** The rights and obligations of an s.r.o. exist autonomously from those of the shareholders and the executive directors.

b) Formation

a. An s.r.o. is founded by way of conclusion of a Memorandum of Association or via a Foundation Deed in the case of a sole shareholder. It has to be notarized.

b. Setting up an s.r.o. is uncomplicated and can be accomplished easily. Registration is done either directly by notaries or via the courts.

c. Under Czech law, it is not mandatory to set up a supervisory board as one of the bodies of an s.r.o.

c) Costs of Formation

The estimated total notarial costs for the formation of a standard s.r.o. usually amount to approximately CZK 6,800 CZK (€250) (In the case of registered capital – CZK 100,000 (€3,700)) plus court costs, about approximately CZK 6,000 CZK (€220) and fees for legal counsel regarding the drawing up of the Foundation Deed or of the Memorandum of Association. Notarial costs are calculated based on the amount of the company's registered capital. The registration of an established company in the Commercial Register can be performed directly by a notary following the procurement of a certificated notarial deed. In such a case, the total costs of the formation of an s.r.o. are a little lower.

d) Minimum Registered Capital

a. The minimum registered capital required for an s.r.o. is 1 CZK. It is, however, recommended to set up a company with higher registered capital, which will serve to cover the company's initial expenses and to avoid having to declare bankruptcy due to lack of funds early on. It is thus recommended to set up a company with registered capital in the amount of at least CZK 100,000 (€3,700).

b. At least 30% of each shareholder's monetary contribution to the registered capital must be paid to a special bank account before the company's registration in the Commercial Register. If the company's registered capital is lower than CZK

20.000, contributions to the registered capital are not required to be paid to a special bank account but may be paid to a contribution administrator.

e) Limited Liability

a. The shareholders of the entity are not personally liable for the company's debts. The shareholders' liability is joint and several and is limited by the extent of the shareholders' unpaid contributions to the registered capital registered in the Commercial Register at the time they are invited by the company's creditor to satisfy the company's debt.

b. The limitation of liability arises once the s.r.o. has been registered in the Commercial Register.

c. The company's statutory body is comprised of one or more executive directors.

The executive directors act in all matters on behalf of the company. The manner in which the executive directors are to act on behalf of the company is also registered in the Commercial Register. The Foundation Deed and the Memorandum of Association may stipulate that the executive directors constitute a collective body.

d. Any internal restrictions of the executive directors' powers are not effective against a third party. Under Czech law, a violation of these restrictions by an executive director will not affect the validity of a contract with a third party, but the s.r.o. may hold the executive director in question liable for damages.

2. Czech Joint-Stock Company – a.s.

a. An a.s. (akciová společnost) is a legal entity in which the shareholders are not liable for the debts of the company during its existence.

b. It is much more complicated to form and

to operate than an s.r.o.

c. Hence, the rules governing an a.s. are generally less flexible compared to the rules for forming a limited liability company.

a) Formation

a. At least one founding shareholder is required; this may be either an individual or a legal entity.

b. The minimum share capital is CZK 2,000,000 (EUR 80,000).

c. The Articles of Association must be notarized and contain certain mandatory information.

d. Application for registration in the Commercial Register is to be filed with the court with local jurisdiction (i.e., the place where the company is located).

Note: Previously, the founding shareholders had to pay a minimum contribution. In the case of cash contributions: each of the founders had to pay at least 30% of the subscribed registered capital by the time of the submission of the proposal to the Commercial Register.

e. Tax registration is to be carried out with the local tax authority.

f. The company must establish a website containing the obligatory information concerning the company without undue delay after its registration into the Commercial Register

b) Structure – 2 options

a. There are two options regarding the company's structure: (i) the monistic structure, (ii) the dualistic structure. Neither option is implemented in Czech law in their pure forms. The company may freely change its structure by changing its Articles of Association.

b. The structure is typical in European countries such as Italy, France and Switzerland, and this structure is also used

in European Companies (Societas Europaea).

c. In a Czech Joint-Stock Company with a monistic structure, the Management board fills both the supervisory and executive roles and is the company's only corporate body. Members of the Management board are appointed by the General Meeting. Management board may also have only 1 sole member.

d. The dualistic structure, which is also currently used in Germany, is the most common structure of corporate governance in a joint-stock company in the Czech Republic.

e. A company with a dualistic structure has a Board of Directors and a Supervisory Board. The Board of Directors is the company's statutory (executive) body which is in charge of the company's business management. Nobody is authorized to instruct the Board of Directors as regards matters linked to business management. The Supervisory Board is the controlling corporate body supervising the performance of the Board of Directors and the undertakings of the company. Nobody is authorized to instruct the Supervisory Board in controlling matters regarding the Board of Directors.

f. The General Meeting is the third body of the a.s. in both types of corporate structure. It consists of all company shareholders. Its most important rights consist of (i) electing new members of the Board of Directors in the dualistic structure if the Memorandum of Association does not delegate this right to the Supervisory Board; (ii) electing new members of the Management Board in the monistic structure; (iii) deciding on the distribution of profits

and amendments to the Articles of Association.

c) Liability

a. Only the company is liable towards the company's creditors, not the shareholders.

Note: Persons acting on their behalf are liable for the obligations which arise before the company's incorporation in the Commercial Register. If there are more persons acting together, they are liable for such acting jointly and severally. The company can assume the effects of such acts no later than three months from its incorporation and then it is bound by such acts as if it were bound by them from the very beginning.

3. Other types of entities

There are two other types of Companies under Czech law, a Limited partnership company (k.s.) and an Unlimited partnership company (v.o.s.), these are, however, not often used in real estate transactions.

The same applies to private law associations that are not considered to be legal entities and where the liability of the members is unlimited.

VIII. Financing

a) The usual method of financing real estate deals is by way of a bank loan/mortgage for at least a part of the purchase price. A bank generally insists on being provided with collateral before the loan is drawn.

b) Usually, the buyer has to cover a certain portion of the price from their own sources. For large development projects, banks usually require a pledge on all possible claims which the buyer can gain in connection with the real estate.

c) In connection with this, the buyer often has to present the seller with an irrevocable acceptance of loan financing by a reputable bank or show proof of sufficient funds before signing the purchase agreement.

d) Normally, the mortgage/loan is provided for about 60%, up to 70%, of the purchase price.

e) For special transactions such as large individual properties or real estate portfolios, a common alternative to a bank loan is the use of capital market products, for instance, bonds, receivables, or credit derivatives.

IX. Payments and Costs

a) The costs and taxes are normally borne by the buyer. However, usually the seller has to bear the costs of deletion of old mortgages from the Land Registry.

b) Usually, the purchase price is transferred to an escrow account maintained by a notary, a bank, or an attorney-at-law, whereafter the

money gets transferred to the seller following the successful registration of the transfer in the Land Registry.

c) The tax on acquiring property was abolished. No notary or important registration fees are mandatory. The necessary official registration stamp is only EUR 100.

X. Examinations before closing

a) The buyer is advised to check the title to the property for any potential or actual deficiencies and the financial condition of the seller as well.

b) Commercial buyers should also check if there are any planning restrictions imposed upon the property, since a construction or alteration as well as change in use or the demolition of a building requires a building permit. The building project has to comply with the content of the local (or regional, as the case may be) development plans. Therefore, with regard to prospective plans of construction, the development and land use should be reviewed very carefully before the closing of the contract.

c) In addition to this, environmental issues should be checked before closing too.

d) A thorough check of the counterparty background has become necessary recently due to proliferation of various sanctions imposed by mainly the USA and EU.

Note: It is highly recommended to undertake a due diligence review before the closing of the contract.

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FLADGATE LLP

Buying and Selling Real Estate in England and Wales

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER BRITISH LAW

1. Introduction

Historically, there has been significant investment by overseas individuals and corporations in real estate in England and Wales and in particular in central London, which is perceived as a safe haven for overseas investors. Much of the recent overseas investment has been focused on residential real estate, but there has also been substantial investment in commercial real estate.

This guide applies to real estate in England and Wales, but it is not applicable to other parts of the United Kingdom, namely Scotland and Northern Ireland; or to dependencies such as the Channel Islands or the Isle of Man, which have their own separate legal systems.

2. Tenure

Real estate in England and Wales may be any of the following:

Freehold

Freehold real estate is the absolute property of its owner, subject to any rights and title covenants in favour of third parties. These may affect how the real estate is used.

Leasehold

Leasehold real estate is held under a lease for a fixed period, usually subject to the payment of rent and the performance of obligations or covenants contained in the lease. The terms of the lease will dictate whether or not the leaseholder is entitled to transfer its interest to a third party or whether it can sublet either the whole or part of the real estate.

Commonhold

This is a relatively new type of real estate ownership. It allows perpetual "strata" ownership of a multi-occupied residential property by the individual unitholders, with joint responsibility over common areas and facilities. However, commonhold has, for various reasons, failed to gain traction in the marketplace and is rarely used (although the UK government hopes to revitalise commonhold in the near future). Residential apartments are, therefore, almost always owned under a long lease.

3. Know your client (KYC)

It is necessary to carry out due diligence on the purchasing entity to comply with UK Anti-Money Laundering Regulations. The documents which are required will vary depending on the purchasing entity, but they need to establish the identity of the purchaser and its ultimate beneficial owner.

4. Individual stages in a real estate purchase

It is customary for real estate to be sold by a two-stage process. Firstly, the parties enter into a contract in which the seller agrees to sell the property to the buyer. This process, known as "exchange of contracts," has the effect of passing the beneficial interest in the property to the buyer. In the second stage, typically about 28 days later, the seller transfers the legal title to the buyer. This is known as "completion." It is possible, however, for the parties to proceed straight to completion and this is sometimes done when timing is critical.

Before signing the purchase contract

After the buyer's offer has been accepted, but before the purchase contract is "exchanged" (i.e., becomes legally binding), the buyer's solicitors will negotiate with the solicitors acting for the seller and conduct investigations relating to various matters, such as:

- the form of the purchase contract;

- the title documents, including any leases and other matters subject to which the real estate is being sold; and
- searches with various local authorities or statutory bodies to ascertain matters which may affect the real estate or its use, including environmental matters.

It is important to note that, during this investigatory period, the seller of the real estate generally is not contractually bound to the buyer and is free to deal with other prospective buyers. It may be possible, however, to negotiate an exclusivity agreement that will prevent the seller from negotiating with a third party for a limited period.

A prudent buyer should always commission a structural survey of the real estate, and this should be carried out prior to any exchange of contracts, as generally no warranties are given by the seller as to the state and condition of the real estate. It may also be advisable for the buyer to have soil or other technical investigations made, particularly where a development site is being acquired or where it is possible that the real estate has been used for purposes causing contamination. Environmental protection legislation may require the owner of a contaminated site to incur substantial clean-up costs in respect of waste left by a previous owner, and a tenant can sometimes be liable for such matters under the terms of the lease either directly or indirectly through the service charge.

Exchange of contracts

Once the contract has been negotiated and agreed and the buyer's investigations have been completed, the parties will then proceed to "exchange" formal written contracts. It is usual for a buyer to pay a deposit, often but not always of 10% of the purchase price on exchange, which sum is liable to be forfeited if the buyer does not "complete" (i.e. close) the purchase. Completion of the actual transfer of the real estate follows a pre-agreed period following exchange of contracts, typically about 28 days.

Once contracts have been exchanged, both parties, subject to the terms of the contract, become bound to continue with the transaction and neither party can withdraw. Where the buyer is borrowing all or part of the price, it is highly advisable that the lender's financial commitment is in place before exchange of contracts. The buyer may also need to arrange insurance as from exchange of contracts.

Registration of the buyer's title

Following completion, the buyer's solicitor will pay any purchase tax (in England, **SDLT** and in Wales, **LTT**) due on the purchase and apply to the Land Registry to have the change of ownership and any mortgage registered. If the buyer is a company, the mortgage will also need to be registered at Companies House. If the buyer is an overseas entity, details of the entity's ultimate beneficial owners need to be registered at Companies House.

5. Lender's requirements

Each lender's requirements will vary depending on the real estate, the identity of the borrower and the nature of the transaction but, generally, on investment real estate a lender will require the following:

- a satisfactory valuation from the lender's valuers;
- a satisfactory certificate of title from the lender's solicitors confirming that the lender will obtain a good and marketable title to the real estate;
- full information about the proposed borrower, including company accounts (where applicable); and

- where the real estate is bought as an investment, details of the occupiers of the real estate and the passing rents.

6. Leasing of commercial premises

Leases of commercial real estate generally fall into one of two categories:

- a building or "ground" lease at a premium for a long period, usually at least 125 years, possibly acquired as a capital investment to be sublet to occupational subtenants; or
- an occupational lease for a shorter term (say, up to 25 years but often these days much shorter) at an open market rent.

Long-term leases of commercial real estate are not uncommon, especially where there are plant and machinery tax benefits (capital allowances) that the freeholder wishes to retain or where the freeholder will not willingly part with the freehold. Residential apartments are also owned by means of a long lease.

The liabilities of a tenant will depend on what is agreed between landlord and tenant and are subject to negotiation. Generally, however, an occupational tenant would expect to be responsible for the costs of repairs, insurance, business rates (local taxes), and outgoings. There may also be an obligation to contribute by way of service charge for services provided by the landlord. The lease is likely to prevent the tenant from making substantial alterations. The lease may also prevent the tenant from subletting or disposing of the lease to a new tenant without the landlord's prior written consent.

The rent under an occupational lease generally reflects the open market letting value of the premises and, depending on the length of lease term, there may be rent reviews at predetermined intervals (typically five years). The rent under a building or ground lease, however, is usually nominal, reflecting the fact that a capital premium has been paid on the grant of the lease.

The occupying tenant of business premises normally has a statutory right to renew the lease on the expiry of the contractual term. This right can be excluded by agreement between the landlord and tenant by following a prescribed procedure. Most underleases and short-term leases (e.g. five years or less) will exclude the right to renew.

Depending on the state of the market and the particular real estate, the tenant of an occupational lease should seek to negotiate:

- an initial rent-free period;
- an unconditional right to terminate the lease early (a "break right"); and
- a limit on service charge payments.

The first draft of a lease will normally be prepared by the landlord's solicitor, and the terms will be negotiated by the tenant's solicitor who will make similar searches and enquiries to those on a freehold purchase. A landlord will frequently require security if the tenant is an overseas company or a private limited company. This may take the form of a parent company guarantee or a "rent deposit." A rent deposit is a sum of money equal to (say) six to 12 months' rent, held by the landlord, to be used by the landlord in the event of a default by the tenant; it will be returned at the end of the lease or in other agreed circumstances.

A well-advised tenant will also want to commission a survey of the premises, especially where the lease requires the tenant to repair and maintain the structure.

A tenant taking a transfer of a lease from an existing tenant is unlikely to have the opportunity to negotiate the terms of the lease but will have to take it on its existing terms.

An original tenant or a tenant who takes a transfer of a lease originally granted before 1 January 1996 is likely to have to remain liable under its terms for the remainder of the lease period, even though it subsequently transfers it to a new tenant, if there is a subsequent default.

An original tenant or a tenant who takes a transfer of a lease granted on or after 1 January 1996 is likely to have to guarantee any new tenant to whom it transfers the lease for the period that that particular tenant remains the tenant, but its guarantee will cease if the new tenant later transfers the lease to another party.

7. Ownership structure

The choice of ownership structure is often tax driven. We look at tax in the next section but here we focus on the non-tax facets of different types of ownership.

Personal ownership / Directly held

Advantages: Simple and cost effective. There is no structure to maintain and no annual running costs.

Disadvantages: Details of land ownership are held on a central, searchable register at the Land Registry. If owned through a nominee (be they a corporate entity or trustees of a bare trust), only the nominee's details appear on the title, but UK corporate nominees have had to disclose their ultimate beneficial owner on a separate public register (see below) since June 2016. This was extended to offshore corporate nominees in 2022, and these now have to register as a trustee on HMRC's Trust Registration Service (not public) and verify their beneficial owners through registration on the Register of Overseas Entities (**ROE**) (public). A UK Will and UK Property and Financial Affairs Lasting Power of Attorney should be considered, to avoid a loss of control over the property in the event of death or incapacity. The asset will be exposed to claims from creditors and potentially also on divorce or relationship breakdown.

Company registered in UK

Advantages: Annual running costs are usually less than for offshore registered companies where corporate fiduciaries located in offshore jurisdictions often provide the directors. The company affords limited liability.

Disadvantages: Since June 2016, those owning more than 25% of the ultimate beneficial ownership of a company must appear on a publicly searchable register held at the UK's Companies House. Corporate governance documentation, such as company articles and possibly shareholders' agreements, in addition to a Will (a UK Will may not be the most appropriate one in the circumstances) and a UK Property and Financial Affairs Lasting Power of Attorney, may be required in order to regulate who controls the company in the event of death, divorce or incapacity. The shares owned by the ultimate beneficial owner of the company will still be considered in the event of financial claims but pre-emption rights in the company's articles may prevent the shares being transferred to satisfy creditors.

Company registered offshore (i.e., outside UK)

Advantages: Following the introduction of the ROE, it is hard to see any advantages over UK corporates.

Disadvantages: Annual running costs can be high. Provisions requiring the disclosure of ultimate beneficial ownership, similar to the rules that apply to UK companies, were introduced in August 2022. As with a UK company, local corporate governance documentation and the most appropriate Will and a Power of Attorney (most likely in the jurisdiction of the offshore company) may also be required to determine who controls the

company in the event of death, divorce, or incapacity.

Partnerships

For UK partnerships, the identity of the partners is not disclosed unless the partnership is a Limited Liability Partnership, in which case the members of the partnership will appear on a publicly searchable register at Companies House. Offshore partnerships must register on the ROE and disclose their beneficial owners.

Trusts (UK or offshore)

Advantages: Common law jurisdictions often have a significant body of law associated with trusts and their operation, providing certainty as to how they can be used. Trust assets can benefit successive generations. Often beneficiaries do not hold a fixed share of trust assets, so a beneficiary's death or incapacity does not affect the administration of the trust's assets. Appropriately structured trusts may also offer protection against claims by third parties, such as creditors or on divorce or relationship breakdown. Trusts do not have to register on the ROE unless the trustee is a corporate.

Disadvantages: Annual running costs can be high. The trust model may, in the opinion of some, confer insufficient control on the person contributing the wealth to the trust structure. In certain trust jurisdictions (especially the UK), the law may be perceived as allowing the beneficiaries to have too much influence. The trustees' fiduciary obligation to act in the best interests of the beneficiaries may prove too constraining. In 2022 The Trust Registration Service was expanded, requiring (broadly speaking) trustees of non-UK trusts who acquire UK land on or after 6 October 2020 or enter into a business relationship with a 'UK relevant person' (e.g. a UK professional adviser) on or after 6 October 2020 to register. Trusts with a UK tax liability (on or offshore) are required to register in any event.

8. Tax implications of ownership structures

Tax is a major consideration for investors. The taxes that need to be considered include:

- In England, stamp duty land tax (**SDLT**) rates differ significantly depending on whether the real estate is commercial or residential.
    - For commercial real estate, the rate of tax is 0% on the first £150,000 of the purchase price, 2% on the next £100,000 and 5% on the remaining amount.
    - For residential real estate, the rates are 0% on the first £125,000 of the purchase price, 2% on the next £125,000, 5% on the next £675,000, 10% on the next £575,000 and 12% on any remaining amount. The relevant rates for purchasers of additional residential real estate (whether buy-to-let property or second homes) are 5%, 7%, 10%, 15% and 17% respectively. First-time buyers of properties worth up to £500,000 may pay a reduced rate of SDLT. An additional SDLT surcharge of 2% if certain other criteria are met for non-residents buying residential property in England was introduced in April 2021.
    - Various reliefs may apply. These are complex and outside the scope of this guide.
    - With regard to leases, a 1% rate of SDLT will be due on the net present value of the rent, above £125,000 (residential) or £150,000 (non-residential/mixed), which is calculated

using a formula that takes into account various factors, including the fact that rents to be received in the future have a lower value than rents received immediately.

- For commercial leases, where the net present value exceeds £5m, the rate of SDLT for the proportion of the net present value above £5m is 2% rather than 1%
- A 17% SDLT rate applies to the entire purchase price when residential real estate costing more than £500,000 is acquired by certain "non-natural persons" (**NNP**s). These include companies and partnerships with a corporate partner but not trustees. Relief from the 17% charge (with the effect that the normal rates apply) may be claimed by NNPs carrying on real estate development or using real estate for commercial renting to third parties. Conditions apply.

- In Wales, land transaction tax (**LTT**) is payable instead of SDLT. The two taxes (and the reliefs that apply) are broadly similar but there are some technical differences and also differences in the rates of tax that apply:
  - For commercial real estate, the rate of tax is 0% on the first £225,000 of the purchase price, 1% on the next £25,000, 5% on the next £750,000 and 6% on the remaining amount.
  - For residential real estate, the rates are 0% on the first £225,000 of the purchase price, 6% on the next £175,000, 7.5% on the next £350,000; 10% on the next £750,000 and 12% on the remaining amount. Purchases of additional residential real estate (or purchases of residential real estate by companies) attract higher rates (and payable at different thresholds) up to a maximum of 17% on any portion of the purchase price that exceeds £1.5m. There is no first-time buyer's relief in Wales.
  - With regard to commercial (but not residential) leases, a 1% rate of LTT is applied to the net present value of the rent above £225,000. Where the net present value exceeds £2m, the rate of LTT for the proportion of the net present value above £2m is 2% rather than 1%.
  - Unlike in England, NNPs of residential real estate do not pay an enhanced rate of LTT.

- Annual Tax on Enveloped Dwellings (**ATED**) came into effect on 1 April 2013 and is currently payable only in respect of residential properties owned by NNPs worth in excess of £500,000 on 1 April 2022 (or at acquisition if later). ATED is an annual charge of up to £292,350 per year (as at ATED tax year 25/26), calculated by reference to real estate value bands. Rates increase in line with the Consumer Prices Index each year. Relief may be claimed by NNPs carrying on real estate development or using real estate for commercial renting to third parties, commercial trade purposes or as employee accommodation. Conditions apply.
- For interests in UK land (residential or commercial) owned by individuals or trustees, capital gains tax (**CGT**) or non-resident capital gains tax (**NRCGT**) may be

payable at rates of either 18% or 24% (rate depends on total UK income and gains) on gains realised on a disposal of the real estate. Main home relief may be available to exempt some or all of the gain if relevant conditions are met.

- Disposals of interests in UK land (residential or commercial) directly owned by companies are subject to UK corporation tax. The current main rate of corporation tax is 25%. No main home relief can be claimed.
- From 6 April 2019, disposals of assets deriving at least 75% of their value from UK land (commercial or residential) by non-resident persons who have a substantial (25%) indirect interest in the land are also chargeable to NRCGT or corporation tax (other conditions apply). For example, disposals of shares in 'property rich' offshore companies are caught.
- In certain situations, re-basing of assets to their 5 April 2019 market value will be applied automatically unless an election is made.
- Disposals by non-resident individuals of UK residential property interests must be reported, and any NRCGT paid, within 60 days of completion.
- Income tax (**IT**) is payable by individuals on rental income. Various deductions are permitted against rental income. Capital allowances may also be available for commercial real estate.
- UK resident companies are liable to corporation tax on their profits (rental income, capital gains, or trading income). non-UK resident companies are subject to corporation tax on income deriving from UK properties.
- Inheritance tax (**IHT**). Individuals are liable to IHT on their UK situated assets, which includes UK real estate. Holding UK situated assets on death, or gifting them in lifetime, can give rise to IHT liability of 40%. Since 6 April 2017, it is no longer possible to avoid an IHT exposure by holding UK residential property through an offshore company – the company is now effectively transparent for IHT purposes if it is the equivalent of a close company and its value is attributable, directly or indirectly, to UK residential property. Trusts holding shares in offshore companies with UK residential property interests require review, as they can be subject to periodic charges to IHT and give rise to IHT issues for settlors who are also beneficiaries. Loans made to third parties to facilitate the purchase of UK residential property can, in certain situations, cause the lender to have an IHT exposure. Certain debts, however, remain deductible when calculating the value of an asset for IHT purposes.
- Value added tax (**VAT**). This is applicable to commercial real estate only. Commercial real estate is exempt from VAT unless the sale is of the freehold of a new or partly completed commercial property, or the owner opts to tax (which most do in practice). VAT is payable at the standard rate of VAT, which is currently 20%, unless it is possible to structure an acquisition as a transfer of a going concern (**TOGC**). A TOGC is generally available to a purchaser of investment real estate, but there are conditions that include the buyer registering for VAT and submitting quarterly VAT returns to the UK's revenue authorities.

The interrelationship of each of these taxes and the formalities which need to be complied with are complex and careful consideration needs to be given to their application to the acquisition of any specified real estate. By way of example, the following table compares ownership by an offshore company with personal ownership.

	Ownership by Offshore Company	*Ownership by Individual*
ATED	Yes, annual charge, depending on value	No
CGT	No	Yes, on disposal on gains. At rates of 18% or 24%. Relief may be available if property used as main residence
CT	Yes, rental income (mortgage interest is deductible) and on disposal on gains at up to 25%. No main home relief	No
IHT	Participators in offshore company have IHT exposure (40% on death, subject to exemptions and reliefs)	Yes, immediate exposure (40% on death, subject to exemptions and reliefs)
IT	No (see CT above)	Rental income taxed at 20%/40%/45%. No deductibility of mortgage interest
SDLT	Potentially at higher flat 17% rate if purchase price >£500,000. Additional rates apply to purchases by non-UK residents	Stepped rates between 0% and 12%. Higher rates apply to purchases of residential buy-to-let and second residences. Additional rates apply to purchases by non-UK residents

9. Expenses

The buyer will have to meet at least the following additional expenses at completion of the transaction:

- Land Registry fees ranging from £20 to £1,105, depending on the value of the real estate. This is less than the registration or cadastral fees payable in most other European countries.
- Legal and other professional fees, which are generally agreed at levels to reflect the purchase price and professional input. These fees will bear VAT at the then current rate (currently 20%), even for overseas investors. Each party usually meets its own professional advisers' fees unless agreed otherwise. A tenant who is subletting or transferring the lease will usually be required to pay the landlord's professional fees for the consent to the subletting or transfer.
- The seller, not the buyer, pays the selling agent's fees. These typically vary from 1%-3%, depending on whether the real estate is commercial or residential, with fees for auction sales generally higher than for private sales. Payment of the agent's fee is normally conditional on completion of the sale.

- Some buyers may instruct a buyer's agent to help them find a suitable property. The fee payable to the agent normally varies from 1-3%. These "finder's fees" are sometimes found in the high-end London residential market, where there may be stiff competition for prime real estate.
- Fees incurred in obtaining finance.
- Miscellaneous expenses such as search fees of approximately £2,000-£3,000 per property and bank transfer fees.

10. Constraints on development

Town planning legislation

Development may generally not be undertaken without planning permission obtained under the Town and Country Planning Act 1990 (although there are various exceptions).

"Development" may take one of two forms:

- the making of a material change in the use of land or of an existing building; or
- the erection of new buildings or the extension or other alteration of existing buildings (and, in some cases, the demolition of an existing building).

Applications for planning permission are made to the local planning authority in the first instance and there is a right of appeal to the Planning Inspectorate against a refusal of permission.

Certain additional controls apply if development is proposed within a conservation area or if listed buildings are affected.

Other controls

The development and use of buildings may be governed by other statutory controls that regulate the quality and form of construction and the safety of the building. This is particularly so in relation to high-rise residential buildings (seven storeys or above). Building regulations cover the technical standard that building works need to meet and the procedures that need to be followed.

In the case of leasehold land, the lease may have controls on both kinds of development.

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August 2025

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INTERNATIONAL LAWYERS NETWORK

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Buying and Selling Real Estate in Greece

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER GREEK LAW

1. PROCEDURE – MAIN STEPS OF REAL ESTATE ACQUISITION UNDER GREEK LAW.

Acquisition of a real estate property in Greece includes mainly the following steps:

- Finding the property to be purchased, with the possible assistance of a real estate agent. Usually, the agent's fee amounts to 2% upon the purchase price, but can be negotiated between the parties.
- Obtain a Greek Tax Registration Number. This procedure is simple and does not require the presence of the foreigner in Greece, since it can be carried out by a third party, by virtue of a Power of Attorney.
- Legal due diligence of the property. After having found the property and before proceeding to the execution of any deed or agreement, the purchaser should appoint a lawyer to perform a complete legal due diligence of the property, which includes a detailed audit of the rights of the seller and his predecessors, as well as research on any possibly existing encumbrances (mortgages, claims, etc.). Legal due diligence is performed with the Land Registry or Cadastre of the region in which the property lies. It is noted that the responsibility for this very important step lies with the purchaser, given that Greek notaries are not obliged to (and will not) perform such a due diligence.
- Technical due diligence. It is performed by a civil engineer and is mostly needed in cases where the property to be purchased is a non-constructed land or lies outside the urban plan. Technical due diligence aims to ensure that the property meets all legal requirements for the construction of buildings to be allowed, and, in cases where the property to be purchased is already built, to determine whether the already existing building(s) include any illegal constructions which need to be settled, according to the relevant laws.
- Issuance of the required certificates and other documents. In order for a property purchase to take place, a number of certificates must be produced to the notary public, which however pertain to the seller.
- Execution of the notarial purchase deed. In Greece, purchase of any real estate property is performed solely by virtue of a notarial deed. Execution of such a deed takes place before a notary public. The notary public is usually chosen by the purchaser, who also pays the relevant notary fees. Both the seller and the purchaser may either appear in person before the notary in order to execute the deed, or they may appoint someone else to execute it in their name and on their behalf, by virtue of a notarized Power of Attorney.
- Registration of the notarial purchase deed with the Land Registry or Cadastre. In Greece, a purchaser of a property becomes the property's owner only after the notarial purchase deed is registered with the competent Land Registry or Cadastre. Such registration entails certain fees which are paid by the purchaser (and their amount is indicated herein below).

2. TIMELINE

The time required for the conclusion of the purchase of a real estate property depends on the complexity of each case. In regular cases, after the property has been found, purchase procedures are normally concluded within a period of 1,5 – 3 months approximately.

3. MAIN CONTENT OF THE PURCHASE DEED

- The Contracting Parties
- Detailed description of the property
- Detailed description of the ownership rights of the seller and his predecessors
- The price
- The payment terms in detail
- Other clauses depend on each case.

The notary will read the deed aloud for both parties, but purchase deeds are drafted only in Greek. Therefore, non-Greek-speaking purchasers (if personally attending the execution of the deed) will need to appoint a translator.

4. FEES AND EXPENSES CONNECTED WITH THE EXECUTION OF THE NOTARIAL PURCHASE DEED. TO BE PAID BY THE PURCHASER.

- Notarial Fees. They are calculated gradually, as a percentage upon the value of the purchase deed, ranging from 0,80% for the part of the value up to 120.000,00 € to 0,10% for any amount beyond 20.000.000,01 €. Notarial fees are subject to VAT 24%.
- Lawyer's Fees. The presence of a lawyer at the time of execution of the purchase deed is no longer required under law. It is, however, strongly recommended, in order to secure the accuracy of the deed's content in relation to the description of the property, the description of the sequence of rights of the seller and his predecessors, etc. Lawyer's fees for the performance of the legal due diligence and the attendance of the execution of the purchase deed are agreed between the client and the lawyer and depend on the value of the transaction and the complexity of each case. Lawyers' fees are subject to VAT 24%.
- Registration Fees. The fees for the registration of the notarial purchase deed with the Land Registry or Cadastre amount approximately to 0,475% upon the value of the deed and are subject to VAT 24%.

5. FINANCING

The most common way of financing the purchase of a real estate property is through a bank loan. In order to grant a loan, Greek banks examine the financial situation of the purchaser. Greek banks have the current commercial value of the property estimated by a civil engineer of their own choice and grant loans for an amount not exceeding the 70-75% of such estimation. Before the loan is disbursed (directly to the seller) the bank shall register a mortgage upon the property for an amount of approx. 120% of the loan.

6. TAX TREATMENT

a. Taxes imposed at the time of purchase of the property. To be paid by the purchaser.

- Transfer Tax

Before the execution of the notarial purchase deed, the purchaser is obliged to pay the corresponding transfer tax. Such tax amounts to 3% upon the value of the property.

It should be noted that Greek Law also provides for an exemption – under certain conditions – from the payment of the transfer tax. This exemption applies only to purchasers that already reside or intend to be established in Greece and fall into the following categories: (i) Greeks, (ii) repatriates from Albania, Turkey and countries of the former Soviet Union, (iii) EU citizens and citizens of the European Economic Area, (iv) acknowledged refugees, and (v) nationals of non-EU countries who enjoy the status of long-term residency in Greece.

- Value Added Tax for new buildings

When it comes to new buildings, namely buildings, the building permit of which has been issued or revised from 01.01.2006 onwards, a VAT of 24% upon the value of the property shall be imposed at the time of their first sale / transfer by a manufacturer, or by a person who deals professionally with the construction and sale of buildings. In cases where VAT is applicable, the purchaser is not required to pay any transfer tax. The application of VAT on new buildings is currently on suspension until 31.12.2025.

Important Note: due to frequent legislative amendments in taxation of property, it is strongly recommended that all property related taxes are re-visited and re-calculated before any purchase.

b. Annual fiscal obligations of property owners.

- Real Estate Property Tax (*sic: "ENFIA"*)

  Any real estate property located in Greece belonging to individuals or legal entities on the 1st of January of each year, is burdened with Real Estate Property Tax. This is the major annual tax imposed on real estate properties. Such tax is calculated on the basis of the surface of the real estate property, its location, etc. When it comes to buildings, it ranges from 2,00€ per m2 to 16,20€ per m2, while when it comes to plots of land, it ranges from 0,003 € per m2 to 9,25 € per m2. The Greek Government has applied reductions of 10-30% to such Tax, in proportion to the total value of the real estate properties belonging to the same owner. Such reductions apply from the year 2022 onwards.

- Real Estate Duty (*sic: "TAP"*)

  This is a special duty imposed upon real estate properties, in favor of the Municipal Authorities. It is calculated by multiplying the value of the property by a rate ranging from 0,25 o/oo to 0,35 o/oo. This duty is collected through the Electricity Bills of the property.

- Special Real Estate Property Tax

  This is a special property tax imposed upon legal entities having their registered seat in countries with a privileged tax regime, and possessing full or bare ownership or usufruct of properties located in Greece. Such tax amounts to 15% upon the value of the property. This tax has been imposed in order to deal with the phenomenon of tax evasion of offshore companies possessing real estate property in Greece. Law provides for a number of exemptions from the application of the above tax, depending on the type of company and its statute.

- Tax on Income from Property Rents

  Annual income from property rents is taxed by a rate of 15% on the amount of income up to 12.000€, by a rate of 35% for the amount of income between 12.001€ and 35.000€, and by a rate of 45% on any amount above 35.001€.

  Rents of properties leased for business or professional purposes are surcharged by a stamp duty of 3,6%, which however is usually paid by the lessee, subject to an agreement.

  Important Note: due to frequent legislative amendments in taxation of property, it is strongly recommended that all property-related taxes are re-visited and re-calculated as may be needed.

7. RESTRICTIONS IN ACQUIRING REAL ESTATE PROPERTY IN GREECE

- **Cross-border Areas.**

Greek law provides restrictions for the acquisition of property rights in cross border areas of Greece, by individuals or legal entities that are not nationals of the European Union or the European Free Trade Association ("EFTA"). Furthermore, the transfer of shares or the change of partners /shareholders of companies not located in the EU or EFTA that own real estate property in cross-border areas of Greece, is also prohibited. Any such natural or legal persons (which are not nationals of the EU or EFTA) wishing to acquire real estate properties located in cross-border areas, must apply to a special Committee in order to obtain permission to acquire or rent the real estate property. Any transaction taking place in breach of the above provisions is null and void.

The following areas of Greece are considered as cross-border areas, in which the above restrictions apply: Dodekanisa, Evros, Thesprotia, Kastoria, Kilkis, Lesvos, Xanthi, Preveza, Rodopi, Samos, Florina, Chios, Thira (Santorini), Skiros, as well as certain regions of the areas of Drama, Ioannina, Pella and Serres.

Restrictions are lifted depending, in principle, on the legal form of the requested transaction, its monetary value, the exact location or value of the property, and unless national security reasons exist.

- **Purchase of Islands**

Greek law also provides that in order for a natural or legal person to acquire ownership of or rent a privately owned island or a property located in a privately owned island, they have to apply for the issuance of a permit by the Minister of Defense.

When it comes to public islands, acquisition of ownership is not possible; such islands may only be leased under the same above conditions (prior issuance of a permit by the Minister of Defense).

8. IMMIGRATION RULES RELATED TO PROPERTY INVESTMENT

Greek law provides that a residence permit of 5 years shall be granted to citizens of non-EU countries who are the owners (either personally or through a legal entity established in Greece or in an EU country, the shares of which belong entirely to them) of real estate property in Greece, or who have concluded a timeshare agreement or have leased hotel accommodations for at least 10 years.

According to the applicable law, for the Region of Attica and the Regional Unit of Thessaloniki (Region of Central Macedonia), the Regional Unit of Mykonos and Santorini (South Aegean Region) and the islands with a population of more than 3.100 residents, the minimum value of the real estate property and the contractual value of the timeshare or hotel accommodations lease agreement, has been set to the amount of eight hundred thousand (800,000) euros. If the investment concerns the acquisition of only a joint percentage of a real estate property, the value of this percentage must amount to at least 800,000 euros.

As for all the other regions of Greece, the minimum value of the real estate property at the time of its acquisition has been set to the amount of four hundred thousand (400,000) Euros. If the investment concerns the acquisition of only a percentage of a real estate property, the percentage in question must meet the same requirements, i.e., its value must amount to at least 400,000 euros. In both of these cases, the investment must concern only one single property, and if it concerns an already constructed building, its surface area must be at

least 120 square meters. Such residence permits may be renewed for an equal period (5 years) for as long as the real estate property remains in the ownership of non-EU citizens, or the timeshare-lease agreements remain in force.

The minimum value of the investment is set to 250,000 euros in the following cases:

a. For real estate properties the use of which has been converted from commercial to residential before applying for the residence permit.

b. For real estate properties located in preservable buildings which the investor shall restore or reconstruct. In order for the residence permit to be renewed after five (5) years, the restoration/reconstruction must be fully completed.

If the property is not fully restored/reconstructed within the above period, the residence permit shall be revoked, and an administrative fine of 150,000 EUR shall be imposed. Any transfer of the property before the completion of the restoration or the reconstruction by the investor is invalid.

In both of the above cases, the amount of 250.000 euros must be invested in one single real estate property, regardless of its location and size.

Said non-EU citizens may be accompanied by their family members (spouse, unmarried children under 21 years old, parents), to whom a separate residence permit may also be granted following their request. Their permit shall be terminated at the same time as the property owner permit. To children over 21 years old, a separate residence permit may be granted, having a duration of 3 years, for reasons of family reunification.

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Buying and Selling Real Estate in Hong Kong

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER HONG KONG LAW

Introduction

Hong Kong is one of the most densely populated cities over the world. Due to historical reasons, almost all lands in Hong Kong are leasehold tenures. Over the centuries, the Government leased or granted to individuals or corporations pieces of land for use or for development. Therefore, a sale and purchase of landed property in Hong Kong is in fact a transfer or assignment of a lease. In a sale and purchase transaction, the vendor agrees to sell, and the buyer agrees to purchase both the legal estate and the equitable interest of and in the landed property. This article provides a brief introduction to land law in Hong Kong and sets out a summary of the procedures of the sale and purchase of landed properties in Hong Kong.

System of Deeds Registration

Unlike other common law jurisdictions, the Hong Kong registration system is not one of registration of title but a deeds registration system. Registration of instruments alone does not confer title but only serves as a notice of having an interest in the landed properties which are affected by the instruments. Instruments affecting landed properties are required to be registered at the Land Registry in Hong Kong in order to have priority over any other subsequent registrable interests in land. While the general rule is that the priority of the registrable instruments shall be determined by the sequence of their respective dates of registration, there is a special rule that priority shall take effect by reference to the date of execution instead of the date of registration if such registrable instruments (excluding charging orders and lites pendentes) are registered within one month after the date of execution. Failure to register a registrable interest will render the same to be null and void against any subsequent bona fide purchaser or mortgagee for valuable consideration but will not affect the legality, validity and enforceability of the instrument as between the parties of the unregistered registrable instrument.

On 25 September 2025, the Registration of Titles and Land (Miscellaneous Amendments) Bill 2025 ("Amendment Bill") was passed by the Legislative Council. The Amendment Bill seeks to amend the Land Titles Ordinance (Cap. 585) in order to implement a new title registration system for land granted by the government on or after the operation of the new laws ("new land"). It is currently expected that the implementation of the new title registration system for the new land will be in the first half of 2027.

The Procedures of the Common Sale and Purchase of Landed Properties in Hong Kong

Provisional Agreement for Sale and Purchase

Before a potential purchaser decides to purchase a landed property, he/she usually inspects the landed property (flat/apartment/house) through the arrangement by an estate agent first and considers if he/she requires any financing when purchasing the property. It is advisable that, at least, a rough estimate verbal valuation of the relevant property should be obtained beforehand in order to apply to bank(s) for mortgage loan. Nowadays, a mortgage loan of around 50%-90% (depending on the value of the landed property) of the market value of the property can be obtained. In the circumstance, a purchaser should consider carefully whether he/she can afford to pay for the remaining purchase price and the Ad Valorem Stamp Duty.

When a purchaser agrees to purchase and a vendor agrees to sell a landed property, both parties will enter into a written agreement. In Hong Kong, the preliminary agreement, also known as the provisional agreement for sale and purchase (the "PASP"), is not required by law but commonly used. Such written agreement is usually prepared by estate agents which contains the basic terms such as details of the subject property, parties, consideration and completion date Upon signing of a PASP, the purchaser will pay to the vendor or the vendor's solicitors (as stakeholders) a sum being the initial deposit (which is usually 3%-5% of the consideration) to show his/her sincerity to purchase the landed property. The purchaser will usually register the PASP at the Land Registry (after stamping the PASP).

The PASP generally contains, inter alia, a standard clause which gives both the vendor and the purchaser a chance to "get out" of the contract after signing the PASP. The vendor is entitled to forfeit the deposit paid by the purchaser if the purchaser decides not to proceed further, whereas the vendor shall refund the deposit to the purchaser and compensate the purchaser with a sum equivalent to the amount of the deposit paid if the vendor decides not to sell the property to the purchaser. However, both the vendor and the purchaser can choose to enter into a "binding" agreement without the chance to get out of the contract unless the title to the property is defective.

Ad Valorem Stamp Duty will be payable on the PASP only when the terms of the formal agreement for sale and purchase (the "Formal ASP", as hereinafter defined) cannot be finalized and the Formal ASP cannot be signed within 14 days of the signing of the PASP. The Formal ASP is also required to be submitted for registration at the Land Registry.

Formal Agreement for Sale and Purchase

After signing the PASP, the parties have to appoint their respective solicitors as soon as possible. Solicitors for the respective parties will negotiate and agree on the terms and conditions of the Formal ASP. After execution of the Formal ASP, Ad Valorem Stamp Duty will be payable, and the Formal ASP will be presented for registration at the Land Registry.

Use of Power of Attorney in the Sale and Purchase

It is common for a purchaser or a vendor to execute a Power of Attorney (the "POA") in the sale and purchase of a landed property, especially when the purchaser or vendor is physically unable to be present in person when executing the Formal ASP and/or Assignment (as hereinafter defined). A POA is an instrument that allows a person (or corporation) to give power to an attorney to act for and on his/her/its behalf in performing certain acts or obligations, for example, for the purpose of enabling the sale or purchase of a landed property. To determine whether a POA is in order, a number of criteria has to be fulfilled:- (1) whether the POA has been properly executed; (2) whether the specified power(s) is/are clearly defined therein; and (3) whether the POA is still valid and not revoked as at the time when the relevant instruments such as the Formal ASP and/or Assignment is/are executed. Generally, the validity period for a POA is 12 months from its date of creation.

If a POA is being relied upon by any party in a sale and purchase transaction, it is important for the purchaser's solicitors or the vendor's solicitors to produce the POA to the other side for verification. More importantly, it is always advisable to consult your own solicitors before executing the POA to ensure that the proper procedures are observed, especially where the POA will be executed abroad for use in Hong

Kong. For POA executed abroad, it is always a good conveyancing practice for the execution of the POA to be witnessed by a notary public and sometimes further authenticated/legalized depending on different jurisdictions.

Notwithstanding the foregoing, a POA might not be applicable or acceptable to all landed property transactions. For example, if a purchaser needs to obtain mortgage loan for financing the purchase of the property, a bank or financial institution may not accept POA when executing the mortgage deed. As such, it is advisable to obtain legal advice and/or consent from the relevant bank or financial institution prior to the execution of a POA for use in a landed property transaction.

Title Requisitions: Proving & Investigating Title

The parties shall abide by the terms and conditions set out in the Formal ASP and prepare for completion after the execution of the Formal ASP. If the landed property is subject to any existing mortgage, the vendor will have to arrange for discharge or release of the existing mortgage before completion to ensure that the landed property shall be sold to the purchaser free from all encumbrances. The purchaser is advised to apply for mortgage loan from the relevant mortgage bank reasonably in advance of completion if he/she requires financing to pay the balance of the purchase price of the landed property.

Prior to completion, unless otherwise agreed by the parties, the vendor shall be under a duty to prove good title to the purchaser of the landed property by (1) delivering to the purchaser all relevant title deeds and documents in respect of the landed property; and (2) satisfactorily answering requisitions on title raised by the purchaser. As previously mentioned, one cannot prove his/her title of the landed property under the said deeds registration system. Hence, it is always the duty of the purchaser's solicitors to check the title to the landed property by perusing all the relevant title documents provided and delivered by the vendor's solicitors. This also explains why lawyers are actively involved in a sale and purchase transaction in Hong Kong. The rights of the purchaser's solicitors to investigate title and to raise requisitions are also generally set out in the Formal ASP. The vendor's solicitors have to satisfy the purchaser of the vendor's good title to the property or the vendor's title agreed to be delivered to the purchaser. The purchaser has the right to insist on a good title being proved and shown and the vendor is obliged to clear all title encumbrances or to remedy all the title defects upon completion.

Mortgage Financing

In Hong Kong, if the purchaser requires financing for payment of the balance of the purchase price, the purchaser will apply for the mortgage loan as soon as practicable before completion and/or even get an indication from the bank(s) before entering into the PASP. When choosing a bank or financial institution for mortgage loan, the purchaser should consider the following (not exhaustive) :-

(i) the landed property valuation and mortgage amount to be offered;

(ii) the repayment term, number of installments and the amount of each installment;

(iii) the criteria for determining interest rates; and

(iv) the early redemption penalties and the notice period.

Depending on the value of the landed property, the banks or financial institutions usually offer the purchaser a loan of up to 50%-70% of its market value. However, if the purchaser wishes to extend the loan up to 90% of its market value, he/she must obtain further loan (e.g. Mortgage

Insurance Programme under the Hong Kong Mortgage Corporation Limited or by way of Second Mortgage).

Usually, the purchaser's solicitors also act for the purchaser's mortgagee in respect of the mortgage transaction by preparing all the relevant mortgage and security documents.

Preparation before Completion: Apportionment of the Outgoings

Before completion, purchaser's solicitors have to make enquiries with the management company or the incorporated owners of the building as to whether there are any outstanding management or other fees payable by the owner of the property. The vendor's solicitors will usually prepare an apportionment account to the purchaser's solicitors to show how all the relevant outgoings will be apportioned between the vendor and the purchaser. It is common that management fee, rates and Government rent and rental payment (if any) will be apportioned as at the date of completion. The vendor usually pays up to and inclusive of the actual date of completion. Nonetheless, utility payments such as electricity, gas and water will be dealt with by the vendor and the purchaser with the respective utility companies directly.

Preparation before Completion: Inspection of the Landed Property

Purchaser will make a final inspection of the landed property through the arrangement with the estate agent before the completion date if the property will be sold to the purchaser with vacant possession. There may be fixtures and fittings which have been agreed to be sold or delivered to the purchaser together with the landed property upon completion. One must note that even if the purchaser discovers that any or part of the fixtures and fittings which have been agreed to be sold to the purchaser is/are not available upon final inspection, he/she is not entitled to terminate the PASP/Formal ASP on this reason alone and the only claim which is available to the purchaser is a claim for damages.

Execution of Assignment

On completion, the vendor shall execute a deed of assignment (the "Assignment") upon receipt of the purchase money of the landed property. Assignment shall be in the form of a deed. It is required for transferring the legal estate of and in the landed property from the vendor to the purchaser upon completion. In usual practice, the purchaser will execute the assignment in escrow (i.e. to execute the completion documents before completion and the completion documents will only become effective upon all the conditions having been satisfied).

Completion of the Sale and Purchase

Completion for sale and purchase of the landed property usually takes place by way of solicitors' undertaking. This form of completion places an important reliance on the solicitors by requiring the solicitors giving their professional undertakings (i.e. promises).

On the completion date, the purchaser's solicitors shall deliver the balance of the purchase money in exchange for an undertaking given by the vendor's solicitors to return (1) the assignment duly executed in the purchaser's favour by the vendor; (2) all original title deeds (which relate exclusively to the landed property and are required for giving good title to the landed property) including the release or discharge of the existing mortgage/legal charge (if any); and (3) the keys of the landed property (if vacant possession is agreed to be delivered to the purchaser on completion).

After the vendor has delivered a duly executed assignment to the purchaser, the purchaser's solicitors will then arrange to pay stamp duty (which is a nominal sum of HK$100) and levy

fees (HK$350) on the assignment and register the assignment at the Land Registry.

Stamp Duty Implications

Under the Stamp Duty Ordinance (Cap.117) ("SDO"), the vendor and/or the purchaser may be liable for the payment of Ad valorem duty ("AVD") (if applicable) for the sale and purchase of a landed property. However, payments of AVD (if applicable) are not mutually exclusive. The following stamp duty implications will have to be carefully considered prior to entering into a sale and purchase transaction in relation to landed property:-

Ad Valorem Duty ("AVD")

Effective from 11 am on 28 February 2024, the Government of HKSAR has announced that sellers and buyers of residential properties in Hong Kong are only required to pay ad valorem stamp duty (AVD) at the same rates as Scale 2 rates (from HK$100 up to 4.25% of the consideration).

Any agreement executed on or after 26 November 2020 for the sale and purchase or transfer of **non-residential** property, either by an individual or a company will be subject to AVD at the rate set out under "Scale 2" under Schedule 1 to SDO (i.e. a rate ranging from $100 to 4.25% of the consideration or value of the residential property, whichever is the higher), unless specifically exempted or provided otherwise.

While it is typical for the purchaser to agree to bear the AVD, it is important to note that under the Hong Kong law, the purchaser, the vendor, and any person who uses the instrument will be jointly and severally liable to pay AVD, irrespective of any agreement to the contrary made between them.

Sale and Purchase of Property by way of Transfer of Shares

On the other hand, it has now gradually become a common practice for potential purchaser in Hong Kong to acquire property by way of transfer of shares in a limited company. Under such arrangement, the vendor, who is actually the shareholder of the limited company, agrees to sell and the purchaser agrees to purchase all the issued share capital and liabilities of and in that limited company. As a result, the purchaser will acquire the property through becoming the shareholder of that limited company in place of the vendor.

Unlike the usual PASP as aforesaid, an agreement for the sale and purchase of shares of limited company is a more complicated legal document. Apart from taking over the shares of a limited company, the purchaser will also have to take over the debts and liabilities of that limited company which is associated with the share transfer transaction. However, such debts and liabilities of the limited company may not be easily discovered or notified by the purchaser unless a thorough due diligence examination of the accounting records and corporate documents of that limited company has been conducted. Further, complications may arise from the share transfer transaction if financing is required by the purchaser. The approach will be totally different from applying for mortgage loan for financing the purchase of a property through a simple sale and purchase as aforementioned.

From a tax perspective, a purchaser may prefer making his/her purchase through a company in order to enjoy lower stamp duty. As mentioned above, purchase of property in Hong Kong may be subject to AVD. Meanwhile, a share transaction is subjected to a significantly lower stamp duty, which is 0.1% (For each Transferor and Transferee) of the amount of consideration

or the underlying net asset value of those shares, whichever is the higher.

If parties intend to sell and purchase a property by way of transferring shares of a limited company, it is important that the parties' interests are adequately protected, and comprehensive legal documentation is required. It is advisable to obtain legal advice before acquiring a property by way of share transfer.

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INTERNATIONAL LAWYERS NETWORK

JALSOVSZKY LAW FIRM

BUYING AND SELLING REAL ESTATE IN HUNGARY

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER HUNGARIAN LAW

1. Types of real estate transactions

In the Hungarian market, the typical types of real estate transactions can be differentiated as follows.

1.1 Transfer of an undeveloped plot of land

Plots of land are often bought for the purposes of construction. In this regard, primarily the relevant Hungarian zoning and construction regulations should be previously checked, to ensure that the desired facility can indeed be developed on the given land.

1.2 Transfer of a developed plot of land

Generally, buildings located on a real estate are considered to be the part of the land and are treated as one and the same property. It means that generally, by buying the land, the purchaser automatically acquires its buildings as well.

1.3 Transfer of the building and the land separately

The ownership of the land and the buildings thereon however may also be separated and registered as independent real estates, and in that case, they may also be sold separately.

1.4 Transfer of a condominium property (typically flats)

A condominium property consists of separately owned (typically the flats itself), and jointly owned (e.g. garden, staircase) parts, but the separately owned part automatically includes the connected ownership ratio in the jointly owned parts. In case of a condominium, the co-owners might have a right of first refusal, and therefore the deed of foundation of the condominium must always be checked in advance, to see whether such right applies or not. New rules on the exercise of the right of first refusal entered into force on 15 January 2025 under the new Land Registry Act. For condominiums, certain procedural simplifications now apply: if the property is designated as a “garage” on the title deed, the purchase offer does not need to be individually served on each entitled person. Instead, a formal declaration from the condominium’s representative (or equivalent) confirming that the offer was prominently displayed in a common area for the entire binding period will suffice.

1.5 Transfer of an agricultural land

In addition, a parking space may be registered as a separate unit for private use. Accordingly, unless otherwise provided in the condominium’s deed of foundation, no right of first refusal applies to the sale and purchase of such a parking space. **Transfer of an agricultural land**.

A real estate is deemed to be an agricultural land if it is recorded in the Land Registry as such. The typical forms are arable land, meadow, lake, or forest. The acquisition and use of agricultural lands are subject to wide and strict limitations as to who can acquire or use them and under what conditions, and a transfer procedure may take up to 6-8 months to complete.

Agricultural land transfers require approval by the agricultural authority and a statutory public notice (kifüggesztés) to inform pre-emption

right holders. The sale agreement must be executed on a special "security document" (biztonsági okmány) – a green-coloured paper with security features – and prepared and countersigned by an attorney.

1.6 Share deal of a corporation that owns real property

During the planning of a property acquisition, if the owner of the real estate is a company, it often is a reasonable solution to acquire the legal entity that owns the respective property.

2. Restrictions for acquiring real estate in Hungary

2.1 General rules

In general, EU/EEA citizens and entities are freely allowed to purchase and sale real estates in Hungary, while non-EU/EEA citizens and entities may only purchase a Hungarian real estate with the permission of the competent Government Office.

2.2 Agricultural real estates

Unlike regular real estates, the purchase of agricultural land in Hungary is subject to numerous legal restrictions and limitations.

Generally, non-EU/EEA citizens and entities (including Hungarian and non-EU/EEA or EU/EEA companies) are completely excluded from acquiring agricultural lands in Hungary. As per EU/EEA citizens, private individuals must fulfil certain criteria to become entitled to own agricultural lands, while in case of legal entities only very limited types may own agricultural lands (the state, municipalities, churches). Other EU/EEA legal persons, if they fulfil certain statutory conditions, may only use agricultural lands, but are not entitled to own them.

Apart from the above, there are also limitations for the maximum size of agricultural lands that can be owned (or used) by one private individual. In addition, agricultural land in Hungary is subject to an extensive statutory system of pre-emption rights. When agricultural land is sold, the buyer chosen by the seller may be overridden if a pre-emption right holder (such as a local farmer or even the Hungarian State) exercises its statutory right to buy under the same terms.

3. Land registry

The Hungarian Land registry is a unified system keeping records of all kinds of real estates, and the records are public and authentic. Publicity means that anyone may obtain the title deed of a respective real estate from the Land Registry.

On 15 January 2025, the new Land Registry Act came into force in Hungary, bringing comprehensive reforms to the land registry system. Its most significant feature is the gradual transition from paper-based procedures of the past decades to a fully electronic land registry (E-ING). During a transitional period, electronic and paper-based procedures will operate in parallel to facilitate a smooth changeover for both practitioners and land registry offices. The electronic system is being introduced in phases, and the complete shift to exclusively electronic registration and case management is currently expected to take place in the autumn of 2025, once the system has been widely adopted. As soon as the electronic land registry system becomes operational, only attorneys registered with

the bar association in this capacity will be authorized to act in real estate sale and purchase transactions. To qualify for such registration, an attorney must first successfully pass the required examination and obtain enhanced professional liability insurance before applying for registration to the competent bar association.

3.1 Title deed

The title deed of a real estate consists of three parts, with the following main content:

(i) Section 1: main data and characteristics of the real estate

(ii) This part contains the size and qualification of the property, its topographical lot number and address (if the property has a separate address), and a note if there are any pending procedures in progress relating to the property at the Land Registry.

(iii) Section 2: ownership rights

(iv) Here one can find the data of the owners, and the date and legal title of their acquisition.

(v) Section 3: encumbrances (e.g. pledge, buy option, prohibition of alienation and encumbrance)

The third part contains the existing encumbrances and third-party rights related to the property. It is always essential to check the registered encumbrances / third party rights before any transaction.

3.2 Ranking

The most important principle of the Land Registry is the principle of ranking, meaning that the Land Registry (with only a very few exceptions) will proceed with the pending requests according to the order of their submission, and will not deal with any submission until all previous pending requests have been completed.

3.3 Procedural deadline

The general procedural deadline for the Land Registry to proceed with any request is 60 days. An urgent procedure may also be requested, subject to the payment of a separate fee, in practice this can shorten the procedure to approximately 12-15 days. Pending requests appear on the title deed as a marginal note (széljegy).

4. The sale and purchase agreement

The sale and purchase agreement of a real estate has certain, strict, formal and content requirements that must be met in order to be suitable for registering the transfer of ownership in the Land Registry.

4.1 Formal requirements

The most important formal requirements for the transfer documentation of any real estate are the following:

a) the agreement must be concluded in writing;

b) it must be prepared and countersigned by a Hungarian attorney-at-law or public notary;

c) in case of a multiple-page document, all pages must be signed by the contracting parties and the countersigner.

4.2 **Compulsory elements**

The Hungarian law prescribes several elements that must be included in the property sale and purchase agreement. Some notable elements are:

a) detailed definition of the property (including property classification);

b) certain scope of data of the contracting parties (among others, birth name, place and date of birth, address, mother's family name, tax identification number, or registered seat, registration number, statistical number, tax identification number in case of legal persons, as well as the name of the entity or authority with which the legal person is registered);

c) the exact legal title of the transfer (e.g. sale and purchase);

d) unconditional and irrevocable statement of the registered owner on consenting to the transfer of the title ("*registration consent*") (which statement may also be made later separately, especially if the payment of the purchase price is made in instalments);

e) regulations on the handing over of (i) an energy certificate (a document issued by an authorized expert that includes information about the energy efficiency of the property) and (ii) electrical safety inspection, which are generally handed over by the seller to the buyer at contract signing or at the hand-over of the property at the latest.

4.3 Typical further elements of an agreement

Although the inclusion of the below elements is not legally required, according to market practice the parties apply them frequently.

a) Payment of the purchase price in more instalments

In case the purchase price is paid in more instalments, there is typically one common scenario regarding the transfer of title following the introduction of the new Land Registry Act.

Novum is the registration of a buyer's right related to retention of title. Under the new Land Registry Act (effective from 15 January 2025), this right replaces the former suspension procedure. When such a right is registered, the buyer lawfully secures a claim to acquire ownership, while the seller retains title until the full purchase price is paid or other conditions are met. This right may be established for an indefinite period or a maximum fixed period of up to 5 years. For the first six months following registration, it offers full protection to the buyer, preventing other registrations (such as enforcement, sale, or encumbrance) from taking priority. After the first 6-month period, the protection becomes partial: the buyer's right is recorded and basically functions as a prohibition on alienation and encumbrance, meaning that any such act requires the buyer's prior written consent. The land registry deletes the buyer's right ex officio when the buyer's ownership right is registered,

or its term expires or after 5 years, whichever occurs earlier. This option provides strong legal protection for the buyer throughout the payment period, especially in deferred payment or instalment transaction.

b) Earnest money

A typical real estate transaction is sealed with the payment of earnest money, a special form of advance payment, with a typical sum of 10% of the purchase price. If the transaction is completed, the earnest money will be deemed as an advance payment. If the transaction is not completed, the party responsible forfeits the amount of the earnest money. If the seller is responsible for the failure to complete the transaction, it must pay the buyer an amount equal to twice the earnest money. It is common practice to place the earnest money or purchase price instalments in lawyer's escrow until completion. Lawyer's escrow is a highly secure and strictly regulated mechanism under Hungarian law, ensuring that the funds are released only when the contractual conditions are met. The escrow agreement clearly sets out the release terms, providing both parties with legal and financial protection.

c) Transfer of possession

Designating the date of transferring the possession is important, as normally the buyer takes over the burdens, the risk of damages, and all other relating liability for the property from the date of the possession transfer. The transfer of possession typically follows the payment of the full purchase price.

5. Transfer of ownership

As a general rule, the ownership is transferred with the registration into the Land Registry, but with retroactive effect to the date when the request for registration has been submitted.

6. Usual fees and costs

6.1 Transfer duty

In the case of the acquisition of a real estate, a transfer duty must be paid by the buyer. The rate of the duty is 4% of the value of the real estate up to the value of 1 billion HUF, and 2% of the exceeding part of the value (but maximum 200 million HUF per property).

In certain cases, the buyer can be entitled to a duty exemption or discounted duty. The most typical cases of duty exemption and discounts are the following:

- transfer between affiliated companies (no duty is payable);
- buying a building site if the buyer develops a residential building thereon within 4 years after the purchase (no duty is payable);
- buying/selling between close relatives or spouses (no duty is payable);
- acquisition by real estate funds (the duty is 2% of the value instead of 4%).
- pursuant to new legislation, as of July 20, 2025, in the future the portion of the market value of a plot of land that corresponds to the market value of a solar power

plant or wind power plant structure will be exempt from transfer duty. In other words, the value of such built facility itself would not be included in the tax base; only the value of the underlying land would be taxed.

6.2 Procedural costs

For making any entry or registration in the Land Registry, a procedural fee is to be paid, which is normally borne by the buyer.

6.3 Legal fees

If both parties are represented by their own legal advisors, usually both parties bear their own advisor's fees. Since in case of the sale of a real estate, legal representation before the Land Registry is mandatory (meaning that it should be a lawyer who submits the documents to the Land Registry), in most cases it is the buyer's lawyer who proceeds in that respect.

7. Our firm

Jalsovszky is a commercial law leading independent firm with unrivalled expertise and experience in mergers and acquisitions, private equity funding, tax, and a sound presence in banking & finance and property law. We are international in our quality, perspective and understanding; independent in the personal nature of our professional services; and local in the sense that we understand how things work locally, and we use that to our clients' advantage.

We are a young, but experienced and innovative team of lawyers, combining international standards of ethics with practical local experience, with a clear focus on identifying potential issues and providing real-world solutions. We work with leading companies and investors, both domestic and regional, across a range of sectors, helping each of them to manage legal, regulatory and tax risk, thus allowing them to optimise their business performance.

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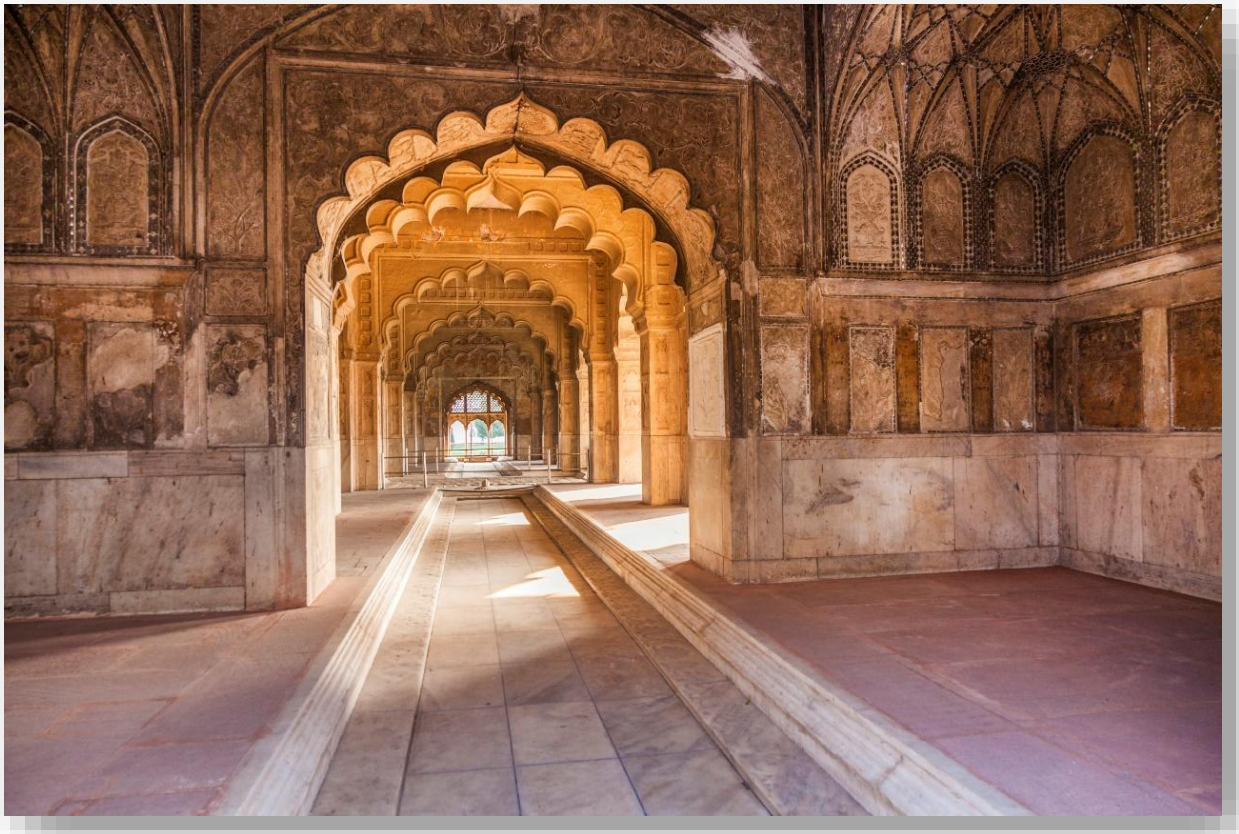

AHLAWAT & ASSOCIATES ADVOCATES

Buying and Selling Real Estate in India

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER INDIAN LAW

INVESTMENT AND CONVEYANCE OF REAL ESTATE IN INDIA

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This chapter offers an overview with respect to investment in and conveyancing of real estate in India. The contents of this chapter are not intended to create and do not constitute, an attorney-client relationship, or its equivalent in the requisite jurisdiction.

This chapter describes the law and procedure in force in India at the date of preparation of this chapter and the contents, statutes, regulations, and/or rules are subject to amendments and alterations in due course. The author hereby does not assume any duty to update the contents of this guide.

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1. INTRODUCTION TO REAL ESTATE IN INDIA

Since the liberalization of Indian economy, the real estate sector has been gradually growing and adopting to technologies that improve the market access, efficiency, quality, and consumer experience. In the last fifteen years, post liberalization of the economy, Indian real estate business has taken an upturn and is expected to grow multifold in the next decade.

The developments in real estate sector have been influenced by the all-around developments in the retail, hospitality, entertainment, education, and information technology sectors. Major factors contributing to this development are favorable demographics, increased purchasing power, existence of customer-friendly banks and housing finance companies and favorable reforms initiated by the government to attract global investors. Further, increase in the business opportunities and migration of the labor forces acting as a fuel has increased the demand for commercial and residential space.

The real estate sector in India is being recognized as a developing sector that is driving the economic growth engine of the country. At present, there are various developments and elevations which are taking place in the real estate sector, on the basis of which Non-Resident Indians and Person of Indian Origin (PIO) have been permitted to own immovable property in India. On the basis of the past and future expected transformation of India, the real estate sector is being looked at as a unique market to invest for a long term with high possible rate of return.

2. LEGISLATIONS GOVERNING REAL ESTATE

Despite there being plethora of laws governing the real estate sector in India, most of the enactments are quite old and major amendments to existing laws are required to make them relevant to modern day requirements and transformations in the ever-changing dynamic sector. The Central laws governing real estate include:

2.1. Transfer of Property Act, 1882 ("TPA")

The TPA is a central legislation regulating the transfer of property particularly immovable in nature and enumerates the general principles of realty, like part-performance. TPA specifies provisions for dealing in property through sale, exchange, mortgage, lease, lien and gift. A person acquiring immovable property or any share/interest in it is presumed to have notice of the title of any other person who was in actual possession of such property.

2.2. The Indian Contract Act, 1872

This legislation is the primary enactment governing essentials of a contract including parameters to ascertain capacity of an individual to contract. A contract pertaining to realty can be entered into, among others, by an individual (who is not a minor or of unsound mind, as per the Indian laws), partners of a firm, a corporate legal entity, a trust, a sole corporation, the manager of an undivided family, and a foreigner, however, all the essential requirements of a valid contract, i.e., consideration, intention to contract and validity under the law of the land must be satisfied.

2.3. The Registration Act, 1908

The Act was enacted to ensure conservation of evidence, assurances, title, publication of documents and prevention of fraud. It details the formalities for registering an instrument and specifically enumerates the instruments which are mandatorily required to be registered. An unregistered document, effectuating transfer, will not affect the property comprised in it, nor such unregistered document be received as evidence of any transaction affecting such property (except as evidence of a contract in a suit for specific performance or as evidence of part-performance under TPA or as collateral), unless the document/instrument has been duly registered.

2.4. The Indian Stamp Act, 1899

The Stamp Act is a fiscal enactment on the basis of which stamp duties are levied on transactions and the instrument effectuating the transaction, and the same is directly linked to the aforementioned Registration Act. The stamp duty is required to be paid on all instruments which are registered, and the rate varies from state to state. Some states even have double stamp incidence, primarily on

immovable property and then on the development thereupon.

2.5. The Real Estate (Regulation and Development) Act, 2016

The Central Government, through the Ministry of Housing and Urban Poverty Alleviation, has enacted the Act. It is an enactment to establish the Real Estate Regularity Authority for the regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, or a real estate sector project in an efficient and transparent manner and to protect the interests of the consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority.

2.6. The Bharatiya Sakshya Adhiniyam, 2023

Under the Act, in the event status of any person as the owner of a piece of immovable property is questioned, of which such person is shown to be in possession of, the burden of proof clarifying that such person is not the owner lies on the person who asserts that person in possession of immovable property is not the owner.

3. CATEGORIZATION OF REAL ESTATE

3.1. On the basis of ownership

3.1.1. *Freehold Property*

Refers to an estate which is free from the hold of any entity, besides the owner. In its true essence the owner alone enjoys the complete ownership and can utilize the estate for any purpose (renovate or transfer or lease) in accordance with the local regulations. In its strict interpretation, sale of such estate will not require any prior legal or government consent and thus has less paperwork attached. For such reasons, a freehold asset is more expensive when compared to a leasehold asset.

3.1.2. *Leasehold Property*

Refers to an estate which has been leased to a person for a certain number of years but the estate at all times remains under the ownership of the state. Utilization of the Leasehold estates if affixed to the purpose for which it was obtained. Since the person is possession of such estate is not the owner and property is not freehold, transfer of such estate requires prior state consent (obtained at the land office).

3.2. On the basis of land use

3.2.1. *Residential*

Such land is utilized exclusively or intended to be used for family dwelling or associated uses for residential purposes. Zoning for residential use may permit some services or work opportunities or may totally exclude business and industry. It may permit high density land use or only permit low density uses.

3.2.2. *Commercial*

Such land is utilized for development of such structures or office buildings, medical centers, hotels, malls, retail stores, warehouses, garages etc.

3.2.3. *Mixed Use*

Refers to the provision for undertaking non-residential activity in residential premises/land. Such land allows access to commercial activities in the proximity of the residences and reduces the need for commuting across zones in the city. However, at the same time, it needs to be regulated in order to manage and mitigate the associated adverse impact related to congestion, increased traffic and increased pressure on civic amenities.

3.2.4. *Industrial*

Such land is typically a premise for undertaking industrial activity with non-hazardous, non-polluting performance and may include a group of small industrial units with common services and facilities of non-polluting nature.

4. PURCHASE OF IMMOVABLE PROPERTY

In the earlier constitutional regime, the right to property was guaranteed by the Constitution of India as a fundamental right. However, later vide 44th constitutional amendment, the right to property was moved from being a fundamental right to being a constitutional right under article 300A. The said article of the Constitution of India embodies the doctrine of eminent domain which specifies that the Government of India has the right to acquire immovable property of person in India in public interest.

A foreign national of non-Indian origin resident outside India cannot buy any immovable property in India. At present, apart from Indian non-residents as specified below, no person who is resident outside India can acquire any immovable property in India.

- Citizen of India residing outside; and
- Person of Indian origin residing outside.

The aforementioned persons are permitted to acquire immovable property in India, however, cannot acquire agricultural property, plantation property or a farmhouse, provided that the payment for purchase of the same has been made out of:

- Funds received in India through normal banking channel by way of inward remittance from any place outside India;
- Funds held in any non-resident account maintained in India in accordance with the foreign exchange regulations.

5. PRE-REQUISITES TO PURCHASE OF IMMOVABLE PROPERTY

5.1. Verification of title and ownership of Seller:

Buyer should conduct due diligence over the immovable property to ascertain the existence of the title with the seller, the nature of the title and its marketability and the ability of the seller to convey a clear and marketable title free from any kind of encumbrance over the immovable property.

5.2. Verification of identity and authority of Seller

Similar to verification of title to the property, the purchaser must ascertain the identity of the seller and any specific conditions, governing the ability of the seller to convey the immovable property.

5.3. Conversion and land use permission

With increasing urbanisation and merging revenue lands with urban conglomerates,

and restriction on purchase of agricultural property by non-agriculturists, conversion of property for non-agricultural usage has assumed crucial significance. In the event that actual use of land is different from the notified zoning, it is mandatory to obtain orders from the Town Planning Authority permitting change of land use.

5.4. Encumbrances search

Inspection of registers and records at the jurisdictional sub-registrar of assurances, where documents pertaining to immovable property are registered and information available on the official web portal of the Ministry of Corporate Affairs, in case of the seller being a corporate entity, must be conducted as the same will reveal information of any registered encumbrance on the property.

5.5. Physical inspection of the immovable property

It is recommended that the purchaser must undertake a physical inspection and confirm the extent and measurement of the immovable property intended to be purchased. In case of a vacant land, it is recommended to identify and demarcate the boundaries and access to the property and further, ascertain any other physical attributes that may impede enjoyment of the property.

6. MODES OF CONVEYANCING IMMOVABLE PROPERTY

Conveyancing is the legal process for transfer of ownership of property from a seller to the buyer and this term is used in both buying and selling of immovable property. Amongst various modes of conveyancing, the most commonly used means of transferring a property in India are:

6.1. Sale

Sale is a transfer of ownership in exchange for a price paid or promised or part paid, and part promised. It is pertinent to mention that as per the TPA immovable property does not include standing timber, growing crops or grass.

6.2. Gift

A gift can be movable or immovable property that is transferable and tangible. As gifting is a voluntary action, the instrument evidencing gift must mention that the instrument has been made voluntarily and out of the donor's own choice without any force or coercion. The deed should also declare that the donor, i.e., person who is gifting, is solvent (not bankrupt) and that the gift is being made without any consideration. However, there are certain aspects that need to be kept in mind while making gift – (i) as minor is not capable of entering into a valid contract, so the minor cannot make a valid gift deed; (ii) a gift once made cannot be revoked; (iii) gifts made to relatives defined by the Income Tax Act, 1961 are exempt from tax in the hands of the donee.

6.3. Lease

Section 105 of the TPA states that a lease of immovable property is a transfer of a right to such property, for a certain time in consideration of the price paid or promised or any other thing of value, to be rendered periodically on specific occasions to the transferor by the transferee, who accepts the transfer on such terms. In simple terms, a lease is a contract that outlines the terms under which one party agrees to rent property owned by another party. It guarantees the transferor, tenant, use of an asset and guarantees the

transferor, the property owned or landlord, regular payments from the transferor for a specific number of months or years.

6.4. Inheritance or Will

After the death of a person, his property devolves in two ways - according to his Will i.e., testamentary, or according to the respective laws of succession, when no Will is made. In case an individual dies intestate (no Will is made), the laws of succession come into play. The law of succession defines the rules of devolution of property in case a person dies without making a Will. These rules provide for a category of persons and percentage of property that will devolve on each of such persons.

Under the Indian Succession Act, 1925, a Will is a legal declaration of the intention of the testator, with respect to his property which he desires to be carried into effect after his death, however certain formalities must be complied with in order to make a valid Will. It must be signed and attested, as required by law. A Will is primarily intended to dispose of property in the manner the Testator desires.

7. REGISTRATION AND MUTATION OF LAND RECORDS

The registration of a property involves adequate stamping and paying the registration charges for a sales deed and having it legally recorded at the sub-registrar's office. If the property is purchased from a developer, registering the property amounts of an act of legal conveyance. If it is the second or third transaction for the property, it could involve a duly stamped and registered transfer deed.

The second step after registering a property is Mutation of land records with respect to the same. Mutation refers to the change of title ownership from one person to another when the property is sold or transferred. By mutating a property, the new owner gets the property recorded on his name in the land revenue department and the government is able to charge property tax from the rightful owner. The documentation procedure and the fee payable vary from state to state. In case of ownership related to land, mutation is considered a vital document.

8. REAL ESTATE INVESTMENT TRUST

A Real Estate Investment Trust ("**REIT**") is a company which develops and own 'income producing' real estate properties. The initial public offering of India's first REIT was launched on 18th March 2019. The shares of Indian REIT started trading from 01st April 2019 in Bombay Stock Exchange. REITs are registered with the Securities and Exchange Board of India ("**SEBI"**) under the SEBI (REITs) Regulations, 2014 (the "**REIT Regulations**") as amended from time to time. The REIT Regulations, inter alia, set out the registration requirements, procedure of registration, and eligibility requirements of REITs. It is mandatory for units of all REITs to be listed on a recognised stock exchange having nationwide trading terminals, whether publicly issued or privately placed.

REITs are companies that own or finance income-producing real estate in a range of property sectors. REITs provide investors the chance to own valuable real estate, present the opportunity to access dividend-based income and total returns, and help communities grow, thrive, and revitalise. REITs allow anyone to invest in portfolios of real estate assets the same way they invest in other industries – through the purchase of

individual company stock or a mutual fund or exchange traded fund. The stockholders of a REIT earn a share of the income produced through real estate investment – without actually having to go out and buy, manage or finance property.

REITS may invest either directly or through a Special Purpose Vehicle ("**SPV"**). Where the investment is through a SPV, it is required to hold controlling interest and not less than 50% equity in such SPV. Also, the SPV in turn is required to hold 80% equity in the REIT assets.

Foreign investments have now been permitted in REITs after a circular notification by Reserve Bank of India. The Reserve Bank of India clarified that downstream investment by REITs will be regarded as foreign investment if either the sponsor or the manager is not Indian 'owned and controlled' as detailed in Regulation 14 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017.

9. FOREIGN DIRECT INVESTMENT IN REAL ESTATE SECTOR

Foreign Direct Investment in India is governed in accordance with the FDI policy and norms as laid out and amended from time to time by the Government of India. Furthermore, FDI in India is also governed by the master circular on foreign investments issued by the Reserve Bank of India and Foreign Exchange Management (Transfer or Issue of security by any person residing outside India) Regulations, 2017 (TISPRO). The 'Consolidated FDI Policy Circular' is issued annually by the Department of Industrial Policy and Promotion (DIPP) of the Ministry of Commerce and Industry which elaborates the policies and processes with respect to FDI in India.

At present, 100% FDI under automatic route is allowed for construction development projects including but not limited to development of townships, roads or bridges, hotels, resorts, hospitals etc. However, it is important to note that FDI is not permitted in an entity which is engaged in Real Estate activities or construction of farmhouses. However, it has been clarified that the Real estate business shall not include the development of townships, construction of residential/ commercial premises, roads or bridges and Real Estate Investment Trusts REITs registered and regulated under the SEBI (REITs) Regulations, 2014.

The present FDI policy also stipulates that each phase of the construction development project would be considered as a separate project. Further, the investor will be permitted to exit on completion of the project or after development of trunk infrastructure i.e., roads, water supply, street lighting, drainage, and sewerage. However, a foreign investor can exit and repatriate foreign investment before the completion of project under automatic route, provided that a lock-in period of 3 years has been completed.

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INTERNATIONAL LAWYERS NETWORK

EXP LEGAL – ITALIAN AND INTERNATIONAL LAW FIRM

BUYING AND SELLING REAL ESTATE IN ITALY

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER ITALIAN LAW

I. INTRODUCTION

This brief guide has the goal to provide legal explanation on the main aspects of the real estate transactions in Italy.

II. REAL ESTATE TRANSACTIONS ACCORDING TO ITALIAN LAW

Land

There are different types of land that can be purchased, such as agricultural or building lands. Although these are always and, in any case, real estate sales, rules and taxation may vary according to the classification of the land.

For agricultural lands, it is possible to build under certain conditions; the agricultural land can be transformed into building land at the discretion of the Municipality.

Residential properties

The most common forms of residential property purchase and sale concerns independent units or property inside a condominium.

Residential properties are known to be a low risk and medium yield investment option. It is possible to buy property to refurbish and sell, or to rent.

Commercial properties

The purchase of a commercial property essentially recalls what has been indicated above for residential properties, although obviously not for residential use.

Commercial properties are a medium to high yield investment option and are associated with longer leases (6 + 6-year period or 9 + 9-year period).

III. METHODS OF SALE AND PURCHASE

III A) Private sale

Real estate may be sold and purchased through a sales agent or by private sale directly between a seller and a purchaser.

1. Assistance of a Real Estate Agent

REAs are usually appointed for the research of a residential and commercial property in Italy.

REAs charge a commission that usually varies from 3% to 6% of the purchase price.

REAs accompany to visit/s the real estate and provide the preliminary basic information, including legal information and the main conditions established by the seller to complete the sale. If the real estate meets the is requested to sign a binding unilateral offer to purchase. This is usually a form produced by offer to buy the real estate for the price requested by the seller. In the majority of cases the Unilateral Offer is issued together of a bank check representing a percentage of the sale price, that will be utilized as part of the payment of the purchase price. The bank check, depending on the case, may be cashed by the seller when accepting the Unilateral Offer or in one of the following steps of the deal. It is important to underline that the Unilateral Offer is binding for the purchaser only, until the seller declares in writing to accept it. One of the most delicate issues relating to the Unilateral Offer is that the standard form utilized by the REAs are not usually accurate legal documents and often miss relevant element of the sale i.e.

existence of mortgages or other burdens and encumbrances; condominium debts; regularity of the construction from the applicable real estate construction laws; litigation on the ownership of the real estate etc. Thus, the Unilateral Offer should be properly examined to avoid that it is not enough protective for the purchaser and is enforceable also in case one or more of the previously mentioned problems is disclosed after the Unilateral Offer is accepted (or to be granted that if this happens the deposit will be returned to the purchaser).

2. Preliminary Agreement

The preliminary agreement is the key step for the purchase of real estate, and it is a contract utilized when the REAs assistance is present too.

The preliminary agreement is drafted after the seller delivers to the purchaser all the documentation and information pertaining to the real estate, such as the title of property, mortgages and

account reports when appropriate, compliance with construction laws and regulations, existence of proper concessions and authorizations for possible refurbishment, compulsory energy certification, and other details delineated on a case-by-case basis.

The supply of the above-mentioned documentation and information allows the purchaser to conduct a due diligence whose results will be the basis for the drafting of the final deed of sale or for the execution of the pre-closing activities that may be necessary to legally transfer the property of the real estate to the purchaser without limitation or conditions (cancellation of mortgages, payment of condominium arrears, regularization of construction irregularities etc.).

At the time of the signature of the preliminary agreement, the purchaser makes a down payment that constitutes an anticipation of the purchase price, that varies depending on the conditions of sale and is usually between 20% and 40% of the price.

The down payment (so called has also the function of a guarantee, on behalf of both parties, for the execution of the final deed of sale.

With the preliminary agreement, the parties will also agree on the timeframe for the execution of the final deed of sale.

In some cases, it is worthwhile to register the preliminary agreement in the Real Estate Public Register to avoid that, pending the term for the execution of the final deed of sale the seller, breaching the preliminary agreement, selling the same real estate to a different purchaser or that estate with mortgages or seizures.

Since the moment of the registration, the real estate remains fully available for the purchaser and is not available for any third person right or demand.

The registration of the preliminary agreement is advisable, for example is particularly high, or the term for the final deed of sale is far away, or lack of trust on bankruptcy.

3. Notarial Deed of Sale

The role of the Notary in the real estate transactions is compulsory since a legally and fully valid deed of sale is enforceable toward the seller, and any third party must be executed by a public Notary.

On the other hand, the Notary has also a role of guaranteeing the regularity of the transfer of ownership.

The Notary must verify the respect of all the compulsory provisions that regulate the legal transfer of real estate and the details of the sale.

In order to validly stipulate the final deed of sale, under penalty of nullity of the deed itself

- in the case of land: the seller shall produce the certificate of urban use certificato di destinazione

- in case of properties: the deed must include the details of the license or building permits/concessions according to the age of construction; for works executed prior to September 1, 1967, the seller may render a declaration about the date of construction without need to report the details of license/concession/permit.

It is also necessary that the conformity with urban-cadastral planning of the properties be documented or declared.

The Notary is also in charge for:

- drafting the final deed of sale, based on the preliminary agreement;
- confirming in the deed of sale that the payment has been duly completed and the contract therefore constitutes an acknowledgment and evidence of the payment;
- registration of the deed and assessment and payment of stamp duties;
- registration of the transfer of the ownership on the name of the purchaser with the Real Estate Registry and with the Real Estate Land Registry.

These two last formalities conclude the process of ownership transfer.

After the mentioned formalities are completed, the purchaser has in his/her hands the document that testifies the title of property and if all the steps are duly completed has all the rights for future disposal of the real estate.

Although the role of the Notary is neutral with respect to both the parties, it is usual that the Notary is appointed and paid by the purchaser.

4. Tax duties

The notary is also empowered to collect those amounts that are due from the purchaser under the tax system.

In this regard, it is extremely important to point out that some tax benefits apply to the purchase of the so-called “first house”, that is, if some requirements are met, the first immovable property ever purchased or gained by that specific acquiring party, who is required to reside or work in the municipality where the immovable property is located.

When the “first house” benefits apply, the public deed is subject to the following tax duties:

- If the seller is an individual or a company whose sales are exempt from VAT:
  - Registration fee: 2% of the final purchase price;
  - Mortgage tax: fixed amount of € 50,00;

- Cadastral tax: fixed amount of € 50,00.

- If the seller is a company whose sales are subject to VAT, the latter is reduced to 4% and all the other taxes listed above are due in the fixed amount of € 200,00.

- On the other hand, when the "first house benefits do not apply, the tax duties are estimated as follows:

- If the seller is an individual or a company whose sales are exempt from VAT:

  - Registration fee: 9% of the final purchase price;

  - Mortgage tax: fixed amount of € 50,00;

  - Cadastral tax: fixed amount of € 50,00.

- If the seller is a company whose sales are subject to VAT, the latter is in the amount of 10% (or 22% in case of high-quality dwellings, villas and historical-artistic buildings), and all the other taxes listed above are due in the fixed amount of € 200,00.

III B) Auction

An important segment of the real estate market is made up of auction sales, resulting from real estate foreclosures.

The methods for participating to an auction for the purchase of real estate are as follows:

1. **Consultation of portals / publications**

   It is possible to consult the internet portals connected to the Courts, with reference to the place of interest, on which the announcements relating to the auction sales of the foreclosed properties in the various executive procedures are published; or, alternatively, printed publications, available free of charge at the Courts or available for purchase at kiosks.

2. **Report consultation**

   Once the asset of interest has been identified, it is advisable to read the report drawn up by the consultant appointed by the judge, to assess the condition of the real estate.

3. **Judge's ruling**

   Of extreme importance is the examination of the sale order issued by the Judge, which contains the conditions for the offer, including i) the amount of the deposit to be paid, which shall not exceed one tenth of the target price and the term within which to pay it, ii) the minimum amount of the increase to be made to the offers, iii) the term, not exceeding sixty days from the award, within which the price shall be deposited and the methods of deposit, iv) the date and place where the auction will be held. Everyone, except the debtor, can submit an offer for the purchase of foreclosed real estate, personally or by means of a solicitor, in the registry of the property enforcement section of the competent Court.

   The offer must be filed in a sealed envelope, on the outside of which is noted, after identification, of the person who materially provides for the deposit, by the receiving registrar, the name of the execution judge or the delegated professional and the date of the hearing fixed for the examination of the offers.

4. **Opening the envelopes**

   If the sale takes place by auction at the hearing set in the sales order, the judge's

delegate will open the envelopes, or the envelope in the case of a single offer.

In the latter case, if the offer is equal to or higher than the value of the property established in the order of sale, the same is certainly accepted; if, on the other hand, the price offered is lower than the price established in the sales order by no more than a quarter, the judge may proceed with the sale when he/she considers that there is no serious.

If there are more bids, the delegate invites the bidders to bid on the highest offer, with the possibility of a raise; the asset, therefore, will be awarded to whoever has made the highest offer, also considering other elements, such as the deposits given, forms, methods, and times of payment.

5. Conclusion of the auction

The successful bidder shall pay the balance of the price within the term and in the manner set by the order of the Judge that orders the sale and deliver the document proving the payment to the registry; only following this payment the Judge issues the decree of transfer of the estate that completes the transfer of ownership and that is registered in the competent registers.

IV. OTHER MAIN METHOD OF ACQUIRING PROPERTY

Gift

This is a typical act of gift which involves an increase in the assets of the donee (the one who receives the gift) with a corresponding patrimonial sacrifice of the donor (the one who transfers the asset).

The law requires for the donor the "full capacity to dispose of his/her assets". For the donee, by way of derogation from the general discipline on legal capacity, and similarly to the provisions for the will, the law states that the gift can also be made on behalf of the unborn, even if not yet conceived.

The law also allows legal entities to gift if this capacity is recognized by their statutes or articles of association, and to receive them.

The gift is a personal act that does not allow, therefore, representation, except for the possibility, for the donor alone, to release a special power of attorney through which to give a third party the task of designating the donee from a category of subjects (natural or legal persons) or things indicated by the same.

Mortis causa succession

The real estate can be acquired by succession.

Succession may be regulated by the will or, in the absence of the same, directly by law

testamentaria.

The phases that mark the succession are three:

1. the first coincides with the opening of the succession, which is the first phase immediately following the death of the person. The succession opens at the time of death, in the place of the last domicile of the deceased.
2. the second consists in the so-called denunciation of the inheritance, i.e., determining who owns the assets and to what extent, and whether on the basis of a will or according to law.
3. the third consists in the acceptance of the inheritance and the consequent attribution of assets to the heir/heirs. It must be highlighted that the Italian civil

law provides a legal tool that can be used by the heirs to protect themselves from inherited debts, that is the acceptance of the inheritance "with the benefit of inventory", which results in a separation between the heir's assets and the deceased's, by virtue of which the latter's creditors will not be allowed to satisfy their claims on the heir's assets.

The usucapion is an original way of acquiring the ownership of real estates through the continuous, uninterrupted and uncontested possession for a certain period of time.

The ordinary term of usucaption requires 20 years to elapse, while the abbreviated one requires 10 years to elapse and occurs when possession of the real estate was purchased in good faith "by virtue of a title that is suitable for transferring ownership and that it has been duly transcribed".

For the small rural property, the abbreviated term of usucaption is further reduced to 5 years from the date of the transcription of the title.

The purchase by usucaption of the property requires a judicial assessment, having the purchaser provide rigorous proof of continuous, uninterrupted and unobjected possession for the period required by law.

V. FORMS OF OWNERSHIP

The forms of ownership vary according to the needs of the interested person depending by a number of elements, such as taxation issues, estate planning, costs.

The most common structures of ownership are single ownership, co-ownership, companies, trust. It is also possible to buy an interest in a property by buying shares or units in the ownership structure.

Single ownership

Single ownership is the simplest and least expensive option in which the owner has sole control of the real estate. The main disadvantage with individual ownership is that it does not offer any asset protection, right to claim against the personal assets of the owner, including the real estate.

Co-ownership

Co-ownership may be of a different type: i) joint ownership by two or more persons holding undivided quota over the real estate such as ownership by spouses, ii) co-ownership by two or more persons holding specific quota of the real estate.

In a usual real estate community, each participant can transfer his/her quota or his/her right when he/she wants, to whoever he/she wants, at the price deemed more convenient, without having to respect any right of first refusal of the other co-owners.

The pre-emption right provided for by the Italian civil code is specifically foreseen for inheritances (i.e., succession retract), according to which the co-heir who wants to sell his/her quota must notify the proposed sale to the other co-heirs having the pre-emption right.

The pre-emption right only applies to onerous assignments and, therefore, it does not apply to cases of gift of the quota to unrelated third party; also, it does not apply if the sale is made to a co-heir, but only if it is sold to an unrelated third party.

Companies

Real estate may be acquired through a company structure. The most used legal forms are limited liability companies.

Residential property is typically owned by individuals, while owners of commercial property are most frequently legal entities under either private or public law.

Trust property *(negozio fiduciario)*

Trust is a *"sui generis"* hypothesis of ownership, in which the beneficiary (that can be individuals, trusts or companies) transfers to the trustee the ownership of the real estate that shall be managed in the interest of the beneficiary and under the indications of the latter.

The trustee, by virtue of the so-called pactum fiduciae is required to re-transfer the property to the beneficiary, either at his request or at the expiry of the agreed term.

It is essential to highlight that, unlike the trust legal framework provided in Common law systems, in case of a breach of the pactum fiduciae by the trustee, it is not granted by the Italian law to the beneficiary any tool to resume the property. Consequently, the only remedy available to the beneficiary would be a compensation for damages claim.

Indeed, the pactum fiduciae entails a full transfer of ownership to the trustee, who is bound only by the management of the real estate in the interests of the beneficiary. This also means that the immovable property is exposed to the risk of being subject to the claims of trustee's creditors.

The trust is created by a document called trust deed.

VI. TYPES OF *IN REM* RIGHTS IMPACTING ON OWNERSHIP

Ownership over the property is the principal and main real right that allows the widest powers.

According to article 832 of the Italian Civil Code the ownership is "the right to enjoy and dispose of things fully and exclusively, within the limits and in the ways provided by the law".

The referred limits include the other real rights, so-called minor in rem rights.

They are:

1. real rights of enjoyment: emphyteusis, surface rights, usufruct, real right of use, real right of residence, easements (or predial easements);
2. real warranty rights: pledge and mortgage.

Minor *in rem* rights are constituted and remain linked to the real estate, regardless of the change of the ownership of the estate itself (i.e., right of sequela).

Minor *in rem* rights are enforceable against purchasers of the real estate subject to the transcription in the Real Estate Registry.

Minor *in rem* rights not transcribed are opposable to the purchasers if mentioned in the deed of sale of the real estate, as in this case the real estate is transferred encumbered by the minor in rem right.

Differently from the right of ownership, which is not subject to statute of limitation period and is protected by specific actions (rei vindicatio action, actio negatoria servitutis), minor in rem right expire due to non-use for the 20-year period.

VII. PRINCIPLE OF MUTUALITY

Pursuant to article 16 of the Preliminary Provisions to the Italian Civil Code, the principle of mutuality configures the necessary condition for admitting foreigners to the enjoyment of the civil rights granted to Italian citizens by the national law,

including the right to purchase property in Italy.

From a subjective point of view, this rule does not apply in case of:

- citizens of EU Member States, as well as citizens of EEA countries;
- non-EU citizens residing on Italian territory and holding a residence card or a regular residence permit issued for reasons of employment, self-employment, running a sole proprietorship, family reasons, humanitarian reasons and study reasons;
- stateless persons who have been residing in Italy for at least 3 years;
- refugees who have been residing in Italy for at least 3 years.

At the same time, with specific regard to real estate investments made by foreign investors within the Italian territory, it is recognized an exemption to the verification of the mutuality condition for those nationals of the countries with which Italy has concluded Bilateral Investment Treaties (BITs).

Indeed, the specific provisions provided by the BITs are considered as a “lex specialis” which replaces the general rule stated by article 16.

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INTERNATIONAL LAWYERS NETWORK

C. MPUTHIA ADVOCATES

Buying and Selling Real Estate in Kenya

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER KENYAN LAW

I. STANDARD FORMS OF AGREEMENTS

A. The transaction usually begins with a letter of offer from the seller setting out the purchase price, completion period, description and details of the property and any other salient terms of the intended purchase. The purchaser is given a time within which he may or may not accept the offer. Issuance of letters of offer is not mandatory; however, if the letter of offer and acceptance are made, it may be deemed to be a contract.

B. Most parties prefer to enter into a formally binding sale agreement. In Kenya, any transaction for the sale of land must be in writing as provided under Section 3(3) of the Law of Contract Act. A registered Advocate must also witness contracts for the sale of land.

C. There are many forms of sale agreements, and parties are free to choose the terms of sale. Section 38 of the Land Act provides that no suit can be brought in a breach of contract case unless the agreement is in writing.

D. The Law Society of Kenya provides a model sale agreement and the Law Society of Kenya Conditions of Sale 2015. Most agreements adopt this format except where any clause is specifically omitted/exempted in the agreement between the parties. II.

BROKERS

A. Each party is free to appoint a broker to act on its behalf in the transaction. Broker fees are paid as per the commission/agency agreement between the appointing party and the broker.

B. Real estate agents are licensed under the Estate Agents Act. Fees are guided by Legal Notice 198 of 2012 or by agreement between the parties.

C. The relationship between the parties is governed by a separate agency agreement between the parties. Agreement should conform to the Consumer Protection Act insofar as full disclosure and representations are concerned.

II. BUYER'S INSPECTIONS

A. Due diligence on seller: - for individuals' verification on identification numbers and tax numbers, for registered bodies, undertake a search of the business and company to verify ownership and company status.

B. Due diligence on title deed: - land verification search to ascertain ownership and presence of any encumbrances and other overriding interests on the land, such as long-term leases, mortgages, easements and cautions. The due diligence is also to ascertain the permitted use of the land as residential, commercial, industrial or other use. Search done on Ardhi Sasa Online Platform. (www.ardhisasa.lands.go.ke)

C. Due diligence on other documentation: - Verification of regulatory approvals and compliance checks. Verification of building permits, architectural plans, survey maps and other documents

D. Physical due diligence: - Buyer physically inspects the property by viewing beacons and land boundaries. If the buyer is purchasing a building, then they

physically inspect the building. If the buyer is buying a building off-plan, then they will inspect the showhouse to ascertain standards. Most contracts of sale are sold on an "as is basis, therefore necessitating physical inspection.

III. FORMS OF CONVEYANCE IN KENYA

A. LAND RIGHTS IN KENYA

1. Land in Kenya is classified as either public, community or private land under Article 61 (2) of the Constitution.
2. Public land includes all land held by state agencies, county and national government and contains minerals, forests, roads and water bodies. Public land is held by the government and is managed by the National Land Commission. No dispositions can be made of public land except by legislation. (Article 62 Constitution Of Kenya
3. Community land is land held by authorised group representatives of any community or held by a specific community. It includes ancestral and grazing rights. No dispositions can be made on community land except by legislation in Parliament (Article 63).
4. Private land is land held by individuals or other registered entities. It includes freehold land and leasehold land. Dispositions of privately held land can be made by private contract. (Article 64 Constitution).
5. Article 65 of the Constitution places a limit on the land rights of non-citizens. Non-citizens can hold land for a maximum 99-year leasehold term. A non-citizen has not acquired Kenyan citizenship, or if it is a company/trust, one whose majority ownership is comprised of non-citizens. Since the provision is in the Constitution, it has not yet been effected. In practice, non-citizen individuals and entities still own land under freehold terms or leasehold terms exceeding 99 years.

B. TYPES OF LAND TRANSACTIONS IN KENYA

1. Transfer of land: - Section 43-49 of the Land Act. A transfer will include a conveyance, transfer, assignment, transfer of lease and other instrument that records transfer of disposition in land. A transfer gives the transferee land ownership rights once the transfer deed is registered. A transfer is made subject to the permitted user, conditions on title (if any), and interest in land (leasehold/freehold). Transfers are made subject to any other interests registered against the title. If a long-term lease is registered against the title, then the transfer shall be subject to the lease. If a mortgage/charge is registered against the title, then the transfer shall be subject to the charge.
2. Transmission of land: - This is the disposition of interest in land after the death of the registered owner. Under Section 48 of the Land Act, upon the death of a co-owner of land in a joint proprietorship, the remaining interest shall be transmitted to the surviving co-owner. Upon the death of a tenant in common, then their share shall be

transmitted to their estate. The same applies to a sole owner of any title; then his/her title would be transmitted to their estate under Section 50 of the Land Act.

3. In the event of bankruptcy, the bankrupt's trustee shall be registered as the proprietor under Section 52 of the Land Act. Under Section 53, the title to a liquidated/wound-up company is passed on to the liquidator through a transmission

4. Leases: - Part VI recognises various forms of leases of private land and includes periodic leases, short-term leases, leases terminating on the occurrence of a future event, future leases, sub-leases and other forms. The terms of leases can be statutory under Part VI of the Land Act, express (as drafted by parties) and implied (by conduct).

5. Charges: - Recognised under Part VII of the Land Act. Must be made in the prescribed form to charge the interest in the title on payment of existing or contingent debt or the fulfilment of a condition. Charge of matrimonial property cannot be effected unless spousal consent is given. Section 80 charged land operates only as security and does not create any land rights in favour of the charge. Charges rank in order in which they have been registered (Section 81), allowing for the creation of subsequent charges subject to the prior chargees' consent. Charges can be transferred under Section 86. The charger has the right to discharge his property under Section 85 once he completes the obligations. Chargee powers, remedies, and rights are set out under the Land Act.

IV. THE "CHECK-THE-BOX" REGULATIONS

a) Property transactions are subject to the Land Act, Land Registration Act, Sectional Properties Act, Distress for Rent Act and the Landlord and Tenants (Hotels, Shops and Catering Establishments Act.

b) Stamp Duty Act and Finance Act, which provide the rate of tax payable in property transactions. The Income Tax Act would apply if an entity is tax-exempt.

V. FORM OF DEED

A. The Land Registration Act No. 3 of 2012 Subsidiary Legislation contains the form of deed and instruments affecting dispositions in land. The instruments/deeds must be in an approved statutory format

VI. CLOSING COSTS/ADJUSTMENTS

A. The Vendor pays capital gains tax on net gain at a rate of 15% of the gain

B. The purchaser pays stamp duty at a rate of 4% of the purchase price in urban areas. In rural areas, the percentage is 2% of the purchase price

C. Where land is leasehold, then consent to transfer/lease/charge is paid at a rate of approximately USD 10 if the land is non-agricultural. If the land is agricultural, then land control board consent must be given, and costs between USD 60 and 100, depending on the nature of consent. Special Land Control Board Consent is approximately USD 100.

D. The purchaser shall pay the registration fees of less than USD 10

E. The parties pay their advocates legal fees for acting for them in the transaction. Usually, each party pays its own advocate. A guide on the legal fees payable is contained in the Advocates Remuneration Order, 2014. Advocates may opt to follow the Remuneration Order or charge a higher fee as agreed on between the parties.

VII. OTHER CLOSING DOCUMENTS

a. The instrument of conveyance in triplicate, which must be signed, dated and witnessed by an advocate

b. Copies of the parties' tax certificates (PIN) and identification documents (identity card or passports).

c. In the event of a transmission, the certificate of grant.

d. Three colored passport-sized photographs

e. In the event of conveyance of a leasehold title interest, a rent clearance certificate and consent to transfer/charge are required. In the event of agricultural land, the Land Control Board Consent

f. Stamp duty/capital gains payment slip

g. Any other document required or requested by the regulatory body.

h. Residential Properties: Seller has to have a smoke/carbon monoxide detector in

VIII. RECORDING REAL ESTATE DOCUMENTS

a. An application to register interest in land is made to the Land Registrar in the approved statutory format.

b. There is a land registry that registers all dispositions in land, and the land registry maintains a record of all transactions in the land register

c. The registrar shall issue the relevant document upon completion of the conveyance transaction

IX. ANNUAL COSTS FOR PROPERTY OWNERSHIP

a. Annual land rent paid annually as indicated in the title deed. Annual land rent is payable only in leasehold titles. Estate that are held as freeholds are not subject to any yearly rents.

b. Rates payments payable to the county government at the rate assessed

X. THE SECTIONAL PROPERTIES REGIME

The sectional properties system has completely changed how people own apartments and flats in Kenya. Off-plan projects are currently the most common type of property in the country. As more and more high-rise buildings go up in Kenya's cities, it has become increasingly important to have a clear, safe, and up-to-date way to determine who owns what. This need led to a gradual shift from the old system of long-term subleases to the more efficient, owner-focused system of sectional titles.

You can get sectional titles for land that is either freehold or leasehold, as long as the leased land has at least 21 years left on the lease and there is a clear intention to give ownership. The first step in getting a sectional title is to prepare a sectional plan based on the approved building plan. A licensed surveyor must make and sign this sectional plan.

Every sectional plan must have a geo-reference and must clearly:

- Show the mother title of the parcel;
- Include detailed drawings of the units, with each unit clearly numbered;
- Show the approximate floor area of each unit;

- Include a schedule with whole numbers showing the unit factor (share value) for each unit;
- Be signed by the registered owner of the land;
- Be signed and sealed by the relevant survey authority; and
- Clearly state who is allowed to use each unit.

The original register for the mother title is closed, and separate registers have been opened for each unit, as shown in the plan. This happens once the sectional plan is approved and registered at the land registry. When they register, each unit owner gets either a Certificate of Title (for freehold land) or a Certificate of Lease (for leased land).

The Sectional Properties Act, 2020, also says that unit owners can form a corporation to manage and own common areas. This corporation owns the common property and is responsible for managing, maintaining, and operating it in accordance with the Act and the corporation's bylaws.

You can transfer properties registered under the old system (usually through long-term subleases or leases) to the sectional properties system. To convert, you need to send an application to the Registrar of Lands with:

- The approved sectional plan;
- Copies of the current long-term leases or subleases;
- The original certificate of lease or title to the mother property.

The Sectional Properties Act, 2020, and its rules have made owning an apartment in Kenya more modern, easier to get a loan (since banks now accept sectional titles as collateral), and more secure, especially when buying off-plan.

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INTERNATIONAL LAWYERS NETWORK

TEGOS LEGAL

Buying and Selling Real Estate in Latvia

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER LATVIAN LAW

I. STANDARD FORMS OF AGREEMENT

A. Offer to Purchase sets forth Buyer's offer of price and date for closing. Seller may accept or reject.

B. The purchase contract sets forth the terms of purchase and sale, including other things - participants in the transaction, price, allocation of costs of the transaction, settlement procedure, date for closing, encumbrance, and default provisions, and transfer of ownership.

II. BROKERS

A. Buyers and sellers are not required to use the services of real estate brokers; however, parties may use such services. Broker services may be provided only by such an individual person who has been included in the Register of Real Estate Agents. Currently the general commission fee in the market does not exceed 5% (depending on the value of the transaction).

B. Usually, the seller pays the broker's commission, but parties may agree otherwise.

III. BUYERS INSPECTION

The seller shall be liable to the buyer that the real estate has no hidden defects, and it possesses all the good qualities which are warranted or presumed. Defects which the buyer should have discovered before buying the real estate cannot be claimed, thus inspection of the real estate is advisable.

A. Residential property:

Parties usually prepare and sign a deed of delivery and acceptance, so confirming the condition of the real estate at the time of its acceptance.

B. Commercial property:

Before buying the property, the buyer will normally conduct due diligence on the real estate. Also, parties usually prepare and sign a deed of delivery and acceptance.

IV. TYPES OF REAL ESTATE

A. Types of real estates are:

1. Land estate

   Consists of one or several land plots.

2. Land and building estate

   Consists of one or several land plots and one or several buildings or structures located on the land plot (plots).

3. Building estate

   Consists of one or several buildings or structures. In the case of a building estate, the land plot, on which the respective buildings or structures are located, is owned by another person, and does not belong to the owner of the building estate (please see *Section C. Divided estate*, in this paragraph).

4. Residential estate

   Consists of

   a an individual property (apartment, non-residential premises, or artist's workshop in a residential house) in a residential building; and

   b the relevant undivided share of the joint property (external enclosing structures, internal

load bearing constructions and intermediate coverings of the residential house, premises for common use, engineering communication systems, devices servicing the residential building and other indivisible elements functionally associated with the exploitation of the residential building, as well as the auxiliary buildings and structures belonging to the residential building). The joint property also includes the land plot, on which the respective residential building is located, unless it is owned by another person (*please see Section C. Divided estate*, in this paragraph).

B. Undivided share of the real estate

It is possible to acquire not the entire real estate, but an undivided share of the real estate, i.e., to acquire the undivided share of the joint property (*Note: do not mix up with the joint property included in the composition of the residential estate).* The joint property is the undivided real estate owned by several persons - joint owners of undivided shares so that only the substance of the rights is divided.

A joint owner owns the undivided share of the joint property; therefore, the joint owner is entitled to deal with the undivided share, including alienating or pledging the respective undivided share.

However, to deal with the joint property itself, either in its entirety or with respect to a part of it, the consent of all the joint owners shall be obtained. The joint owners can agree on divided use of the joint property proportionally to the amount of the undivided shares by signing a respective agreement.

If one of the co-owners causes harm to other co-owners, maliciously using his rights or not fulfilling his duties as a good and caring owner, the majority of the co-owners may demand the alienation of the share of such a co-owner. The share of a co-owner is subject to alienation to other co-owners, transferring it to one or several co-owners with the obligation to reimburse the cost of the share in money, or the share is alienated by selling at a closed auction among the other co-owners. If none of the co-owners is willing to acquire the alienated share or the court has reasonable doubts about the expediency of such a method of alienation, the court decides to sell this share at public auction.

C. Divided estate

The general principle provided by Latvian law is that buildings and structures located on the land plot are part of the land plot and therefore owned by the landowner, and only in exceptional cases, buildings and structures as separate building property could be owned by another person, who is not the owner of the land plot - the so-called divided estate.

In case of the divided estate, namely, if the building (structure) is located on the land plot, which does not belong to the owner of the building (structure), but is owned by another person, the status of such building (structure) and therefore the legal consequences, which depending on the status of the building (structure) may vary, should be evaluated.

There are two forms of divided estates, depending on the status of the building (structure) on the land plot:

First form. Compulsory divided estate

Generally, a building (structure) built during the Soviet time and until September 1, 1992, when the Civil Law of the Republic of Latvia entered into force.

The divided property was formed when the ownership rights of the land plot under the building (structure) were renewed to the previous owners or their heirs during the land reform, or the land belonging to the state or local government, or building (structure) was acquired by privatizing the state or municipal undertakings or separate real estate objects.

The owner of the building (structure) is entitled to use the part of the land plot functionally related to the building on the grounds of legal right of use, which was introduced on 1 January 2023 to replace the compulsory lease. The legal right of use is viewed as an easement in-rem on land. In the case of divided estate, the parties should agree on the size of the area used of the land and on the amount of payment for use, and, if the parties cannot agree on the mentioned, the dispute shall be resolved by the court. The building owner is obliged to pay the landowner a fee of 4% of the cadastral value of the land per year, but not less than 50 EUR per year.

Since 1 January 2023 a special legal mechanism can be applied to end the forced shared ownership between the apartment owners and the landowner of an apartment building, through a statutory right of redemption granted to the community of apartment owners over the land under the apartment building. This process is initiated by the community of apartment owners' decision and is carried out without the landowner's consent.

Second form. Voluntarily established divided estate.

Buildings built after September 1, 1992, when the Civil Law of the Republic of Latvia entered into force, based on a specific long term (at least 10 years) lease agreement providing the rights to the lessee to build buildings on the leased land plot as separate real estate objects. After 1 January 2017 it is no longer possible to establish a new voluntary divided ownership relationship.

The separate ownership of the building (structure) is established only during the validity of the lease agreement.

Amendments to the Civil Law entered into force on 1 January 2017, by introducing a new institute of build-up rights, which henceforward replaces the institute of specific long-term lease for the voluntary established divided estate.

The build-up rights are rights *in-rem,* established based on the agreement entitling, during the validity of such rights, to build and use non-residential buildings or engineering structures on the land plot owned by another person. The building (structure) built based on the build-up rights is an integral part of the build-up rights. It is not permitted to build residential buildings based on the build-up rights.

The validity of the build-up rights cannot be less than 10 years, and the build-up

rights shall be registered with the Land Registry.

The build-up rights can be alienated and encumbered with rights in-rem, unless explicitly prohibited in the agreement on granting of the build-up rights.

After expiry of the build-up rights, the building (structure) built based on the buildup rights becomes an integral part of the land plot, i.e., becomes the property of the land plot owner. The owner of the land plot acquires the building (structure) without remuneration, unless such remuneration has been provided in the agreement on granting of the build-up rights. In the agreement on granting of the build-up rights the parties may provide that, prior to the expiry of the build-up rights, the holder of the build-up rights shall vacate the land plot from the constructed buildings (structures).

D. Restrictions for acquisition of land in Latvia

As of 3 July 2025, the Law on the Restriction of Transactions Endangering National Security has entered into force, and it applies to the acquisition of *any type of real estate* within the territory of the Republic of Latvia. The law establishes a prohibition to acquire real estate, participate in auctions, or exercise pre-emptive or redemption rights for the Russian Federation, the Republic of Belarus, their citizens, legal entities registered in these countries, as well as entities where Russian/Belarusian nationals or companies hold at least 25% of shares or are ultimate beneficial owners.

Also otherwise exists certain provisions and legal restrictions for acquisition of real estate in Latvia; however, these restrictions are imposed only regarding ownership of the land, there are no restrictions regarding ownership of other types of real estate such as buildings, structures, apartments, business premises etc.

Restrictions for acquisition of land vary depending on whether the land is located in the city or in rural areas.

In cities land may be acquired by:

a the citizens of Latvia and any European Union (EU) member state;

b the State and local government, and state and municipal companies;

c a capital company (a limited liability company or a joint stock company) registered in Latvia or any EU member state, if more than a half of the share capital of the company belongs to:

1) the citizens of Latvia and EU member state; or

2) the State and local government, and state and municipal companies; or

3) private individuals or legal entities from the countries, which have concluded an agreement with the Republic of Latvia for the Encouragement and Reciprocal Protection of Investment and such agreement has been approved by the Parliament of Latvia prior to 31 December 1996 or

4) private individuals or legal entities from the countries, which have concluded an

agreement with the Republic of Latvia for the Encouragement and Reciprocal Protection of Investment after 31 December 1996, and the respective concluded agreement prescribes the rights of the private individuals and legal entities from Latvia to acquire land in the respective country;

d a public joint stock company registered in Latvia or any EU member state, if its shares are quoted in stock exchange;

e religious organizations, which were registered in Latvia before 21 July 1940;

f the state or municipal institutions of higher education.

Other private individuals and companies that do not correspond to the aforementioned conditions may acquire the land in Latvia with the permission from the local government; however, it is also prohibited for such private individuals and companies to acquire the following types of land:

- land in the border zone;
- land in the protection zone of coastal dunes of the Baltic Sea and the Gulf of Riga and land in the protection zones of public bodies of water and water courses, except if the build-up is allowed on the land in accordance with the spatial plan of the city;
- agricultural and forest land in accordance with the spatial plan of the city.

In rural areas land may be acquired by:

a the citizens of Latvia, citizens of the EU member states or European Economic Area (EEA) states or citizens of Member States of the Swiss Confederation and the Code of Liberalisation of Capital Movements of the Organization for Economic Cooperation and Development;

b the Republic of Latvia or derived public persons (such as municipal or other public person established based on law);

c a capital company (a limited liability company or a joint stock company) registered in Latvia, EU, EEA country or in the Swiss Confederation or in a Member State of the Code of Liberalisation of Capital Movements of the Organization for Economic Co-operation and Development, if the respective company has been registered in Latvia as a taxpayer and if all the shareholders and beneficial owners of the company are:

1) citizens of Latvia, citizens of the EU member states or EEA country, or citizens of Member States of the Swiss Confederation and the Code of Liberalisation of Capital Movements of the Organization for Economic Co-operation and Development; or
2) the Republic of Latvia or derived public persons; or
3) private individuals or legal entities from the countries, which have concluded an agreement with the Republic of Latvia for the Encouragement and

Reciprocal Protection of Investment and such agreement has been approved by the Parliament of Latvia prior to 31 December 1996; or

4) private individuals or legal entities from the countries, which have concluded an agreement with the Republic of Latvia for the Encouragement and Reciprocal Protection of Investment after 31 December 1996, and the respective concluded agreement prescribes the rights of the private individuals and legal entities from Latvia to acquire land in the respective country;

d legal subjects registered in Latvia, EU, EEA country or in the Swiss Confederation or in a Member State of the Code of Liberalisation of Capital Movements of the Organization for Economic Co-operation and Development, if the respective legal subject has been registered in Latvia as a taxpayer or as a commercial activity performer and if the legal subject is:

1) an individual merchant owned by a citizen of Latvia, citizen of the EU member state or EEA country, or citizen of Member States of the Swiss Confederation and the Code of Liberalisation of Capital Movements of the Organization for Economic Cooperation and Development;

2) an individual undertaking registered by a citizen of Latvia, citizen of the EU member state or EEA country, or citizen of Member States of the Swiss Confederation and the Code of Liberalisation of Capital Movements of the Organization for Economic Cooperation and Development;

3) a co-operative society, if all the members of the society are legal subjects mentioned in clause 1), 2), 3) or sub-clause a), b), d) of clause 4);

4) other legal subject registered in the EU member state, EEA country or in the Swiss Confederation or in a Member State of the Organization for Economic Co-operation and Development, which can be compared to the above individual merchant, individual undertaking, or co-operative society;

5) religious organizations registered in Latvia; the activity whereof is at least 3 years;

6) associations and foundations registered in Latvia, the activity whereof is at least 3 years, and the purpose of activity whereof is related to the environmental protection, production of agricultural cultivated plants or products, or hunting management or maintenance, if the land is acquired to ensure the mentioned purpose of activity.

Other private individuals and companies that do not correspond to the

abovementioned conditions may acquire the land in Latvia with the permission from the local government; however, it is also prohibited for such private individuals and companies to acquire the following types of land:

- land in the border zone;
- land in nature reserves and other protected nature areas in zones of nature reserves;
- land in the protection zone of coastal dunes of the Baltic Sea and the Gulf of Riga;
- land in the protection zones of public bodies of water and water courses;
- agricultural and forest land;
- land in the mineral deposits of national significance.

If, due to the changes, the status of the legal subject does not correspond to the aforementioned conditions, in order to keep the land in the cities or rural areas, the permission from the local government should be received within a period of one month, and if the permission is not granted the land should be alienated within a period of two years.

E. If a private individual or a company, which has acquired land in the cities or rural areas with the permission of the local government, does not use the land for the prescribed purpose the land should also be alienated within a period of two years. Agricultural land

The additional limitations are set on the acquisition of agricultural land in rural areas of Latvia. Legal entities are entitled to acquire 5 ha of agricultural land in aggregate without additional limitations, but private individuals are entitled to acquire 10 ha of agricultural land in aggregate without additional limitations.

In order to acquire more agricultural land, private individuals and legal entities should confirm that the acquired land will be used for agricultural activities, and the respective private individuals and legal entities shall comply with the specific criteria prescribed by law, including clear information on the true beneficiaries and statement that total amount of tax debts of which in Latvia or in the state where these persons are registered does not exceed EUR 150. In addition, the citizens of the European Union Member States, the Member States of the European Economic Area or citizens of Member States of the Swiss Confederation and the Code of Liberalisation of Capital Movements of the Organization for Economic Cooperation and Development, if they wish to acquire the agricultural land as private individuals, or if they are sole shareholders or shareholders jointly representing more than a half of the share capital of the company intending to acquire the agricultural land, or persons entitled to represent the respective company, shall receive a registration certificate of the Union citizen and the document certifying knowledge of the official language (Latvian) at least at B level grade 2 (*namely, the person is able to communicate on everyday subjects and professional issues, to clearly phrase and justify his or her opinion, reads and understands texts of different content, is able to write the documents necessary for work (for example, statements, summaries, minutes, reports, deeds), as well as expanded texts regarding everyday life and*

professional topics, comprehends, and understands naturally paced spoken texts on different topics). However, with the judgment in case No C-206/19 dated on 11 June 2020, the Court of Justice of the European Union has recognized that the language knowledge requirement is discriminatory and cannot be applied to the citizens of the European Union Member States. Although the law has not been changed, the court's finding is respected in practice.

If the language criteria shall be applied upon the request of the local government, the person shall make a presentation in Latvian explaining the intended usage of the land in agricultural activity. If the agricultural land is to be acquired by a legal entity - the usage of the land in agricultural activity shall be presented by the individual - the sole shareholder or individual shareholder, jointly representing more than one half of the share capital of the company (in case of beneficiaries - presentation shall be made by those beneficiaries).

For a person, who meets the criteria, to be able to acquire agricultural land, he or she shall first submit an application to the local government of the territory in which the relevant land is located, and after examination of the application and offering to exercise the rights of first refusal to the registered lessee, if any, of the agricultural land and to the Land Fund of Latvia, the commission of the local government shall decide on giving its consent or refusal to acquisition of the agricultural land.

In addition, one private individual or legal entity can acquire up to 2,000 ha of agricultural land. The local government has the right to determine the maximum area of agricultural land one private individual or legal entity can possess within their administrative area, but no more than 2,000 ha. Related parties can acquire up to 4,000 ha of agricultural land.

V. Real estate registries

There are two registries related to real estate in Latvia: The Land Registry and the National Real Estate Cadastre Information System (Cadastral Registry).

The Land Registry is the main real estate registry and is kept by the respective Regional Court Land Registry Offices, each of them operating within a particular administrative territory. All rights (including ownership rights, all kinds of legal encumbrances, mortgages, restrictions, etc.) regarding real estate shall be registered with the Land Registry.

Ownership rights of real estate shall be registered with the Land Registry and only a person, whose ownership rights have been registered with the Land Registry, shall be considered the owner of real estate, except when the ownership rights of the real estate are established by the law.

Entries registered with the Land Registry have public credibility. Thus, not only is the owner of the real estate guaranteed credibility of its title registration, but also every third party is provided with valid information on the current status of the real estate. However, this does not mean that transfer of title to real estate or the title itself cannot be challenged (for example, the seller has no rights to sell the respective real estate, or any third party's rights of first refusal have been violated and thus this person may possibly exercise his or her redemption rights).

The Cadastral Registry is kept by the State Land Service. The cadastral value

(determined mainly for the real estate tax and Land Registry state duty purposes), detailed information on buildings and structures (area, number of premises, etc.) as well as detailed information on every real estate object, including graphical information and technical encumbrances, are held in this register.

However, not all encumbrances prescribed by law are actually registered in the registers, for example, protection zones and consequential restrictions and limitations are set by law, notwithstanding whether they are registered with the Land Registry and/or Cadastral Registry, therefore the actual situation on site shall be considered prior to the acquisition of the real estate.

In practice, frequently the information in the Cadastral Registry differs from the information in the Land Registry.

The law also specifies buildings and structures which are not registered in the Land Registry as separate and independent objects of property, for example - fences, small buildings, except for garages, linear engineering structures, except for transport structures, engineering structures, the area of which is less than 50 square metres or height is less than 10 metres. But some transport structures, such buildings and structures are registered in the Cadastral Registry.

Therefore, to obtain more detailed information on the real estate, the information in both registries - the Land Registry and the Cadastral Registry should be reviewed and considered prior to the acquisition of the real estate.

VI. Agreement and re-registration of the title with the Land Registry

Any transfer of the title of the real estate should be registered with the Land Registry. Agreement on alienating the real estate should be prepared in writing and signed by both parties personally. It should be also noted that an oral agreement is binding to the parties, and each party is entitled to claim from the other party to express the oral agreement in a written form.

It is not required, but signatures of the contracting parties on the agreement could be certified by a notary public, as well as an agreement could be concluded in the form of notary deed.

Agreement on alienation of real estate is binding upon the parties from the moment of its conclusion, but for any third party, only a person, whose ownership rights have been registered with the Land Registry, shall be considered as the owner of real estate.

The title (ownership) is transferred to the buyer from the moment of re-registration of the title with the Land Registry (i.e., a Land Registry judge has adopted a decision on registration of the buyer's title). This rule would be always applicable in relation to the reliance of third parties on the owner of real estate; however, the contracting parties may agree otherwise at the moment of transfer of title.

To re-register the title with the Land Registry, the registration request to the Land Registry for the transfer of the title should be personally signed before a notary public chosen by the contracting parties. This can be done in person at a notary's place of practice or remotely, using video conferencing mode and signing necessary documents electronically with a secure digital signature with a time stamp.

The notary verifies the identity of both parties, and in case of legal entity also the

rights to represent the legal entity. The persons signing the registration request need to provide proof of their identity - passport or ID card for private individuals and also a representative of the legal entity. If the contractual party is a legal entity not registered in Latvia an excerpt from the company register certifying registration of the company and the representation rights of the representative should be provided. Depending on the registration country of the legal entity, the excerpt from the company register should be certified by a notary public or by an authority of the company register of the respective country (for the EU or the EEA countries, or the Swiss Confederation or a Member State of the Organization for Economic Co-operation and Development), or the excerpt should be legalized in accordance with the international regulatory enactments. The excerpt from the company register should also be translated in Latvian and translation should be certified by a notary public.

A registration request for the re-registration of the title with the Land Registry should be submitted to the respective district (city) court in the territory of operation of which real estate is located. The following documents should be enclosed with the registration request:

- an agreement on alienation of the real estate;
- a refusal to exercise the rights of first refusal (except the refusal of the joint owner or owner of divided property)
- (*Please see Section IX. (A)*);
- a consent from third parties, if such is required in the particular situation, for example, a consent from the bank in case of a mortgage, or a consent from the spouse of the seller, if the real estate is the co-property of spouses;
- permission from the local government to acquire the land in Latvia, if such is required by the law (*please see Section V. (D)*);
- documents certifying representation rights of the parties;
- receipts for the payment of the state and stamp duties.

VII. CLOSING COSTS/ ADJUSTMENTS

Notary fees are determined by secondary legislation, i.e., the Regulations of the Cabinet of Ministers.

For the re-registration of the title with the Land Registry, a state duty and a stamp duty should be paid prior to the submission of the registration request with the respective district (city) court.

The amount of the Land Registry state duty depends on the person in whose favor the property rights to the real estate are secured - the rate applicable to the state duty depends on the cadastral value of the real estate or the transaction amount, whichever is higher. The state duty for the consolidation of property rights in the Land Registry for each real estate is set at the following amount (but no more than 50,000 euros):

- 1.5% of the value of the real estate (euro), if the property rights are acquired by a private individual on the basis of a contract or a court decision to approve the statement of auction, or on the basis of a court decision on registering ownership rights to the real estate to a bidder, co-owner, or creditor;
- 2% of the value of the real estate

(euro), if the property rights are acquired by a legal entity on the basis of a contract or a court decision to approve the statement of auction, or on the basis of a court decision on registering ownership rights to the real estate to a bidder, co-owner, or creditor;

- 3% of the value of the real estate (euro), if the property rights are acquired on the basis of a gift agreement;
- 1% of the amount of investment of real estate that be invested in the share capital of the capital company (euro), if real estate is invested in the share capital of the capital company.

The ratio of 1.5 is applied to the state duty, if more than 6 months have passed, starting from the day of signing the document that confirms the rights to be registered.

Costs for the re-registration of the title with the Land Registry, including notary fees, are usually covered by the buyer, or equally divided between both the seller and the buyer, however, the seller usually bears the costs of deleting the existing mortgage on the real estate, if any.

The seller should also pay the real estate tax for the entire year of the transaction, and no ownership will be transferred until the real estate tax is paid.

VIII. OTHER INFORMATION

A. Rights of first refusal

The rights of first refusal are priority rights to purchase a real estate if the owner sells the real estate.

1) Joint owners' rights of first refusal

If any of the joint owners of the real estate alienates its undivided share (*please see Section V. (B)*) to a person who is not a joint owner, then the other joint owner(s) shall have the right of first refusal. A joint owner is entitled to express the will to exercise its rights of first refusal within a 2 (two)-month period as from the receipt of the purchase agreement. But, if by the fault of the seller, the joint owner is not able to exercise the rights of first refusal, such joint owner will have the redemption rights, namely, within a period of 1 (one) year as from the registration of the acquirer's title to the real estate with the Land Registry, the joint owner will be entitled to claim for acquisition of the real estate, by taking precedence over the acquirer and by assumption of the rights of the acquirer.

2) Rights of first refusal in case of divided property

In the case of divided property *(please see Section V. (C)),* the owner of the land and the owner of building (structure) have mutual rights of first refusal and redemption rights, if the respective land or building estate is alienated. The rights of first refusal shall not apply if the building (structure) is built based on the build-up rights.

3) Other rights of first refusal

Rights of first refusal can be established also by the agreement or will.

The law also provides for other specific cases when third parties have the rights of first refusal or

redemption rights to real estate, for example, if the real estate is alienated in the territory of a civil aviation aerodrome of the state significance (also the territory necessary for further development thereof) and the civil aviation aerodrome is owned by a capital company where the state has a decisive influence - the state has the rights of first refusal, but if the civil aviation aerodrome is owned by a capital company, where the local government has a decisive influence - the respective local government has the rights of first refusal, or rights of first refusal to the real estate in the territory of the port may be exercised by the local government, represented by the port authority, but the rights of first refusal to the real estate in the territory of the port of Riga shall be exercised by the port authority of Riga as a derived public person and in the territory of the port of Ventspils shall be exercised by the port authority of Ventspils as a derived public person.

Up until 1 January 2023, when new Municipality law entered into force, local governments had rights of first refusal in case of alienation of the real estate, if it was necessary for performance of local government functions. The procedure necessary to gain the local government's decision on its first refusal rights hindered the transaction. Now these rights are completely discarded, and in case of a necessity a local government may at any time initiate a process in accordance with the Law on the Alienation of Immovable Property Necessary for Public Needs.

B. Permitted use of the real estate (zoning) and environmental protection regulations

Prior to the acquisition of real estate, the permitted use of the real estate (zoning) and possible restrictions for the usage, including construction, of the real property should be additionally reviewed in the local government spatial plan and Territory Usage and Build up Regulations.

Prior to the acquisition of real estate, it should also be reviewed whether the territory of the real estate is not registered with the Register of Polluted and Potentially Polluted Areas. However, it should be noted that, even if the territory of the real estate has not been registered as polluted or potentially polluted, depending on the historical usage of the respective real estate there is a risk that historical pollution may appear.

IX. ANNUAL COSTS FOR PROPERTY OWNERSHIP

A. Property Insurance

Property Insurance is not mandatory, but very common. When property is purchased through loans by banks or other financial institutions, usually the lender requires the buyer real property insurance to secure a mortgage.

B. Real Estate Tax

Real estate tax is levied on a property's assessed value. Real estate tax is payable for land and buildings, and certain infrastructure. It is an annual tax but can be paid in four installments in March, May, August, and November. The local

municipalities are free to set tax rates on real estate in their area from 0.2% to 3% of its cadastral value, otherwise tax rates defined by state apply. A tax rate exceeding 1.5% of cadastral value may be charged only if the real estate is improperly maintained.

An increased real estate tax rate of 3% may be applied if the maximum allowed duration of construction works is exceeded, i.e. 5 years or 8 years of construction works period, depending on the type of construction.

C. Maintenance Costs

An apartment owner is obliged, according to the existing joint property share included in his or her residential property and a respective decision of the community of apartment owners, cover the expenditures for the performance of the mandatory administration activities of the residential house, remuneration to the administrator, expenditures for the performance of other administration activities of the residential house which ensure improvement and development of the residential house, as well as monetary payments into the communities of apartment owners savings fund.

D. Payments for Legal Rights of Use

If the real estate is a divided estate (please see *Section C. Divided estate*, in paragraph IV), owner of the building (structure) is obliged to make compulsory payments for use of the part of the land plot functionally related to the building to the landowner. The amount of such fee is agreed between the parties, but if no agreement is reached, it is 4% of the cadastral value of the land per year, but not less than 50 EUR per year. On 1 July 2024 a yearly fee for preparing and sending the payment notification in amount of 15 EUR per building (structure) owner and 30 EUR fee for late payment notification was introduced. The same law also limited the annual increase of fee for right of use to 30% compared to previous' year fee. The limitation is in force till 2028. An agreement between the owner of the building (structure) and the land for a different fee for use of land plot or payment notification is not binding to the next owner of the divided estate.

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BUYING AND SELLING REAL ESTATE IN MEXICO

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONSUNDER MEXICAN LAW

Preface

Martínez, Algaba, De Haro y Curiel, S.C. ("**MAHC**") and Martínez Berlanga Abogados, S.C. ("**MBA**") are law firms in Mexico with recognized trajectory, based in Mexico City and Monterrey, committed to provide the highest standard of professional legal counsel and representation.

MAHC was established in 1969 and is comprised of a highly experienced and qualified team of professionals in the diverse areas of law practiced by the firm. MAHC is reputed to be one of the few law firms in Mexico that offers first class litigation services, encompassing virtually every aspect of commercial, civil and administrative legal procedures, including domestic and international arbitration, as well as a consulting legal area to prevent risks in matters related to corporate, financial, banking, regulatory, restructurings, real estate, energy and communications, designing and implementing strategies to promptly and efficiently address, mitigate and neutralize risks and crisis.

MBA, established in 2006, is comprised by professionals with high experience and standards in providing quality and personal legal services in general corporate matters, restructurings, financial matters, corporate finance, mergers and acquisitions, joint-ventures, commercial matters, contractual relationships, cross border transactions, real estate, local and cross border trust structures and testamentary successions, as well as regulatory matters.

These combination of practice areas and fields of expertise allow our firms to render enhanced legal advice, a result of the synergy and collective experience of our trial and consultant lawyers that grants our clients a competitive advantage hard to match by any law firm in Mexico.

I. Real Estate General Overview

The real estate business in Mexico has been increasingly growing during the last decades to the point that now it is considered as a serious, viable and promising economic activity among both Mexicans and foreigners. This growth has developed into a more dynamic and secure economic sector in our country. However, in some respects it is still a growing business, in which real estate agents are not yet required to be licensed, and real estate professional organizations are not as regulated as in other countries.

Investors now can find a variety of specialized agents and corporations that provide tailor-made services, ideal for foreign investors that seek to buy or sell real estate in the country. These services are highly recommended specially for those not familiar with the local real estate regulations and the Spanish language.

Recently the real estate market in Mexico is booming due to the recent "near shoring" phenomenon. Nearshoring can be described as a strategy in which a company moves all or part of its production closer to the final consumer, reducing costs and avoiding logistical setbacks. In the last couple of years, many businesses around the world have started to look at this as an alternative, primarily to avoid supply chain issues. Nearshoring has surged and has given Mexico a great opportunity to attract foreign investment of facilities that are looking for more secure places to manufacture goods or provide services and be close to the big consumer markets. Being so close to the USA and having a big network of international trade agreements have placed Mexico in such a privileged situation.

Qualified labor, competitive salaries and a big real estate market also contribute to Mexico's benefit in favor of both Mexican and foreign investors.

II. Property Rights in Mexico and Limitations

In Mexico, all property rights come from the State itself, who owns "*the original property of lands and water… and has had and has the right to transfer ownership of property to private persons, thus, transforming it into private property.*[1] Accordingly, the Mexican Federal Civil Code (*Código Civil Federal*), as well as those Civil Codes of each Mexican State, provide that it is the people's right to use, enjoy and dispose of their property, under the limitations and modalities established under Mexican law.

There are also other several limitations to the ownership rights of real estate property imposed in the Mexican Constitution, like, for example, the Nation's direct domain over natural resources such as oil, minerals and underground water, or the expropriation of the land by the State in case of public interest situations pursuant to a prior indemnification.

As a general rule, only Mexican citizens, by birth or naturalization, and Mexican corporations, have the right to acquire real estate property or to obtain concessions from the Mexican State to exploit national natural resources. However, the Mexican Constitution states that the Nation may grant the same rights to foreigners, provided that they agree before the Mexican Ministry of Foreign Affairs (*Secretaría de Relaciones Exteriores* or "**SRE**") to consider themselves as nationals in respect of such acquired property and shall agree not to invoke the protection of their government in respect thereof, under the penalty, in case of failure to honor such commitment, to forfeit such real estate property to the benefit of the Mexican Nation. This covenant or statement is known as the "Calvo Clause".

Another restriction to foreigners imposed in the Mexican Constitution is that they will not be able to directly acquire real estate within 100 kilometers (approximately 62.13 miles) along the borders and 50 kilometer (approximately 31.06 miles) from the coast, referred to in Mexican law as the "**Restricted Zone**" (*zona restringida*). However, pursuant to the Mexican Foreign Investment Law (*Ley de Inversión Extranjera* or "**LIE**") and its regulations, foreigners may acquire property located in the Restricted Zone for non-residential purposes, in which case, they would require to give a notice to the SRE of such acquisition within the next 60 days following the date of the acquisition. In such cases, as we will further analyze, a foreign-owned Mexican corporation or a Mexican trust must be created to acquire real estate property.

Non-residential purposes pursuant to the regulations of the LIE are considered as those destined to time sharing, industrial, commercial or tourism related activities and generally those used by entities pursuant to their corporate purpose, such as sales or transfers, urbanization, construction or development of real estate projects.

Finally, foreigners may acquire real estate properties outside of the Restricted Zone provided that they must obtain a permit from the SRE for such purposes.

III. Ways of Acquiring and/or to Invest in Real Estate Property in Mexico

After the prospective buyer has find the desired real estate property and its offer has been accepted by the seller, there are several legal

[1] Article 27 of the Mexican United States Political Constitution (*Constitución Política de los Estados Unidos Mexicanos*) (the "**Mexican Constitution**").

vehicles or capacities classically used to own real estate property in Mexico.

An individual may hold title over real estate property in Mexico, directly or indirectly, allowing her/him to use, enjoy and dispose such property, through three different means: (i) as the direct owner, holding a property title under her/his name; (ii) through a Mexican corporation, as a stockholder; or (iii) through a bank trust, as a beneficiary. As a foreigner, the latter two would be the most recommended vehicles to hold title of land in Mexico.

(a) Foreign-Owned Mexican Corporation

A foreign-owned Mexican corporation (a "**Mexican Corporation**") is a vehicle frequently used by foreign investors to carry on business in the country and not just to hold title over real estate. As a national, provided that all LIE requirements are met, a Mexican Corporation complies with the Mexican Constitution requisite to hold title over private property. However, it is important to point out that holding title of real estate through a Mexican Corporation must be achieved in accordance with the corporate purpose of the entity.

A Mexican Corporation is typically incorporated before a "public faith officer", such as a notary public or *Notarios Públicos* (authorized by local governments) or *Corredores Públicos* (authorized by federal authorities) and requires a minimum of two (2) shares or equity holders since the concept of single-stockholder corporations —with a sole exception[2]— is not allowed under Mexican law. It will have to carry out the corporate activities of any company, such as annual stakeholders' meetings, have an active administrative body, file tax statements, etc. We strongly advise seeking local legal counsel in order to properly incorporate and tailor-make the corporation's purpose to the specific client's needs.

The main advantages of holding real estate property through a Mexican Corporation could be, for example, that a national entity, pursuant to applicable immigration requirements, would directly own the real estate, it could allow its stakeholders to live and work in the country and there is no limit as to the number of properties it may own.

While the main disadvantages of a Mexican Corporation could be, for example, the undertaking of the daily corporate activities, including, but not limited to, its management, accounting reports, tax filings, LIE filings regarding its foreign stakeholders, etc.

(b) Mexican Trusts

Mexican trusts are very useful and flexible and therefore widely used by foreigners as a vehicle not only to acquire real estate, but for general business purposes as well. It provides solutions to a wide range of personal and commercial needs. Trusts are mainly regulated by the Mexican General Law for Negotiable Instruments and Credit Transactions (*Ley General de Títulos y Operaciones de Crédito* or "**LGTOC**").

[2] Simplified stock corporation (*sociedad por acciones simplificada*), which is the latest created type of entity not useful to acquire real estate. It is allowed to be incorporated by an individual single-shareholder (no entities allowed as shareholders). However, this type of entity is not recommended for foreign investment purposes, since its main purpose is to regulate small businesses. Its shareholders may not have any equity participation in any other Mexican entity that allows them to control such entity and the corporation's annual total income shall not exceed the equivalent to approximately $7 million Pesos (approximately $134,500.00 Dollars, as of August 2024).

Pursuant to the LGTOC, a Mexican trust is created pursuant to a commercial contract by which a settlor transfers title and management of certain assets and/or rights to a trustee —*generally a bank or any other financial institution authorized to act as such under applicable Law*—, so that the trustee manages such assets under agreed terms, for the benefit of a person —*could be, among others, a Mexican Corporation, a foreign individual or a foreign entity*— appointed as beneficiary thereto.

The bank, as trustee, will be subject to fiduciary duties while representing the settlor's interests in the trust assets. For example, should the trust purchase real estate property, the trustee should only carry out the transaction after verifying that all the title documents, property dimensions and/or any other documentation related to the property, are in order. On the contrary, if the real estate is not in good standing or up to date with the applicable legislation, the bank's fiduciary duties shall prevent the trust acquiring such irregular property.

During the past few decades, it has been very popular among foreign investors to hold property of real estate through a Mexican trust, where the individual investor or a corporation transfers financial resources to the trust and then the trust itself acquires the real estate and holds title thereof. Thus, it can be created to indirectly acquire the property, whereby the real estate is settled in trust, since no real estate rights would be owned directly by the trust beneficiaries, they would only hold trust rights.

The maximum duration of such trust is 50 years, subject to renewal; provided further that, in such cases it is required to obtain a permit from the SRE in order for such trust to own the relevant real estate property in the Restricted Zone. As of today, there have been no amendments to the relevant laws in order to delete this foreign investment restriction on real estate.

There are great benefits and advantages of holding real estate property through a Mexican trust, for example, the trustee shall be legally responsible for the administrative work and for the conservation and protection of the trust assets —*subject to an annual fee paid to the trustee*—, the investor's heirs can inherit the rights to the trust and some tax advantages, among others. However, trustees often require that the day-to-day administration of the trust property –*the real estate property*– be delegated either to the settlor, a technical committee or a hired administrator through a management or services agreement. Nonetheless, the trustee's fiduciary duties and responsibility cannot be delegated.

(c) Real Estate Investment Trusts

In recent years, Real Estate Investment Trusts (*Fideicomiso de Inversión en Bienes Raíces* or "**FIBRAs**") have also become important investment vehicles for foreigners who seek to invest their capital in the real estate market in Mexico. They are a specific type of trust designed for the real estate business and are regulated by, among others: (i) the LGTOC; (ii) the Mexican Securities Law (*Ley del Mercado de Valores* or "**LMV**"); and (iii) the Mexican Income Tax Law (*Ley del Impuesto sobre la Renta* or "**LISR**"). A FIBRA would be the equivalent to a REIT in the USA.

The Mexican Congress, in order to make more attractive the investment of capital in the real estate market in Mexico,

included special tax benefits for FIBRAs in the LISR.

According to the LISR[3], in order for a trust to be considered a FIBRA and to have the tax benefits provided by the LISR, it needs to comply, among others, with the following requirements:

(i) to be executed pursuant to Mexican laws and with a Mexican trustee.

(ii) to have as its main purpose the acquisition or construction of real estate in Mexico that may be destined for lease, or the right to obtain income from the real estate.

(iii) that the real estate built or acquired by the FIBRA be destined to lease (or equivalent) and not be sold within a period of 4 years following the date the construction of the real estate was completed or as of the date of the acquisition of the real estate, as applicable.

(iv) that the trustee of the FIBRA issues trust certificates to represent the assets allocated in the FIBRA so that such certificates may be placed through a public offering in the Mexican Stock Exchange and registered before the National Securities and Intermediaries Registry (*Registro Nacional de Valores*); and

(v) that the trustee of the FIBRA distributes to the holders of the relevant trust certificates issued through the public offer, at least once a year and no later than March 15th of each year, at least ninety-five percent (95%) of the total taxable income accrued during the immediately preceding fiscal year.

Please be aware that a FIBRA is a way for investors to invest in securities in a stock market of a special vehicle trust backed by leased real estate property but in no way can it be a vehicle that can be settled by a foreigner to invest, use and enjoy real estate property in Mexico.

IV. Preparatory, Promissory and Purchase Agreements

Once the buyer has decided in what capacity she/he will acquire title over the real estate, whether directly or through a Mexican Corporation or through a Mexican trust, the transfer of ownership will take place through the execution of a definitive agreement.

It is customary and recommended, before closing the definitive agreement, to undertake a thorough due diligence and seek proper legal advice before engaging in any transaction.

The following are the agreements typically used to formalize the real estate property acquisition in Mexico:

(a) Preparatory, Promissory Agreement (*contrato de promesa*)

A promissory purchase agreement is a very common way to agree with a seller the future acquisition of a real estate property, without executing at that point the final purchase agreement itself. Through a promissory purchase agreement both parties reciprocally agree or promise, one to sell and the other to purchase real estate property at a stated price, as well as to enter into a definitive purchase agreement within a certain period of time, having agreed upon the essential terms thereof.

[3] Article 187 of the LISR.

This type of agreement is different from a "letter of intent" since, under Mexican law, a promissory agreement is binding on its parties and may be judicially enforced, in order to oblige the promisors to execute the final agreement. Meanwhile, a letter of intent is largely used merely to express a non-binding intention of one party, lacking the essential terms of the final agreement. It is customary to also have a letter of intent or a signed offer to purchase before the promissory agreement. Letters of intent and promissory agreements do not require more formalities other than having the signatures of the parties involved.

The promissory purchase agreement, as well as the private purchase agreement —*as analyzed herein ,* are commonly used as a preparatory agreement providing the parties with an agreed timeframe generally used to finalize the due diligence and draft the final and definitive agreement to be executed at a later date. For instance, before executing the final agreement, the public notary needs to draft the correspondent public deed comprising the definitive agreement, collect data and personal information of the parties and the real estate property, file a preemptive notice and request a lien certificate before the Public Property Registry for priority or preference purposes, calculate taxes, etc.

It is not uncommon to agree therein to a down payment from the promisor buyer, usually held in deposit by the promisor seller. After the agreed period of time, should the promisor buyer fail to buy, at no fault of the promisor seller, then the promisor buyer will forfeit the down payment. On the contrary, failure of the promisor seller to sell would generally trigger an agreed penalty, usually consisting of an amount equal to the down payment, plus returning the deposit to the promisor buyer. In the case that the promisor seller does not return the down payment and/or pays the agreed penalty, then the promisor buyer will have a strong claim against the promisor seller, in order to judicially demand either the deposit and penalty due or the execution of the final purchase agreement, as some courts may consider some promissory purchase agreements —*pursuant to the provisions therein*— as a definitive private purchase agreement.

Upon the agreed period, the parties shall execute the final purchase agreement before a public notary —*as analyzed herein ,* pursuant to the essential terms agreed upon on the promissory agreement.

(b) Definitive Purchase Agreement (*contrato de compraventa*)

Contrary to the promissory agreement[4], the definitive purchase agreement itself is the final and definitive contract. However, it may be executed either privately, as a preparatory agreement —*needing to later comply with the relevant legal formal requirements,* or directly through a public deed granted before a notary public. As a general rule, the sale is perfect and obligatory for the parties when they have agreed on the object —*the real estate*—

[4] However, pursuant to the terms and conditions set forth therein, courts may consider some promissory purchase agreements as final agreements. "*When a promissory purchase agreement contains elements that belong to definitive transactions, such as the way in which the price will be paid, or it is stipulated that the purchased thing is delivered, the promissory purchase agreement is disrupted, because then the consent therein no longer refers to granting a future contract, but actually the final contract is being entered into.*" Judicial precedent entitled "PURCHASE UNDER APPEREANCE OF A PROMISSORY PURCHASE" (*"COMPRAVENTA BAJO ASPECTO DE PROMESA DE VENTA."*), with registry number 241344.

and its price, even if the first has not been delivered nor the second satisfied.[5]

The private purchase agreement, similar to the promissory agreement, is commonly used as a preparatory agreement providing the parties and the notary public with an agreed timeframe to prepare the definitive agreement. As mentioned above, before executing the final agreement, preparations need to be made, such as due diligence, drafting of the correspondent public deed, filing a preemptive notice and requesting a lien certificate before the Public Property Registry for priority or preference purposes, etc.

Pursuant to the legal formal requirements stated on the applicable Civil Codes, a real estate purchase agreement shall be generally executed through a public deed and recorded before the local Public Property Registry, in order to be effective against third parties.[6]

The public notaries will be responsible to ensure the validity and enforcement of the transaction. Prior to closing, they will check for the existence of any debts or liens against the property; that the correspondent taxes and other government fees are paid in full, that the real estate description is correct, and that the seller has the capacity to execute the transaction. In addition, they will take care of the tax matters of the transaction, for instance, that the property taxes, transfer fees/taxes and any capital gains taxes are paid at or prior to closing. They are also responsible for properly recording the transaction before the local Public Property Registry.

After closing, the notary public will be responsible for providing each party with a certified copy of the property title, duly registered before the relevant authorities.

V. Closing and Ongoing Costs

(a) Closing costs

For guidance purposes only, the following are the expenses that a buyer typically needs to take into consideration when acquiring real estate in Mexico, subject to different local requirements that each City or State may have in the correspondent local regulation:

(i) In case of a Mexican Corporation, incorporation costs such as notary public fees and registration fees —*regulated locally in each State*—;

(ii) In case of a Mexican trust, notary public fees and registration fees —*regulated locally in each State*—, as well as applicable trustee's fees;

(iii) Real estate appraisal;

(iv) Notice to SRE, if applicable;

(v) Tax or services certificates, evidencing that no government fees or taxes are outstanding;

(vi) Taxes, whether local of federal, if applicable, such as income tax —*for the seller*—, acquisition of real estate tax, value added tax, etc.; and

(vii) Notary fees and filing fees, such as, preemptive notices, certificate of encumbrances, registration of the

[5] Article 2249 of the Mexican Federal Civil Code (*Código Civil Federal*).

[6] Articles 2316 to 2322 of the Mexican Federal Civil Code (*Código Civil Federal*).

change of title thereof, expedition of public deeds, etc.

(b) Ongoing costs

For guidance purposes only, the following are the ongoing expenses that a real estate owner, directly or indirectly, typically needs to take into consideration in Mexico, subject to different local requirements that each City or State may have in the correspondent local regulation:

(i) In case of a Mexican Corporation, issuance of annual financial statements and filing fees before the Public Commercial Registry in case of Stakeholders Meetings minutes required to be recorded therein, for example, amendments to by-laws, transformation, mergers, spin-offs, dissolution, liquidation and, optionally, the powers of attorney granted by the corporation[7];

(ii) In case of a regular Mexican trust, formalization and trustee's annual fees;

(iii) Annual property taxes, like real estate tax (*impuesto predial*); and

(iv) Payment of services, such as water, electricity and gas supply, among others.

Disclaimer

This note is for general guidance only. Specific legal advice should be obtained in all cases.

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We remain at your disposal in relation to questions regarding this note and in relation to your business and look forward to assisting you.

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[7] Articles 19 and 21 subsection VII of the Mexican Commercial Code (*Código de Comercio*).

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Buying and Selling Real Estate in Portugal

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER PORTUGUESE LAW

I. INTRODUCTION

Portugal is an Iberian Peninsula country, bordered by the Atlantic to the west and south and Spain to the north and east. In addition to its continental landmass, it also comprises the archipelagos of the Azores and Madeira. Portugal has around 10.4 million inhabitants.

Portuguese territory is split up into three administrative divisions: the first division includes 18 administrative country districts, while the others include the autonomous regions of the Azores and Madeira. All country districts are sub-divided into 308 municipal districts and approximately 3,100 parishes.

Lisbon is the capital of Portugal and its largest city with approximately 547,000 inhabitants. Portugal's second and third largest cities are Sintra and Vila Nova de Gaia, with approximately 385,000 and 303,000 inhabitants, respectively.

Portugal is a democracy. Its sovereign bodies are the President of the Republic, Assembly of the Republic, Government and the Courts. The current President of the Republic (and head of state), re-elected in 2021 for a five-year term, is Marcelo Rebelo de Sousa. Elections for the 230 deputies of the Assembly of the Republic are held every four years and are followed by the appointment of the Prime Minister (the head of government, currently António Costa), who then forms the government (currently a PS government with an absolute majority, elected in January of 2022).

Portugal has been a member of the European Union since January 1st, 1986, and a founding member of NATO on April 4th, 1949. It has been a member of the United Nations since the 14th of December 1955.

II. REASONS TO INVEST IN PORTUGAL

Portugal has a pleasant weather, an extensive Atlantic coast, a wide system of motorways, excellent infrastructures for living and for leisure time, competitive operating costs, proactive pensions, an advantageous tax system for investors and flexibility in human resource management systems. These singularities have made Portugal a privileged place to invest, to do business and to live.

III. OVERVIEW OF THE NATIONAL REAL ESTATE MARKET

The real estate market in Portugal is highly developed. It has a relatively high quality of supply in all sectors, on par with the main European markets, dynamic demand and a considerable presence of foreign occupiers. The market is highly transparent, with various international consultants regulated by the most demanding professional organizations of the commercial real estate sector. There is also a strong international contingent of developers and investors looking for new opportunities in the Portuguese market.

III.1. REAL ESTATE INVESTMENT MARKET

In 1985, the road for real estate investment funds in Portugal was opened. Since their launch and up until the 1990s, these funds had typically been used as SPVs rather than as an actively managed, pooled, closed-end-fund. The market in Portugal, up to 1998, was

relatively small and not particularly professional, with foreign investments being few and far between.

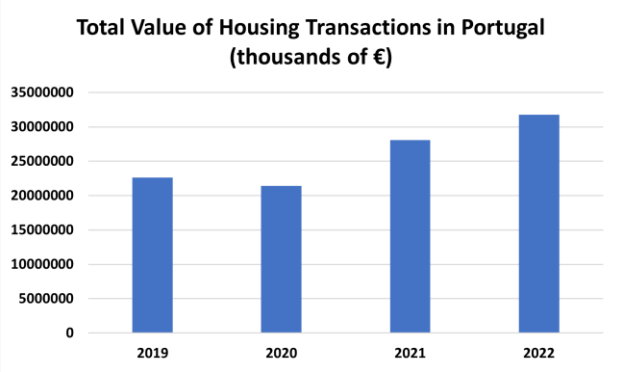
The elimination of foreign exchange risk with most of other European markets, when Portugal joined the Euro in 1999, placed the country more notably on the radar of international investors. Investment, in 1998, ahead of the Euro's launch, increased from around €180 million to more than €400 million, around 90% of which was foreign. Almost all asset transactions were in the office or shopping center sectors, with retail property accounting for more than 60% of the capital involved.

Portugal saw a steady grow in real estate investment during the last decade:

- In 2008 and 2009, the real estate investment was relatively low, mostly due to restrictions and scarcity of bank funding for the real estate sector.
- A slight recovery was noticed in 2010 with a total investment volume of €690 million.
- The two following years continued to reflect the sector investment tendencies. 2011 saw a total investment value of €167 million, while 2012 reached the lowest level of the century, recording only a total investment of € 108 million.
- In 2013, the growth of the market activity began, and a total of €322 million in commercial real estate assets were closed, tripling the volume of the previous year, followed by a significant growth also in 2014.
- In 2015, numbers largely surpassed the investment of previous years, including a historical high of 2007, with a registered €1.9 billion of transactions in commercial real estate assets, doubling the volume of the previous year. 90% of the invested capital came from outside the country.
- During the year 2016, the value of real estate transactions stabilized around € 1.3 billion and then reached a new historical high in 2017, with € 2 billion invested in real estate.
- In 2018, a new historical high was registered, with over € 3.5 billion investment. During this period, it was also evident that a significant increase in the volume of the number of transactions;
- Despite the decline in the number of transactions from 2019 to 2020, related to the worldwide pandemic caused by the Covid-19 disease, the number of properties transacted only decreased by 19.7%. On the other hand, the average value of the properties transacted in 2020 increased slightly (+0.5%) compared to 2019, from 112.5 thousand euros to 113.1 thousand euros;
- In 2021, the main indicators available highlight the increase in the value and number of housing transactions, reaching a new record in the available series, as evident in the figure below. Therefore, the increase represents a new maximum in the series available and a growth of 20.5% compared to 2020. During the year of 2021, the value of housing

transactions amounted to €28.1 billion, 31.1% more than in 2020.

- In 2022, the value of housing transactions totaled 31.8 billion euros, corresponding to a growth of 13.1% compared to 2021.



Source: INE, Índice de Preços da Habitação (Housing Price Index).

III.2. FOREIGN INVESTMENT IN REAL ESTATE

The real estate investment market in Portugal came to notice by the foreign investors since the country joined the Euro in 1999.

Several billion euros of foreign capital have been invested mostly by Germans, British, Dutch and Americans on the acquisition of several real properties since then. Recently, investors from China, Russia, Brazil and France have also made a significant impact in Portuguese market. This value could have been higher as the Portuguese market was, on occasions, simply not large enough to supply enough products in terms of number, quality and/or scale, to fully meet the demand recorded at the time.

Portugal remained present in the investment intentions of several of the most important European investment houses over the past 15 years, with buyers interested in effectively diversifying risk and achieving slightly higher income returns than those available from other markets, in a country offering security, transparency and less competition.

Dramatic changes impacting on European economic situation and in particular on Portugal had driven away the attention of foreign institutional investors until 2013. However, the second half of 2015 brought back international investment into Portugal and, more particularly the last quarter of the year, showed signs of what may be considered an upturn of real estate investment activity. The successful outcome of the political crisis, the continued improvement of economic indicators, greater public debt market stability and Portugal's good performance in terms of the adjustment program, made important contributions to the market recovery.

It should be noted that in Portugal, in July 2023, the median bank appraisal value for housing (€/m²) was set at 1,525 euros per square meter, and the implicit interest rate on all mortgage contracts was 3.649% in June, the highest since April 2009.

IV. HOW TO MAKE A REAL ESTATE INVESTMENT

Portugal, lined with other continental legal systems such as France (propriété), Germany (Voll Eigentum) and England (freehold), adopted the concept of "full ownership" which is defined by the full and exclusive rights of use, fruition, and disposal of the property.

IV.1. INDIVIDUAL (DIRECT ACQUISITION)

The formalization of a real estate acquisition requires the compliance of some important steps, as follows:

IV.1.1. INVESTIGATION

Investigating the property intended to be acquired by checking its commercial, legal, tax, environmental and urban status is essential for a clean and structured execution of the sale and purchase agreement.

Usually, it is done by commissioning *due diligence* procedures, which should ensure and guarantee that the property in question is not subject to any encumbrance, costs, or limitations (registered with the respective Land Registry Office), or that any impediments have been extinguished before or after the sale.

If the intention is to acquire a plot of land, the buyer should also verify, with the competent entities, the urban planning in all its different forms, as well as any restrictions and licenses.

On the other hand, if the intention is to acquire a building, or building unit, the buyer should also verify the use permit license which defines the purpose of the property.

IV.1.2. SALE AND PURCHASE PROMISSORY AGREEMENT

Before the formalization of the real estate sale, it is common practice to celebrate a promissory agreement (or pre-contract agreement) as an immediate binding document, in which case the signing of the definitive sale agreement is usually conditional upon the parties compliance with several obligations.

The parties can also agree with a deposit and down payment of the property price. In the case of default by the promissory seller, the promissory purchaser may receive twice the amount paid; if the default is caused by the promissory purchaser, the promissory seller can keep the amounts he has already received.

IV.1.3. SALE AND PURCHASE AGREEMENT

The real estate sale is formalized either in a deed, signed before a notary, or by a certified private document, which can be signed in the presence of a lawyer.

Altogether with the deed, or certified private document, there is the Land Registry Office record, which is one of the main instruments of a real estate deal, destined to make public the property's actual legal status.

Due to the principle of the priority of registration, the first registered right is effective before third parties and prevails over their incompatible rights even if those rights have been established before the date of registration.

Accordingly, together with the sale and purchase agreement, the registry of the property acquisition is vital to assure the protection of the purchaser before third parties.

IV.1.4. REAL ESTATE WARRANTY

According to Portuguese Law, the real estate seller (and the property builder, when applicable) is responsible for any defects or flaws in the property for a ten-year period

upon delivery, regarding non-conformities concerning structural construction elements, and for a five-year period upon delivery, regarding all other non-conformities.

The lack of conformity is presumed to exist at the time of delivery, except when this is incompatible with the nature of the property or with the characteristics of the lack of conformity.

The purchaser must report the defect or flaw to the real estate seller or property builder within one year from the date of detection of the defect (always within the warranty periods referred to above). The problems that have arisen during this period cannot be the result of bad use by the purchaser.

There may be warranties with distinct deadlines when a conventional warranty is stipulated between the parties and is expressly stated in the sale and purchase agreement.

This legal warranty can also be refused by both parties, specifically if they agree to sell the property "as it is" at the moment of the sale.

IV.2. SPECIAL PURPOSE VEHICLE (INDIRECT ACQUISITION)

The second form of real estate investment is the indirect acquisition of property, via a special purpose vehicle, previously incorporated, or acquired, for such purpose. This procedure requires the compliance of some steps, as follows:

IV.2.1. *DUE DILIGENCE*

As in direct acquisition deals, in indirect acquisition deals it's also recommended the commission of a *due diligence* procedure by the purchaser, in order to i.) verify the property's legal status, as detailed above, and to ii.) analyze the investment vehicle's commercial, financial, tax, corporate and legal status, ensuring the legal acquisition of equity stakes as well as that no undesired obligations or rights are dragged along with the entity to be used as vehicle.

IV.2.2. SHARE DEAL

This process involves the acquisition of equity stakes in investment vehicles, such as commercial companies (usually joint-stock and limited liability companies) and undertakings for collective investment of a contractual nature or of a corporate nature.

IV.2.3. SALES GUARANTEES

In special purpose vehicles acquisitions, it is common practice for the seller to accept liability for a specific length of time for any infringement of its representations and warranties on the object of the sale and underlying assets.

V. TYPES OF SPECIAL PURPOSE VEHICLES

It is standard practice in Portugal to make real estate investments through one of these three vehicles which, in other words, represent the process of a special purpose vehicle acquisition deal: (i) commercial companies, (ii) real estate investment funds and, (iii) real estate investment companies.

V.1. COMMERCIAL COMPANIES

Joint-stock companies as well as limited liability companies are on the Portuguese frontline, representing most of the existing national commercial entities.

V.1.1. LIMITED LIABILITY COMPANIES BY SHARES (PLC)

In a PLC, share capital is divided up into shares, with a minimum initial amount of €50.000,00, and must, only at the moment of its incorporation, have a minimum of five shareholders, unless it is incorporated by

another company as its sole shareholder. Also, only two founding shareholders are required when the State, or a State holding company, owns more than 50% of the capital stock.

After the incorporation, restrictions to the minimum number of shareholders no longer apply.

In its most common composition, the company is governed by a General Meeting Board, the Board of Directors and the Sole Supervisor, who should be a Statutory Auditor. PLCs with a maximum registered share capital of EUR 200.000,00 may be managed by a Sole Director ("Administrador Único"), by means of a provision of the bylaws, rather than having a Board of Directors.

In most PLC companies, the share transfer agreements require no special formalities, and its register is executed directly at the company itself.

V.1.2. LIMITED LIABILITY COMPANIES BY QUOTAS (LTD)

Usually representing the small and medium sized companies, the LTD companies are the most found type of companies in Portugal due to the inexistence of a minimal initial share capital requirement and a simpler functioning and structure, as well as the bigger control given to the founder partners.

Its share capital is divided up into quotas, with a minimum initial amount *per* quota of €1. The limited liability company can have or be incorporated by a sole quota holder (in which case the company must bear the corporate expression "sole quota holder limited liability company by quotas" – "SUPQ"), or by any other number of quota holders ("SPQ").

Differently from PLC companies, the information about the quota holders' identity is public, accessible through the commercial registry official records.

The quota transfer requires a writing form and an official registry of the transmission.

V.2. REAL ESTATE INVESTMENT FUNDS

Over the last few years, these vehicles of real estate investment took up the Portuguese market, mostly due to its favorable tax regime.

The so called "*Fundos de Investimento Imobiliário*" ("FII") are autonomous assets under the joint ownership of individuals or corporate entities, usually called "unitholders." FII's are also divided up into identical investment/participation units.

The expression "investment fund" is reserved to the investment fund, with the addition of the expression "real estate" in the case of real estate investment funds, which should be part of its denomination.

FII's must assume one of three capital variability forms:

i) Open-ended funds – with a number of investment units, variable according to the market demand;

ii) Close-ended funds – with a fixed number of investment units, established at the moment of its emission, with the possibility of increasing or reducing its number, if and when mentioned in the law and in the management regulation;

iii) Mixed funds – with a fixed number of investment units and variable number, included in two different categories.

FII's are a type of undertaking for collective investment ("OIC") of a contractual nature, which management and representation must be performed by third ones specialized in the real estate market – as a general rule, by a management company of a collective investment undertaking ("SGOIC"). The management company of a real estate investment fund must be a public limited company and have its head office and effective management in Portugal.

The creation of these entities requires a formal process, which includes authorization and official supervision from the Securities Commission ("*Comissão do Mercado de Valores Mobiliários*" or "CMVM").

The assets of a FII may comprise liquidity, real estate property and shareholdings in real estate companies, including units in other real estate companies.

V.3. REAL ESTATE INVESTMENT COMPANIES

In 2010, Portugal included in its legislation a possibility that already existed in most of European countries, which consisted in forming FII's with a corporate form (aside of the contractual form previously mentioned).

The so-called "Sociedade de Investimento Coletivo" are collective investment entities ("OIC") with legal personality, which shall take the form of a public limited liability company of variable capital ("SICAVI") or fixed capital ("SICAFI").

These collective investment companies can be self-managed or managed by management companies of collective investment undertakings ("SGOIC").

The share capital of the collective investment companies is divided into identical nominative shares with no nominal value, and they shall have a minimum initial capital of 50,000€ (fifty thousand euros) or 300,000€ (three hundred thousand euros), depending on whether they are heterogeneous or self-managed.

In addition to the activities permitted for this type of collective investment undertaking, these companies also have the exclusive corporate purpose of conducting the following activities:

- Investment management, undertaking the acts and operations necessary for the proper implementation of the investment policy;
- Management of the collective investment undertaking;
- Marketing the units of the collective investment undertakings under management.

Both SICAVI AND SICAFI are subject to the Asset Management Regime ("*Regime da Gestão de Ativos*") - which has revoked the General Framework of Collective Investment Undertakings – and by the provisions of the Portuguese Companies Code, except when it is incompatible with the specific nature and object of these companies or with the provisions of the Asset Management Regime.

Additionally, it is important to point out that the rules behind the incorporation of FII's (contractual form) are equally applied to the incorporation of these collective investment companies, as well as the applicable Portuguese corporate legislation. Therefore, the creation of these entities also requires a formal process, which includes authorization and official supervision from the Securities Commission ("*Comissão do Mercado de Valores Mobiliários*" or "CMVM").

V.4. INVESTMENT AND PROPERTY MANAGEMENT COMPANIES (SIGI)

Finally, on January 2019, a new type of investment and property management companies ("*SIGI*") was legally established, aiming to (a) diversify companies' funding sources, (b) increase the investment in the economy and competitiveness of the securities market, (c) attract foreign investment, and (d) dynamize the Portuguese real estate market, especially the leasing market.

The SIGI main corporate purposes are to:

i) Acquire property rights or other equivalent rights on real estate, to subsequently rent them, including atypical forms of contract which include the supply of services necessary for the use of the real estate property;

ii) Acquire and maintain shares of others SIGI or companies with their head office in Portuguese territory or in another Member State of the European Union or the European Economic Area which is bound to administrative cooperation in the area of taxation equivalent to that established within the European Union and which meet certain requirements;

iii) Acquire and maintain participation units or shares in (i) real estate investment undertakings funds or (ii) residential rental real estate investment funds and residential rental real estate investment companies.

However, the property rights should constitute the major assets of these companies.

The "*SIGI*" are public limited companies ("*PLC*") and must have a minimum share capital of €5.000.000 (five million euros), represented by ordinary shares. The shares are admitted to trading on a regulated market.

The "*SIGI*" must bear the business name "*Sociedade de Investimento e Gestão Imobiliária, S. A.*" or "*SIGI, S. A.*", and may be formed with or without a call for public subscription. However, the deferment of any capital contributions is not permitted.

Debt limitations are also applicable.

Furthermore, both public limited companies ("PLC") and real estate investment undertakings ("OII") in corporate form ("SICAVI" or "SICAFI") may be converted into a "SIGI," subject to compliance with certain requirements stipulated by law. In both cases a resolution of the general meeting is required, with the majorities provided for by law.

Finally, the following relevant aspects of the regime applicable to SIGI should be noted:

i) The indebtedness of SIGI may not correspond, at any time, to more than 60% of the value of the total assets of the SIGI;

ii) The shares representing the entire share capital of SIGI must, within one year from the registration of the company's incorporation, be admitted to trading on a regulated market or selected for trading on a multilateral trading facility located or operating in Portugal or in another Member State of the EU or European Economic Area;

iii) Within nine months of the end of each financial year, SIGI companies must distribute, in the form of dividends, at least: (i) 90% of the profits of the financial year resulting from the payment of dividends and income from shares or units distributed by certain entities; and (ii) 75% of the remaining profits of the financial year distributable under the terms of the Portuguese Companies Code.

VI. TAX REGIME

VI.1. PROPERTY ACQUISITION

VI.1.1. REAL ESTATE TRANSFER TAX ("IMPOSTO MUNICIPAL SOBRE AS TRANSMISSÕES ONEROSAS DE IMÓVEIS") AND STAMP DUTY ("IMPOSTO DO SELO")

The acquisition of real estate is subject to two types of taxes, which must be paid by the purchaser to the tax authorities before the signing of the real estate acquisition agreement.

IMT – Real Estate Transfer Tax, which is calculated over the price of the real estate or its tax patrimonial value ("VPT"), if higher (which is uncommon).

IMT tax rates for housing buildings are progressive between 0% to 7.5% (for buildings whose acquisition price or VPT exceeds € 1,050,400) and fixed for rural property (5%) and plots of land for construction or other urban buildings (6.5%), or when the purchaser, not as an individual, has office, or is deemed as being held or controlled by an entity domiciled, at tax haven (10%). Nevertheless, Portuguese law foresees some exceptions or deferrals on IMT payments, some of them applicable when the acquisition is made by using some of the special purpose acquisition vehicles identified above.

Indeed, real estate companies benefit from an actual exemption as long as the property acquired is re-sold (i) within 3 years; (ii) in the same physical state in which it was acquired; (iii) without the purpose of being re-sold again. Upon the acquisition of property in the context of urban rehabilitation operations over buildings, an exemption is also available upon meeting certain conditions.

IS – Stamp Duty, calculated over the price, or the VPT, if higher. IS tax rate is fixed in 0,8% in most frequent situations.

VI.1.2. VAT ("IVA")

Under Portuguese law, real estate acquisitions are generally exempted of VAT (exceptions apply).

VI.2. PROPERTY OWNERSHIP

VI.2.1. PROPERTY TAX – "IMI"

Owners of real estate located in Portugal, which are registered as such as of 31 December of a certain year, are subject to IMI. Nowadays, IMI reaches a variable rate between 0.3% and 0.45% for urban buildings and plots of land for construction, a fixed rate of 0.8% for rural property, and a fixed rate of 7.5% for owners' resident in tax havens or deemed as being held or controlled by entities established therein.

IMI is levied on a yearly basis and becomes payable in the following year to which it refers, upon the issuance of the tax assessment by the tax authorities.

IMI must be paid: (i) in one installment, in the month of May, when its amount is equal to or less than € 100; (ii) in two instalments, in the months of May and November, when the amount is greater than € 100 and equal to or less than € 500; (iii) in three instalments, in the months of May, August and November, when the amount exceeds € 500.

Additionally, this tax may be applicable if certain thresholds are exceeded.

VI.2.2. PROPERTY TAX - "AIMI"

Additional to the IMI ("AIMI") is due, among others, by the owners of urban properties, located in Portugal, intended for residential purposes and plots of land for construction.

The taxable basis corresponds to the sum of the VPT of all urban properties owned by each taxpayer, reported as of 1 January of the year concerned.

If the owner is an individual, an exclusion from taxation up to € 600,000 applies. Married or living in non-marital partnership taxpayers who opt to submit a joint tax return for AIMI purposes, have an exclusion from AIMI of € 1,200,000.

In the case of individuals, the AIMI rates vary between 0,7% and 1,5% (progressive rates).

For corporate entities, the AIMI rate is of 0,4% (with no exclusions on the taxable basis).

The value of buildings owned by legal persons and used for the personal use of the holders of the respective capital, the members of corporate bodies or of any administrative, directing, managerial or supervisory bodies or of their spouses, ascendants and descendants, is subject to an aggravate rate of 0.7%, being subject to a marginal rate of 1% for the portion of the value exceeding € 1,000,000 and equal to or less than € 2,000,000, and to a marginal rate of 1.5% for the portion exceeding € 2,000,000.

AIMI is assessed by tax authorities in June of each year, being the respective payment made in September.

VI.2.3. SPECIAL CONTRIBUTIONS

Special Contributions are expressly foreseen in law and are generally required when properties are destined to the construction of new buildings and whenever the value of plots of land for construction increases significantly due to major infrastructure public works carried out (mostly in Lisbon, Porto and their outskirts). The applicable rate varies between 20% and 30% and is levied on the aforesaid increased value.

VI.2.4. TAX ON INCOME FROM PROPERTY OBTAINED IN PORTUGAL BY NON-RESIDENTS

Income from property obtained in Portugal by non-residents (e.g., leases) is taxable at a special rate of 28% (applicable to individuals), or 25% (applicable to corporate entities), being in both cases subject to a 25% withholding tax.

Capital gains deriving from the transmission of Portuguese real estate by non-resident individuals are nowadays generally taxed on 50% of net capital gains (as determined by law) at the IRS general and progressive rates, varying from 14,5% to 48% for annual incomes up to €78.834,00. Above that threshold an additional flat rate surcharge of 2,5% applies to global incomes of up to €250.000,00 and of 5% thereafter.

When obtained by companies such capital gains are to be taxed under the correspondent Corporate Income Tax applicable regime.

VII. LEASING LEGAL FRAMEWORK

VII.1. GENERAL ISSUES

In Portugal, leasing is, day by day, acquiring a more relevant economic weight.

On 14 August 2012, in compliance with the terms established in the memorandum of understanding executed by and between Portugal, the European Commission, the European Central Bank and the International Monetary Fund, a pack of Laws entered into force with the purpose of implementing structural reforms in the Portuguese legal framework of real estate lease to boost the market.

The real estate lease is divided into two types: (i) leases for non-housing purposes and (ii) leases for housing purposes.

VII.2. LEASES FOR NON-HOUSING PURPOSES

The most relevant aspects of lease agreements for non-housing purposes, usually for commercial or industrial purposes, can be freely stipulated by the parties, who are, accordingly, free to agree on issues related to duration, termination, and opposition to the renewal of lease contracts, with subsidiary application of the rules regarding leases for housing purposes. However, in the first five years after the beginning of the contract, regardless of the stipulated period, the landlord cannot oppose the renewal.

According to the law, the lease agreements may be entered into for a fixed term or be of non-specified duration. The last option is not commonly used in the property market in recent years. If no provision is made by the parties, the contract is deemed to be concluded for a fixed term, for a period of five years. If entered on a fixed-term basis, the duration may be freely agreed between the parties. The agreement can be automatically renewable, unless the parties agree or any of them decide otherwise.

Maintenance works are freely regulated between the parties. In this case, if no provision is made by the parties, the landlord is responsible for carrying out the conservation works, and the tenant is deemed as being authorised to carry out the works required by law or by the purpose of the lease.

The costs and expenses related with the property are freely agreed between the parties, who are also free to agree the criteria for updating them.

Parties can subject the transmission of tenant's contractual position to landlord´s permission, although, if nothing is stipulated, the transmission is possible in the most frequent situation of transfer of the commercial or industrial business carried out in the property ("*trespasse*").

Any party may cancel the lease agreement based on a serious breach of duty committed by the other. The legal framework specifies some of those situations that justify the termination of the lease agreement by the landlords, with a compensation for the tenants.

Additionally, the contract can be simply terminated by means of a written communication sent by the landlord to the tenant in situations of delay or lack of payment of the rent.

On all other serious breaches, the termination can be declared by the Court.

VII.3. LEASES FOR HOUSING PURPOSES

The lease agreements for housing purposes, unlike the lease agreements for non-housing purposes, have less contractual freedom. Some of the most relevant matters are imperatively established in the law. That is the case of rules regarding the early termination and the opposition to renewal of the lease agreements.

These lease agreements may also be entered for a fixed term or be of non-specified duration. If no provision is made by the parties the contract is deemed to be entered for a fixed term of five years.

Regarding the fixed-term lease agreements, the minimum period for permanent habitation is 1 year. These agreements are necessarily renewable for 3 years, except when the parties stipulate otherwise.

The landlord may legitimately terminate the contract if he alleges the necessity to live in his own house, or the necessity of construction work or maintenance that will result in the disappearing of the house. Otherwise, the agreement will be suspended during the maintenance period, but the tenant has the right to be re-housed in an equivalent house. If the tenant lives in the house for more than 15 years, the agreement can only be terminated by demolishment or severe

works that do not allow remaining in the house.

The tenant is entitled to oppose to the renewal of the lease, by means of a notice sent with a prior notice that may vary depending on the initial term or on the term of its renewal, as well as to terminate the lease agreement at any time and without justification, provided that 1/3 of the lease duration has elapsed, by means of a written communication sent to the landlord with a prior notice provided in the applicable law.

As to non-fixed term agreements, the law provides the conditions and the prior notices that the landlord and the tenant must comply in order to legally terminate the agreement.

Like in the non-housing lease agreements, any party may cancel the lease agreement based on a serious breach of duty committed by the other. Also, here the legal system provides a non-exhaustive list of cases of breach justifying a landlord's decision to terminate the lease agreement.

Additionally, the contract can be simply terminated by means of a written communication sent by the landlord to the tenant in eligible situations of delay or lack of payment of the rent.

In 2019, tax incentives were introduced, foreseeing a signification reduction of taxes in longer renting agreements.

VII.4. SPECIAL PROCEDURE FOR EVICTION

One of the ultimate goals of the urban lease regulation's reform in 2012 consisted of speeding up the procedure for eviction. A special eviction regime was established in order to ensure the effectiveness of the termination of lease agreements – regardless of its purpose – applicable when the tenant has not vacated the leased property on the date foreseen in the law or agreed by the parties.

This eviction procedure is specially used when the lease agreement was terminated by non-judicial means. The landlord can cumulate the request for eviction with the claim of payment of rents and other expenses and charges due by the tenant. This procedure takes place before an extrajudicial entity and is aimed to ensure fast procedures, although it can, under certain circumstances, be transferred to court.

VIII. URBAN REHABILITATION

To promote the properties' rehabilitation, the new reforms simplified the urban licensing procedure required for these operations as well as for termination of lease agreements when the landlord desires to perform rehabilitation works on the property.

Urban rehabilitation of buildings must, however, meet energetic efficiency, seismic vulnerability, and accessibility requirements.

There is a special procedure applicable to the prior licensing control regarding buildings that were built at least 30 years ago and that show high levels of deterioration. According to this procedure, the execution of works in such buildings does not require a construction license, usually a bureaucratic process, being that a prior formal communication to the competent entity is requirement enough to allow the works to commence.

In case the property is leased, and the landlord intends to carry out refurbishment works or deep restoration, in most situations, and as stated above, the landlord is entitled to terminate the lease agreement, without having to resort to court, and to obtain the release of the leased property, provided that he relocates the tenant or, alternatively, awards the tenant with the legally foreseen compensation.

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Buying and Selling Real Estate in Romania

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KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER ROMANIAN LAW

I. Types of Real Property Transactions

A. Purchase of an undeveloped plot of land (agricultural);

B. Purchase of brownfield renewable power generation projects along with land rights for power generation installations, connection, and the collection network;

C. Secure land rights (ownership right, superficies right, concession right, use and easement rights) to enable the development and delivery of turnkey renewable power generation greenfield projects;

D. Purchase of a buildable plot of land (with or without a building);

E. Purchase of a building without the land (with superficies right over the land);

F. Purchase of a flat (condominium);

G. Purchase of a company having real estate assets.

II. Major Content of the Purchase Agreement

A. Main elements of the Purchase Agreement

The contract must include: the identities of the parties, description of the real estate (address, surface area, buildings, cadastral number and Land Book registry number), purchase price (which must be serious – not derisory, real – not fictitious, and determined or determinable), as well as the main obligations of the parties (i.e., to transfer the property rights and to pay the price).

The rest of the contractual provisions are, in principle, freely negotiated between the parties: conditions precedent, transfer date, risk allocation (with certain legal exceptions), guarantees, payment date, etc.

A separate note should be made in respect to purchase agreements for brownfield/greenfield renewable power generation projects, which usually include specific conditions precedent related to project permitting.

B. Specific conditions applicable to renewable generation projects

Permitting of a renewable project in Romania is split into several streams, sometimes interconnected: (i) civil construction permitting stream (covering also urban planning and environmental aspects), (ii) Sector-specific permitting stream.

The relevant authorities have already significant experience with the permitting process from the first generation of renewable projects. Several pieces of legislation regulating land use and building permitting was amended in 2022 to make the permitting process for renewable energy projects easier by reducing land planning formalities and thus, project development time.

Thus, under Law No. 254/2022, the Land Fund Law No. 18/1991 was amended to allow, until 31 December 2026, the development of renewable energy projects on agricultural land located outside a built-up area (extravilan). The measure applies to solar, wind, biomass, bioliquid, and biogas power facilities, as well as electricity storage units, transformer stations, and similar infrastructure, on plots of up to fifty hectares.

Eligible land must be classified as quality class III, IV, or V and fall under the use categories of arable land, pasture, vineyards, orchards, or land improved by reclamation works. Construction is permitted based on a valid building permit and approval for the temporary or permanent removal of the land from agricultural use, which is deemed to occur at the time of issuance of the building permit, subject to certain tariffs.

In the case of the development of renewable energy projects, agricultural land located outside a built-up area (extravilan), with the exception of land classified as arable, may be used in a dual system for both agricultural production and the generation of electricity from renewable sources. In such cases, the permanent or temporary removal from agricultural use may apply only to the portion of land occupied by the investment objectives, while the remaining area shall remain in agricultural use.

Another amendment aiming to facilitate the development of renewable power generation projects was introduced by Law no. 159/2022, into Law no. 50/1991 on the authorization of construction works, to provide that building permits may be issued without land planning documentation for the production of electricity from renewable sources and hydrogen.

For the same purpose as above, a similar amendment was brought by Law no. 166/2023 to the provisions of Law no. 350/2001 on regional planning and urbanism. Thus, the right to build was granted, even in the absence of approved urban planning documents, for construction works of renewable sources electricity and hydrogen production and storage capacities, located either in urban or rural areas, including transforming capacities, cables and installations for their connection to the public utility grid.

The legislation changes mentioned above led to a simplification and streamlining of the authorization process for economic operators that invest in energy production capacities from renewable sources. The process was simplified further with the implementation of Government Emergency Ordinance 140/2022 regarding a single industrial licence. Thus, economic operators who invest in renewable energy production capacities are able to apply for a single industrial licence, which grant in a single procedure, carried out by electronic means, through the Single Electronic Contact Point for Industrial Licence, all licences, authorizations, agreements, notices, or permits necessary to carry out energy production activity. The building permit for energy production, transportation, and distribution facilities was included in a single industrial licence starting on 1 January 2025.

III. Conclusion of the Purchase Agreement

Validity requirements on the form of the purchase agreement. All *in rem* rights over real estate (including ownership) must be transferred through authenticated agreements concluded before a Romanian public notary, under the sanction of absolute nullity of the agreement. The notary public may be chosen by either of the parties. An agreement relating to rights in rem over real estate property located in Romania must be governed by Romanian law.

The persons who sign the agreement before the notary public must have proof of identity (ID Card, Passport, etc.) and, if the case may be, proof of power of attorney (which must also be authenticated by a notary public and must expressly give power to sell/purchase the specific property). If the buyer/seller is a legal

entity, proof of status of the company must also be provided.

The notary shall verify the status of the property and shall obtain an authentication excerpt from the relevant Land Book which shall block any further registrations in the Land Book until the agreement is registered after signing. All the Land Book registrations/de-registrations in respect of the ownership title shall be carried out by the notary public.

The parties will sign only one copy of the agreement which remains in the public notary's archives. The notary shall provide as many duplicates as necessary, which shall be only signed by him/her.

It should be noted that in Romania there are certain pre-emption rights or other statutory limitations imposed by Law 17/2014 regarding certain measures concerning the sale and purchase of agricultural land located outside city limits, the amendment of Law No. 268/2001 on the privatization of companies that hold public and private agricultural lands owned by the state under management, and the establishment of the State Property Agency, as subsequently amended and supplemented, potentially applicable in relation to some specific categories of real estate properties (outside city limits, agricultural land). The rules for the exercise of the pre-emption right have been changed (the amendments brought by Law 175/2020 entered into force on 13 October 2020), and they have become more cumbersome. In the initial phase of the procedure regulated under Law 17/2014 (Stage 1), agricultural land can be offered for sale to seven categories of legal pre-emptors, in a specified order. Should none of these legal pre-emptors express their intention to purchase the agricultural land, then a second phase of the procedure is to be followed (Stage 2), where such land may be sold to "potential buyers" who meet the conditions outlined by Law 17/2014.

Subsequently, if both stages mentioned above are completed without an eligible buyer, as regulated under Law 17/2014 (i.e., either a legal pre-emptor, or a "potential buyer"), expressing an intention to accept the sale offer published by the landowner of the agricultural land for sale, the respective land can be freely sold to any natural person or legal entity at the same price in the sale offer.

The acquisition of land with a value in relation to new investments in excess of 2 million Euro, made by either EU or foreign direct investors in certain sectors of the economy which include inter alia: energy sector, transport sector, supply systems with vital resources, critical infrastructure, industrial security, agriculture and protection of the environment, is subject to the procedures for assessing, investigating, clearance, conditioning, prohibiting or unwinding such investment in Romania on grounds of security or public order **("FDI Screening")** regulated by Government Emergency Ordinance 46/2022 on measures implementing the FDI Regulation and amending and supplementing the Competition Law 21/1996, the Law no. 164/2023 for the approval of GEO 46/2022 and Government Emergency Ordinance 108/2023 amending and supplementing the Competition Law no.21/1996 and other normative acts (collectively "**FDI Law**").

FDI Law defines very broadly the concept of new investment applicable both to EU and foreign direct investments, which, in addition to an initial investment in tangible and intangible assets that are located within the same perimeter and relate to the startup of a new business, also encompasses:

- the creation of a new unit for carrying out the activity in the sensitive sector which is technologically independent from other existing facilities;
- the extension of the capacity of an existing establishment (i.e. the increase of the production capacity in the existing location);
- the diversification of the output of an establishment through products that have not been previously manufactured in that plant or a fundamental change in the overall production process of an existing establishment.

For foreign investors, pending an FDI Screening clearance by the Romanian Competition Council based on the positive recommendation issued by the Commission for Foreign Direct Investment Screening ("CFDIS"), a standstill obligation is provided under the FDI Law, meaning that any acquisitions of real estate that qualify as foreign investments in the economic sectors mentioned above cannot be implemented.

Following amendment to the FDI Law, investors from the EU—including Romanian investors—are now expressly brought within the scope of the screening regime. As a result, the standstill obligation and related gun-jumping penalties are now applicable to both EU and non-EU investors.

EU investors are defined as EU citizens, companies established in an EU Member State (including trustees), as well as EU-based companies controlled by EU citizens or EU legal entities, who have made or intend to make an investment in Romania.

Consequently, any investment in a sensitive sector—as defined under the existing list which remains the same—and exceeding the two million Euro threshold must be notified, regardless of the investor's nationality.

IV. Transfer of Ownership

As a general rule, the property right transfers automatically upon the execution of the agreement, unless the parties have otherwise agreed (e.g., until fulfilment of conditions precedent).

The registration in the Land Book is made for opposability purposes only and is to be carried out by a public notary following the execution of the agreement.

Certain rules shall come into effect after the finalization of cadastral works on all land in Romania. Specifically, once the entire cadastral works for all land in Romania are finalized (a date which is difficult to estimate at this stage), the registration of the property right transfers with the relevant Land Book shall no longer be performed for opposability purposes only but shall become constitutive of a right (i.e., the transfer will operate as of and on the basis of the registration with the relevant Land Book).

In relation to brownfield/greenfield renewable power generation projects, the project company must secure, already from the development phase, a title to land proper for building purposes, which would typically be ownership right or superficies right.

The new Land Book registration regulation that entered into force on 14 February 2023, expressly stipulates that photovoltaic panels erected on buildings or other similar surfaces do not have to be registered in the Land Book.

With this added clarity on the matter, photovoltaic panels can now be installed without legal hassle or doubt on structures including, but not limited to, constructions, constructive elements of road or rail transport infrastructure, constructive elements of building

networks, elements of irrigation infrastructure, etc.

V. Agents

Both parties may use a real estate agent. In general, the agents conclude mainly exclusivity agreements.

The general commission on the market today is approximately 1-3% (depending on the value of the transaction).

VI. Forms of Ownership

In general, Romanian and EU individuals/entities may own land in Romania. While there may be some restrictions for other foreigners to own land in Romania, the practice for foreign investors is to incorporate a Romanian legal entity which has no restriction on owning lands.

The "right of ownership" gives the owner the power to possess, use and dispose of the property.

A. Acquisitions

A real estate deal in Romania may be made either (i) by way of an asset deal (direct acquisition of an asset) or (ii) by way of a share deal (acquisition of the shares in the holding entity of the asset).

Share deals are often preferred to asset deals due to cost and tax optimization purposes, as they are not subject to the fees and costs entailed by an asset deal, as they do not entail the transfer of ownership of the real estate. However, according to Law 175/2020 which entered into force on 13 October 2020, a company which owns, outside city limits, lands, and which sells enough shares to ensure control over the company, shall pay a tax of 80% applied to the positive difference between the value of the agricultural lands from the date of sale and that from the date of purchase, determined according to the indicative value established by the expertise made by the chamber of notaries public or to the minimum value established by the market study carried out by the chambers of notaries public, as the case may be, from the respective period.

This rule is also applicable if the sale of the control package takes place before the anniversary of 8 years since the acquisition of such lands and if such lands are more than 25% of the company's assets. This tax is an additional tax to the ones due in consideration of the Fiscal Code, moreover, this tax is not considered a deductible expense when calculating the tax on profit.

B. Residential Property

The most frequent forms of ownership of residential property are:

1. **Sole ownership**: The owner is the only person authorized to control and dispose of the land in question.
2. **Common ownership**: More than one owner over the property; there are two types:
   - **(a)** joint ownership (ownership by two or more persons holding undivided – undetermined – shares over the property – such as ownership by spouses); no deed may be concluded without the consent of the other co-owner.
   - **(b)** co-ownership (ownership by two or more persons holding determined shares over the property) which, in turn, can be ordinary co-ownership (e.g., two buyers acquire 50% each of a property) or forced co-ownership

(e.g., forced co-ownership of the owners of apartments in a building over the common parts of a building – stairs, lobby, elevator, rooftop, etc.) – deeds may be concluded by each co-owner for its share of the property

C. Commercial Property

Owners of commercial property are most frequently legal entities. The most commonly used entities under Romanian law are joint-stock companies (SA) and limited liability companies (SRL).

i. Limited Liability Company – SRL

1. Legal Entity

SRLs are the most commonly used vehicles.

An SRL is managed by directors who act under the control of the general meeting of shareholders. Shareholders may also be appointed as directors.

No restrictions on citizenship or residency apply for directors or shareholders.

2. Formation

The main steps for the establishment of a SRL are:

a. Applying for and obtaining reservation of the SRL's trade name,

b. Choosing a Registered Office,

c. Drafting and submitting the SRL's constitutive documents to the Trade Registry, and

d. Subscribing the share capital.

A SRL may also be incorporated by a sole shareholder even if:

(i) this shareholder is sole shareholder in another company; or

(ii) the sole shareholder is a legal entity which, in turn, has a sole shareholder.

Timing: In principle, after all documentation is submitted, incorporation is completed within three (3) business days as of the filing of the registration with the Trade Registry (if no other issues arise and no additional documents are requested).

3. Costs of Formation

The administrative fees are approximately RON 1,200 (approximately EUR 250).

4. Minimum Registered Capital

The minimum share capital is RON 1.

5. Limited Liability

The shareholders are liable for the obligations of the company up to a limit equal to the amount of their contributions to the company's subscribed capital.

ii. Romanian Joint-Stock Company – SA

1. Legal entity

The minimum number of shareholders of an SA is two.

An SA is more complex than an SRL. The supreme corporate body is still the general meeting of shareholders as in the case of an SRL.

The management of a joint-stock company is carried out:

(i) either by a director or a board of directors (one-tiered management) – the board of directors may delegate the management to one or more managers;

(ii) or by a supervisory board and a management board (two-tiered management).

The board of directors, as well as the supervisory board, must hold quarterly meetings.

2. Formation

The main steps of the establishment of a joint-stock company are:

a. Applying for and obtaining reservation of the joint-stock company's trade name,

b. Choosing a Registered Office,

c. Drafting and submitting the joint-stock company's constitutive documents to the Trade Registry, and

d. Subscribing the share capital.

Timing: Once all of the documentation is available, incorporation is completed within three (3) business days as of the filing of the registration with the Trade Registry so long as no issues are identified, or additional documentation is required.

3. Minimum registered capital

The minimum share capital is RON 90,000 (approximately EUR 20,000).

4. Liability

The shareholders are liable for the obligations of the company up to a limit equal to the amount of their contributions to the company's subscribed capital.

VII. Financing

Financing is typically secured by way of bank loans. In most cases, banks will require securities (collateral) from the borrower.

Securities or collateral may consist of one or more of the following: mortgage of immovable assets (typically, but not necessarily the real estate which is bought with the loan); mortgage of movable assets (bank accounts, receivables, shares, cars, etc.), assignment of receivables for guarantee purposes or autonomous bank guarantees.

VIII. Payments and Costs. Taxes Involved in Real Estate Transactions

A. Asset deals: Related taxes

The following fees are due in an asset deal involving real estate:

(i) public notary fees for authenticating the SPA which are calculated on a sliding scale based on the property value declared by the parties in the transfer deed. The fees range from 2.2% of the property value for amounts up to 20,000 RON (approximately EUR 4,000), but not less than 230 RON, to 6,405 RON plus 0.6% of the value exceeding 600,001 RON (approximately EUR 120,000).,

(ii) Land Book registration tax – 0.5% of the purchase price for egal entities and 0.15% for natural persons calculated based on the value of the property declared by the parties in the transfer deed, but not less than 60 RON per property.

In practice, usually the purchaser bears all of the fees and taxes of the sale, but the parties may agree to split the costs between them. The seller usually pays the sale tax for sale of immovable property.

VAT shall apply to the purchase price if the land might be buildable (according to the urbanism certificate) or new buildings are being sold (or parts thereof). Standard VAT is 19% but there are special VAT percentages in some cases (e.g., starting on 1 January, 2023 – 5% for a natural-person buyer individually or together with another natural person of a property under Euro 120,000, and with a surface of a maximum 120 m2, provided that the property is fully constructed – the buyer can immediately move in and only for the first acquisition). Nevertheless, if both the seller and the buyer are registered for VAT purposes, VAT is not effectively paid as the reverse charge mechanism is applied.

B. Share deals: Related taxes

If the shares are sold at their nominal value, no special taxes shall be imposed. However, if the shares are sold at a price higher than their nominal value, the seller shall pay profit/revenue taxes on the difference between the nominal value and the value of the transaction.

Also, certain fees must be paid to register the transfer of the shares with the Trade Registry (approximately EUR 200).

IX. Examinations Before Closing

The buyer should make the relevant examinations in order to determine any deficiencies in the property right or in the property itself.

Pursuant to Romanian law, a legal conclusion on whether there is a valid title to certain real estate may be given only after examination of the whole chain of transfers in respect of the particular real estate. There is no rule under Romanian law that the last registered owner of the real estate is its true owner/holder. The registered owner is only presumed to own a valid title until proven otherwise by an interested person. If any of the current owner's/holder's predecessors' rights over particular real estate suffer from any defect in title, such defect survives the subsequent right transfer and affects the right of the current owner/holder.

Thus, under Romanian law, if the ownership title over real estate is cancelled, all subsequent acts of the ownership transfers might also be cancelled by Romanian courts, at the request of interested persons.

Cancellation of the subsequent acts may be requested at any time, no statute of limitations is provided by Romanian law in such cases, in

consideration of the fact that property right is guaranteed under the Romanian Constitution.

Nevertheless, according to the Land Book Law, if no deficiency arises from the analysis of the relevant Land Book, a third party may no longer be deregistered after three years from the moment the last owner was registered in the Land Book. This provision is applicable only if the third party is at least the third owner registered for that particular Land Book – i.e., if the Land Book is newly opened, this should not apply, and the third party may be deregistered at any time. Consequently, in practice, as the safeguarding of concluded transactions is preferred, it becomes more difficult to amend the content of the Land Book, and implicitly, to challenge the ownership title once the aforementioned conditions are met.

The seller should disclose any relevant hidden defects in the property itself or in the property rights.

If the buyer intends to build on the land, verifications should be made in order to assess the existence of restrictions on building in that area (general, zonal, and detailed urbanism plans). Note that a permit is, in most cases, needed for building, as well as for demolition.

Moreover, should building be envisaged on the acquired land, the buyer must take into account that, in order to obtain a building permit, several authorizations such as an urbanism certificate, environmental clearance, or ISU approval certificate must be obtained from the relevant Romanian authorities.

In addition, according to Law no. 102/2023 on amending Law no. 50/1991 and Law no. 350/2001, the holder of the building permit must fulfil several publicity formalities, including, but not limited to the notification of the building permit in the Land Book and publishing the title of the investment objective and the number and date of the building permit in a widely circulated newspaper.

Furthermore, if the acquired land is agricultural, its type may be changed to buildable, in order to be able to actually build on it, by requesting modifications to the regional urbanism plans – if the land is outside city limits. However, in consideration of Law 175/2020, which entered into force on 13 October 2020, this has to be carefully assessed as it might be extremely difficult to amend the regional urbanism plans and to move the land within city limits.

In light of the aforementioned, it is strongly recommended to undertake a due diligence investigation prior to proceeding with real estate investments in Romania.

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INTERNATIONAL LAWYERS NETWORK

GOODWINS LAW CORPORATION

Buying and Selling Real Estate in Singapore

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER SINGAPOREAN LAW

INTRODUCTION

There are two systems of land registration in Singapore: registration under the Registrations of Deeds Act 1988, known as "unregistered land", and registration under the Land Titles Act 1993, known as "registered land". Currently, most land in Singapore has been converted and brought under the latter registration system. As such, most of this article will be concerned only with land registered under the Land Titles Act 1993. The entity overseeing the land registration in Singapore is the Singapore Land Authority ("SLA").

Other relevant legislation governing real estate law in Singapore include the Land Titles (Strata) Act 1967, the State Lands Act 1920, the Land Acquisition Act 1966, the Planning Act 1998, the Residential Property Act 1976, and the Housing and Development Act 1959.

ESTATES & INTERESTS IN LAND

Land may be held in different ways such as:

i) estates in fee simple (or freehold);

ii) estates in perpetuity; and

iii) leases (typically, 99-year leasehold);

Both estates in fee simple and in perpetuity are where a person holds the land indefinitely. However, the latter is subject to covenants and conditions such as the payment of quitting rent.

Leases are for definite terms and are also subject to covenants and conditions. Leases are distinguishable from tenancy agreements in that the latter are not considered disposals of land which require the approval of the President.

While smaller estates or interests can be carved out of larger estates (e.g. the owner of an estate in fee simple may grant a lease of 99 years to a lessee, or the owner of a 99-year lease may grant a lease of 30 years to a sub-lessee), the creation of some estates or interests may require the prior written approval from the relevant authority.

All land may be reclaimed by the State under the Land Acquisition Act 1966.

REAL ESTATE OWNERSHIP

Manner of Holding

Property in Singapore may be held in sole or joint ownership. Joint ownership can come in the form of joint tenants or tenants-in-common. In joint tenancy, the joint owners own the whole interest in the property and there is no separation in shares. Conversely, tenants-in-common own the same property in distinct and separate shares. The right of survivorship applies only to joint tenancy, meaning the survivor will eventually own 100% of the property.

It is possible to convert one manner of joint holding to the other. This is usually done by way of registering with SLA a declaration which has been signed before a Commissioner of Oaths.

Public Housing

Public housing in Singapore is subsidised and comes under the purview of the Housing and Development Board ("HDB") and are more commonly known as "HDB flats". Currently, more than 80% of Singapore's population live in HDB flats.

The eligibility criteria for HDB flats are generally assessed based on Singapore citizenship, income, age, family nucleus and non-ownership of other residential property. A person who owns a private property (whether in whole or in part) is precluded from purchasing a HDB flat, unless he sells the private property.

Executive Condominiums ("EC") are a hybrid public housing property under the Executive

Condominium Housing Act 1996 which resembles private condominiums with security and amenities such as swimming pools and clubhouses. Strict eligibility criteria similar to that for normal HDB flats are imposed. ECs may only be sold after the expiry of a minimum occupation period of five (5) years and until the tenth (10^{th}) year, only to Singapore citizens or permanent residents, after which, they may be sold like any other private condominium.

Planning, Zoning & Use

Planning and control of use of land and its development fall to Urban Redevelopment Authority (URA) under the Planning Act 1998. Land in Singapore can be zoned as residential, commercial or industrial, each type of zoning carrying its own set of rules for ownership, use and development. Permission from URA or such other relevant authorities may be required for deviations such as change of use of properties, subdivision of land, etc.

LEGAL FORMALITIES IN ACQUISITION

Option to Purchase & Sale and Purchase Agreement

The Civil Law Act 1909 requires agreements for the sale and purchase of property to be in writing and signed by the parties involved.

The majority of sales and purchases of property in Singapore are initiated with the issuing of an Option to Purchase ("Option") by the vendor to the prospective purchaser in exchange for an initial sum paid by the prospective purchaser to the vendor which is typically 1% of the purchase price.

An Option is used to reserve the property for an agreed period, typically 14 days, during which the prospective purchaser may confirm whether he is proceeding with the transaction. In the event that he chooses not to proceed with the transaction, it is usually a term of the Option that the initial sum paid shall be forfeit to the vendor.

The purchaser will confirm the transaction by countersigning the Option and paying the remaining deposit amount to the vendor or the vendor's appointed lawyer as a stakeholder – this is commonly known as "exercising the Option". An exercised Option is considered the instrument effecting the sale and purchase of the property and no further agreement is required to capture the intention of the parties.

In some cases where the parties are certain of the transaction, they may decide to enter a Sale and Purchase Agreement immediately.

Completion (or closing) of the sale and purchase typically takes place within 8 to 12 weeks from the time of exercising the Option. This period is to allow the purchaser to complete the investigation of title and government requisitions on the property. This period also allows the purchaser to arrange for financing of the purchase either through his own funds or a bank mortgage.

Properties under Development

Developers of both residential and non-residential properties are subject to specific rules under the Housing Developers (Control and Licensing) Act 1965 and the Sale of Commercial Properties Act 1979 respectively which are designed to protect purchasers.

Developers of residential properties are required to be licensed. The sale of property by developers of residential and non-residential properties alike is subject to terms and conditions prescribed and regulated by the relevant governing Act.

Registration

A transaction of unregistered land is achieved by way of a deed, signed, sealed and delivered, and registered with the Registry of Deeds to secure priority based on the date of registration. Tracing of title is important with unregistered land, and usually requires careful checking of at least 15 years prior to its registration to ensure a good root of title.

Registered land relies on only one document of title, on which every transaction affecting the property is endorsed. Registration with SLA is required to effect the transfer of the interest in the land. Upon such registration, SLA will issue a certificate of title to the registered proprietor.

As most land in Singapore has now been converted to registered land, the change in proprietorship of the property will be effected by the execution of the prescribed form. Upon completion of the sale, this form is lodged and registered with SLA together with the pre-existing version of the certificate of title. Following the registration of the form, SLA will update the land registry to reflect the new proprietor(s) of the property and issue a new version of the certificate of title to the new proprietor(s), and to reflect the mortgage or charge, if any, over the property.

TAXES

Stamp duty is payable on the acquisition or disposal of a property situated in Singapore, or both, as further described in the sections below. The amount of duty payable is computed based on the purchase price or market value of the property, whichever is higher. Such dutiable acquisitions or disposals include those by way of gift or by way of a trust (where there is a change in the beneficial ownership of the property), but do not include acquisition of properties by way of inheritance under the terms of a will or by effect of law.

Stamp duty is payable within 14 days of the date of the instrument effecting the acquisition or disposal of the property, if the instrument is executed in Singapore. For instruments executed outside of Singapore, stamp duty is payable within 30 days. A penalty of up to four (4) times the amount of unpaid duty may be imposed for any late or non-payment.

For Purchasers

A purchaser is liable for Buyer's Stamp Duty ("BSD") and may also be liable for Additional Buyer's Stamp Duty ("ABSD").

Prior to 20 February 2018, the BSD rate was up to 3%. With effect from 27 April 2023, BSD rates differ for residential and non-residential properties, with the BSD rate for the former going up to 6% and for the latter going up to 5%, depending on the purchase price of the property.

Whether ABSD is payable depends on whether the purchaser is an individual or entity, the residency status of the purchaser and the number of residential properties owned (in whole or in part) by the purchaser prior to the acquisition in question and whether the property is acquired under a trust arrangement.

Prior to 6 July 2018, the ABSD rate was up to 15%. Various cooling measures were introduced over the years, with the latest being introduced on 27 April 2023 which caused ABSD rates to be readjusted, with the highest rate at 65%. This highest rate of 65% is where an entity (e.g. a company) or a trust buys the residential property. Where there are multiple purchasers, the ABSD payable will be computed based on the purchaser with the profile who attracts the higher rate.

It should be noted that there are also remissions available such as remissions to married couples of certain profiles and remissions under Free Trade Agreements.

Purchasers should also note that where a mortgage is obtained to finance the purchase of the property, the mortgage is also subject to a stamp duty of 0.4% of the loan amount, or if an equitable mortgage, then 0.2% of the loan amount, both capped at a maximum stamp duty of S$500.

For Vendors

A vendor may be liable for Seller's Stamp Duty ("SSD") if the property is zoned as residential or industrial.

(i) Residential

Where a vendor had purchased the property concerned before 11 March 2017, he will be liable for SSD if he sells or disposes of the property before the expiry of four (4) years of the date of his purchase. The applicable SSD rate can go up to 16%, depending on the date on which the vendor has purchased the property and the holding period.

Where the property was purchased on or after 11 March 2017, the vendor will only be liable for SSD if he sells or disposes of the property before the expiry of three (3) years from the date of his purchase. The applicable SSD rate ranges from 4% to 12%, depending on the holding period.

The SSD rates and holding period reverted to the pre-2017 position in July 2025. For residential properties purchased on or after 4 July 2025, the vendor will be liable for SSD if he sells or disposes of the property before the expiry of four (4) years from the date of his purchase. The applicable SSD rate ranges from 4% to 16%, depending on the holding period of the property.

(ii) Industrial

Where a vendor purchased the property concerned on or after 12 January 2013, he will be liable for SSD if he sells or disposes of the property before the expiry of three (3) years of the date of his purchase. The applicable SSD rate ranges from 5% to 15%, depending on the holding period.

Additional Conveyance Duties (for companies owning primarily residential properties)

Additional Conveyance Duties ("ACD") was introduced on 11 March 2017 and is applicable on top of the existing stamp duty for share transfers to qualifying acquisitions or disposals of equity interests (e.g. shares or units) in property-holding entities ("PHEs") that own primarily residential properties in Singapore effected by instruments executed on or after 11 March 2017.

An entity is considered a PHE if at least 50% of its total tangible assets comprise prescribed immovable property pursuant to the Stamp Duties Act, being primarily residential properties.

A qualifying acquisition occurs when equity interest in a PHE is acquired and the buyer (together with any associates) already held 50% or more equity interest or voting power in the PHE before the acquisition, or following the acquisition, comes to hold 50% or more equity interest or voting power in the PHE.

A qualifying disposal occurs when the seller (together with any associates) holds 50% or more equity interest or voting power in the PHE, the equity interest being disposed of was acquired on or after 11 March 2017 and is being disposed of within three (3) years of its acquisition on a first-in-first-out basis.

Currently, the applicable ACD rate for buyers on instruments executed on or after 6 July 2018 is

65%, while the applicable ACD rate for sellers is 12%.

ONGOING COSTS OF PROPERTY OWNERSHIP

Property Tax

Property tax on residential property is payable, whether owner-occupied or not, and at rates which follow a progressive scale. All other properties are taxed at 10% of the annual value of the property (i.e. the estimated gross annual rent of the property if it were to be rented out).

Property tax reliefs may be available in certain scenarios such as where a residential property is being demolished and rebuilt for subsequent owner-occupation, or where a non-residential property is owned and being used by a registered charity for charitable, public religious worship or educational purposes.

Conservancy & Maintenance Charges

HDB properties are subject to monthly conservancy charges which are dependent on the relevant town council in charge of the property. Similarly, private condominiums and developments are subject to monthly maintenance fees payable quarterly to the relevant management corporation.

PROTECTION OF LANDED RESIDENTIAL PROPERTY

There is generally no restriction on foreign ownership of commercial or industrial property or residential units in an apartment building. However, transactions of restricted residential property (generally landed property) involving foreigners require prior approval by the Minister of Law in accordance with the Residential Property Act 1976. Besides individuals who are foreigners, a foreign person is also defined in the Act to include a company incorporated in Singapore if the company has directors or members who are not Singapore citizens.

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INTERNATIONAL LAWYERS NETWORK

LÓPEZ-IBOR ABOGADOS

BUYING AND SELLING REAL ESTATE IN SPAIN

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER SPANISH LAW

I. PROCEDURE OF A REAL ESTATE TRANSACTION

1. Brokers

A. In Spain, both parties are free to hire a Broker to conduct the conveyance process of real estate properties, representing their interest during the operation. It is not mandatory, however, to sign a service provision agreement between the Broker and the party parallel to the sale and purchase agreement. Whether there is a separate agreement usually depends on the level of closeness between them, i.e. if the broker is a close person to the party, they may verbally agree some terms. However, if the real estate operation is complex or if the Broker also advises legally the party, they usually sign a service provision agreement and agree on professional fees.

B. Each party pays the fees of the Broker they have hired. Seller usually bears all the costs regarding the professional fees of the broker(s) when selling a property and in the fewer cases, when the Buyer looks for a very specific investment or property, hires a Broker to search and identify that specific property to buy, and the Buyer pays the fees of his Broker.

2. Formal procedure of a real estate transaction

Before any formal transfer begins, it is highly advisable to take some initial checks relating the property's current legal, tax/economic and town-planning situation: Legal information is normally obtained from the Land Registry (by requesting excerpts relating current liens and charges; Tax/Economic information may be obtained from the Town Hall and from the "ownership association" ("*comunidad de propietarios*"), if any, as under Spanish Law, who acquires a property is liable for the amounts owed to the ownership association and the payment of local property tax; and Town Planning information, may be obtained by requesting from the Seller or the Town Hall the Activity License/First Occupation License ("*Licencia de Actividad/Licencia de Primera Ocupación*") for commercial/housing purposes or in the event of land, Town Planning information *("cedula urbanística").*

3. Standard Forms of Agreements

A. Offer to Purchase sets forth Buyer's offer of price and other terms and conditions such as Due Diligence period when applicable, it may be verbal o written, Seller may accept or reject.

B. Once the Offer to Purchase has been accepted by the Seller, the most common way to Purchase a property in Spain is to sign an Arras Agreement between Buyer and Seller (unless the due diligence of the property is clear and the Buyer has the funds to buy, in such case, the parties may directly sign a Purchase and Sale Agreement). The Arras Agreement sets forth the date for closing, contingencies for inspections, financing, payment terms, reps & warrants, etc. A minimum of 10% of the agreed price must be paid upon signature of the

Arras Agreement, but the Parties may agree to increase this percentage. Upon completion, this amount shall be deducted from the total price.

There are two types of Arras Agreement according to Spanish Civil Code, each of them provides different enforceable scenarios. E.g., if the Seller refuses to sell upon closing date, the Seller must pay the Buyer two times (x2) the received arras amount or even enforce the Seller to sell or the Buyer to buy.[8]

C. In Spain, real estate transactions are notarized by means of a Purchase and Sale Public deed. This public deed is registered in the Land Registry and that the ownership title is recorded as well as any lien or encumbrance (e.g. mortgage) so anyone has certainty about who is the owner and the existence of any liens or encumbrances that may affect the property. Land Registry info is publicly accessible. The Buyer must consider that notarial and Land Registry fees shall be accrued.

Once executed, the last requirement before its registration is the clearance of all taxes related to the transaction. (Please see Section III for further details).

4. Form of Deed

Spanish law stablishes a property conveyance system *(teoría del título y del modo)* based on two requirements, namely, a valid agreement between the parties (title) and the subsequent handing over of the property (traditio). Therefore, for the conveyance of the ownership of a real estate property to occur, both requirements must be fulfilled.

In practice, this system entails an agreement to convey and, afterwards, granting a deed before a Public Notary, since this granting is considered a handing over by law and notary documents provide legal recognition and protection. Therefore, the most secure form of transferring real estate property in Spain is via the granting of a Public Deed of Sale before a Spanish Public Notary.

5. Spanish legal system in Spain permits different sorts of ownership like ownership of the whole land and construction or ownership for example only of one unit or lots of units (condominium) of the improvements.

In Spain there are different ways to own property: it is possible to own the whole piece of land or only a fraction of the land (plot) after segregating the land.

It is also possible to own the building without owning the land where it was built, if the land / building is subject to an allotment permit / horizontal property regime. In Spanish law, the "derecho de superficie" (right of surface) is an “in rem right” that allows a person (the superficiario) to build or plant on land they do not own, maintaining separate ownership between the land and what is constructed or planted on it. This right is granted for a specific period and under agreed conditions, enabling the superficiario to exploit and own the

[8] These contracts may have nuances in some parts of Spain.

building or plantation without owning the land itself.

This legal figure is especially useful in urban development projects, social housing, or agricultural use, particularly when the land is publicly owned or when multiple parties are involved. For example, a public authority may grant a right of superficies to a private developer to construct and operate a commercial building for a fixed term, after which the right may revert to the landowner.

Residential property in Spain is typically held under freehold tenure, granting the owner full ownership rights, obviously there may be more than one owner, and the owner may be a natural and/or a legal person. However, it is important to note that these rights can be restricted through the establishment of in rem rights or other legal structures, which may impose encumbrances or grant contractual rights to third parties.

6. **Spanish legal system permits joint ownership of real property**

Joint ownership is permitted. Under the Spanish Horizontal Property Law, buildings with more than one owner have common spaces which are property of all owners.

Spanish regulation tends to be more protective with the lessee rather than the lessor and, therefore, establishes some mandatory provisions that benefits the lessee, i.e. the mandatory validity period of urban lease agreements is 5 years if the landlord is a natural person or 7 years if the landlord is a legal person, unless the lessee is interested in an anticipated resolution.

As explained above, certain entities like trusts, unknown to Spanish Law, may have serious problems to formalize their property, as their registration as owners in the Land Registry is not permitted. Aside from this, practically all legal entities may own real property.

7. **The ownership of a building is implied in the ownership of the land.**

Under the right of accession (art. 358 et sq. of the Spanish Civil Code), a building is owned by the owner of the land unless otherwise proven. If the building was built by another party, such a third party has the right to compensation for the necessary expenses or, alternatively, the owner of the land can ask such a third party to buy the land.

Surface rights may be granted over a plot to build and develop. In this case, plot and buildings would have different owners, but once the Surface rights expire, all that is built over the plot will revert to the owner of the plot.

8. **Registration of the Property**

The Land Registry, with delegations at every Spanish region, is the formal registry where title over property is protected. Legal principle *Prior tempore potior iure* ("First registered has the better right") grants protection to the registered over any other transaction which is not.

The Good faith purchaser who acquires a property from the person who appears in the Registry with the faculty to transfer, shall be maintained in acquisition, once registered his right, no matter the right of the transferee is lately annulled or resolved (Article 34 of the Spanish Mortgage Law).

9. Special aspects to consider, if the real estate transaction is organized as share deal

The transfer of shares is exempt from VAT and transfer tax. Nevertheless, transfer tax/VAT can be incurred on the transfer of shares in companies, when the transfer of the shares is made with the purpose of avoiding the payment of the tax that would have been paid in case of transfer of the real estate. The law considers there are tax avoidance reasons where 50% or more of the assets consist, directly or indirectly, of real estate located in Spain and are not used for business activities, and, as a result of the transfer, the buyer acquires control over the company (i.e., more than a 50% stake in its share capital) or increases its stake once it has obtained control. Transfer tax is payable at a rate ranging between 6% and 11% of the value of the underlying real estate assets at the time of the transfer. Transaction costs include notarial fees, requisition fees, legal and other fees relating to due diligence, and agency fees.

In addition, it is very important to conduct a full due diligence of the entity you are willing to acquire in order to detect relevant contingencies and take those into account when negotiating the terms of the transaction, otherwise, the buyer might be exposed to several and relevant liabilities.

The in rem right of usufruct grants the beneficiary with the legal right to use someone else's property temporarily and to keep any profit made from it, with the obligation to preserve its form and substance. This right may be temporal or absolute, and it is common in Spain to grant usufructs, especially in inheritance situations. The existence of this in rem right narrows the owner´s faculties with respect to the property.

Understanding the implications of usufruct rights requires familiarity with Spanish law, and missteps could lead to legal disputes or reduced control over the investment.

Real estate property can be jointly owned by different natural/legal persons and under different legal figures.

10. Buyer's Inspections

A. The main aspect of the Buyer´s inspections, regardless acquiring commercial or residential real estate property, is to set forth a Due Diligence process. As stated in point I, the basic terms and schedule of the Due Diligence that the Buyer shall carry out usually are already stablished in the Offer to Purchase. In fact, it is a common practice in Spain to condition the viability of the operation to the success of the Due Diligence carried out by the Buyer. So, if the Due Diligence leads to a different status of the property from the one stated by the seller, frustrating the transaction, the seller shall bear the cost of the Due Diligence carried out by the buyer.

B. In the post-closing stage of the operation, in the event of unexpected liabilities that the acquirer shall assume, the Due Diligence clause of the purchase agreement is key. If this liability is a result of missed information that the seller should have provided for the Due Diligence to be complete, the buyer may claim the amount to which the liability consists.

Therefore, the Due Diligence operates as a mechanism to exercise the Seller´s liability in the event of discrepancies between what was stated in the Due Diligence, as a result of the investigation of the real estate property, and the post-closing reality of the property.

C. The Due Diligence process consists of several inspections performed by the buyer, including, but not limited to, analysing: the technical structure, the legal status, i.e. title, encumbrances, claims against the property, etc. or the tax situation of the property. Due to Spain´s abundant real estate regulation, it is crucial to analyse if the property complies with the local regulations and holds the necessary licenses, otherwise the owner would be liable, and the Administration may start a claim/sanction process.

Also, it is important to bear in mind that in case the real estate properties are built in condominiums, these are regulated under the Horizontal Property Law. Under this regime, the owners of the properties also own, jointly with other co-owners, the common areas of the condominium (fitness zone, pool, green spaces, etc). Therefore, real estate owners are affected by the bylaws of the owners' association to which the condominium is affected. The Due Diligence should also focus on observing these bylaws and understanding the property´s situation regarding the condominium.

D. If the Seller is a legal person, the Due Diligence has further specialties and analysing the corporate situation of the Seller is key to obtain the whole picture of the operation.

II. FINANCING TOOLS OF THE TRANSACTION

Typically, in Spain, investors finance transactions with mortgage loans but is also possible to finance transactions by means of vendor loans also called owner financing. It can be a good option for buyers who don't qualify for a traditional mortgage.

The advantages of using owner financing for buyers who are not able to secure a mortgage are a faster and cheaper closing with flexible downpayments, and the disadvantages are higher interests and sometimes due-on sale clauses if the seller has a mortgage on the property.

Spain has a very competitive mortgage market and as a result, there's plenty to choose from when it comes to loans. However, non-residents buying Spanish property with a mortgage have more limited access to loan types and conditions. Resident buyers are often offered up to 80% LTV (loan-to-value) but for non-residents, LTV is much lower, some banks only finance 50% of the purchase.

What should be considered when thinking about the financing of a purchase project in Spain?

It depends on the way the deal is structured. Often the owner holds the ownership of the property until they are paid in full, which happens when the buyer either makes the final payment or refinances with a mortgage from another lender.

When taking out a Spanish mortgage the buyer must be aware that the transaction involves several costs. These are levied in addition to the taxes and fees charged as standard on a purchase. It used to be the

case that the buyer took on all costs associated with a mortgage, but in recent years, consumers have successfully won high-profile court cases against the banks and reclaimed mortgage costs. We recommend seeking advice before signing your mortgage to make sure you fully understand which costs are to be paid.

III. COSTS FOR TRANSACTION

What tax aspects are directly involved in a purchase of real property, for example real property transfer tax and what is the percentage of it?

Several taxes are involved in a Commercial Real Estate transaction.

- Value Added Tax –VAT: ("Impuesto sobre el Valor Añadido IVA"): The supply, leasing or letting of Commercial Real Estate or of a building for first occupation is subject to Spanish VAT. Second and further supplies of a building or of parts thereof are exempt from VAT. However, in so far as commercial real estate is basically aimed at developing business activities and most buyers of this kind of real estate also qualify as taxable person for VAT purposes as they are generally dedicated to the development of business activities, said buyers by waiving to the tax exemption, are allowed to exercise a right of option for taxation under VAT for these supplies, leasing and letting of commercial property. By way of this mechanism, buyers are entitled to deduct and to obtain reimbursement of the VAT paid with the property acquisition provided that statutory requirements are complied with. Should these requirements fail, the transaction would be subject to Property Transfer Tax. Finally, the building activity is also subject to VAT. There are different applicable VAT rates depending on the nature of the transaction, the general tax rate is 21%.
- The Property Transfer Tax ("Impuesto sobre Transmisiones Patrimoniales – ITP"): This tax is imposed, among other acts, over the second and subsequent transfers of property. When dealing with Commercial Real Estate Transfers, this tax is rather unusual as buyer generally exercise the right of option for taxation under VAT. If requirements under VAT regulations fail, the transfer of the property will then be subject to this tax. The tax rate is different depending on each Spanish region and calculated (percentage) according to the purchase price that appears in the Public Deed of transfer. Percentages applied by the different Spanish regions move between 4% and 10%.
- Public Document Tax ("Actos Jurídicos Documentados –AJD"): This tax is applied to the execution of agreements or rights when they are granted as notarial, trade and/or administrative documents in Spanish territory (or abroad if they have legal or economic effects in Spain). Rates applied depend as well on the Spanish region it is executed and on the final Tax applied to the transaction (VAT or Property Transfer Tax). When VAT is applied to the transfer of property, the rates of this tax move between 0.4% and 1.5% of the purchase price.
- Tax on the Increase in Value of Urban Land ("Impuesto sobre Incremento del Valor de los Terrenos de Naturaleza Urbana-IVTNU"): This is a local tax which is levied on the implicit value increase that urban land gains by time elapse,

therefore, this tax is calculated considering the time passed since the last transaction -exceeding of one year-. The taxable amount is based on the property's cadastral value (not the sale and purchase price) of the land, and the effective rate increases from 3,7% to 3% depending on the property holding period.

In addition to the precedent, if the buyer takes out a mortgage loan, these are the associated fees and costs:

Valuation fee

In order to approve a mortgage loan, the bank first needs to conduct a valuation on the property. This is a compulsory step, and costs vary depending on the property price. Expect to pay between a few hundred euros and several thousand. Note that the valuation is usually conducted by a valuer named by the bank, not one chosen by you.

Mortgage fee

All banks charge a fee for setting up a mortgage and approving the loan. The fee is levied on the amount loaned so the more you borrow, the higher the mortgage fee. It's worth comparing fees charged by different banks and opting for a lower one, particularly if your loan is substantial. Banks generally charge between 0.5% and 2% of the loan, with the average around 1%. In 2020, the European Court of Justice ruled that the mortgage fee is unnecessary and should not be paid by the buyer, although Spanish jurisdiction has yet to follow suit.

Subrogation fee

If you are buying a property in Spain that already has a mortgage, you may want to take over the loan yourself. Fees to transfer a loan from the vendor to the buyer are around 0.5% of the loan's value.

Stamp duty

Known as *Impuesto sobre Actos Jurídicos Documentados* in Spanish (AJD), this tax is charged on a mortgage loan. AJD is levied as a percentage on the loan, and the amount varies depending on the region of Spain.

Notarial fees

The notary charges a fee for the title deeds and notary services when you buy a Spanish property. Buying with a mortgage involves an extra section on the title deeds with the subsequent additional charge.

Land Registry fees

As is the case with notary fees, Land Registry fees also rise when a mortgage is involved because the loan must be registered as a charge against the property.

Paperwork costs

The bank will employ a *gestoría* (professional company providing paperwork services) to pay the mortgage taxes and fees and to register the title deeds. The cost of this varies depending on the size of the mortgage loan and the work involved. Some banks operate with a particular *gestoría* and give buyers no opportunity to choose an alternative.

Insurance policies

When you take out a mortgage in Spain, you must also contract insurance for the property covering both the building itself (*continente* in Spanish) and its contents (*contenido*). The bank supplying the mortgage loan will offer to provide insurance cover as well, you are not obliged to take out insurance with them, but in practice, you are likely to get better terms and conditions for your mortgage if you do.

Your bank may also offer life and mortgage insurance policies. Neither are mandatory

for a mortgage loan in Spain, but you may wish to look into these for additional financial security. Always check the terms and conditions of insurance policies and beware of clauses that oblige you to take out a policy with your bank for the duration of the loan. Insurance offered by banks is not necessarily the cheapest on the market.

If you are a seller, you will also need to obtain an energy efficiency certificate of the property to be transferred and bear its cost, which may vary depending on the type of property.

Can the seller get his money out of your country after the transaction (repatriation of funds)?

There is no restriction to the repatriation of funds. However, in the case of transfers of real property situated in Spanish territory by taxpayers without a permanent establishment in our Country, the purchaser shall be obliged to withhold and pay to the Tax Authorities 3% or make the appropriate payment on account of the agreed consideration, as payment on account of Non- resident Income Tax imposed on the capital gain obtained from the sale of the property. If the amount withheld exceeds the effective tax due, the non-resident taxpayer is entitled to claim reimbursement of such excess.

If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be considered?

The tenant has a pre-emption right over the leased property unless expressly waived. Once this is cleared, property may be sold to any other third party. The buyer may not terminate the lease agreements currently in force as the transfer of a property means that the acquirer succeeds in all of the previous owner's rights and obligations. According to the Spanish Urban Leasing Act ("*Ley de Arrendamientos Urbanos*"), lease agreements in force can only be terminated without cost when the property is going to be used to live by its owner or its family.

Are you allowed to change the use of a building from residential use to office space, or do you need official approval for doing so or is it not allowed at all?

Every property has a "license of use" indicating if it is for residential or commercial use. This license may be changed or amended by approval of the Town Hall (according to the Urban Plan and the individual features of the property) and by approval of the "ownership association" ("*comunidad de propietarios*"), if the building has more owners.

To get a feeling as to the amount of costs involved, what costs should be considered if a foreign investor bought an existing building (and land) for a purchase price of EUR 5 million, particularly

- **notarial costs:** Notary Public's costs will be around EUR 10,000-25,000.
- **land register:** Inscription of the transfer of Property before the relevant Land Registry may be around EUR 5,000-12,500.
- **real property transfer tax:** EUR 200,000 (4%) - 500,000 (10%) Value Added Tax general tax rate if applicable: EUR 1,050,000 (21%)

Public Document Tax when transaction is subject to VAT: EUR 20,000 (0.4%) - 75.000 (1.5%)

- **advising lawyer (due diligence):** EUR 5,000-8,000, depending on the type of property. Due diligence over the land

subject to zoning regulations would be more costly as this is a complex area of the law.

- **estate agent**: Estate agent usual rate may vary between 3% and 8% of the transaction value, depending on the case.

- **others:** It depends on the financing of the transaction, for illustrative purpose, read question 8 above (e.g., *Paperwork "gestoría" costs, insurance costs).*

IV. CLOSING COSTS/ADJUSTMENTS

As a result of the abovementioned, Spanish real estate operations imply some additional costs consisting in Notary and Registry fees that ensure the effectivity of the conveyance of the property. These amounts are, usually, borne by the buyer.

However, the main cost that private individuals must take into consideration is the Property Transfer Tax [*Impuesto de Transmisiones Patrimoniales (ITP)],* which taxes acquisitions for consideration of goods. The Property Transfer Tax varies depending on the region where the property is located, as each autonomous community in Spain has the authority to set its own rates within a specified range. Generally, the tax rate ranges from 6% to 10% of the property's purchase price or market value, whichever is higher. This variability can significantly affect the total cost of acquiring the property.

TRANSFER TAX SPANISH REAL ESTATE PROPERTIES	
Autonomous Community	**General Rate**
Andalusia	7%
Aragón	8%- 10%*
Asturias	8%- 10%*
Balearic Islands	8%-13%*
Canary Islands	6,50%
Cantabria	9%
Castilla la Mancha	9%
Castilla y León	8%
Catalonia	10%-13% For large property holders and/or for the acquisition of entire residential buildings: 20%

TRANSFER TAX SPANISH REAL ESTATE PROPERTIES	
Autonomous Community	**General Rate**
Valencian Community	9% For transfers with a taxable base over 1,000,000, the tax rate applicable would be 11%
Extremadura	8%-11%*
Galicia	8%
Madrid	6%
Murcia	7,75%
Navarra	6%
Basque Country	7%
La Rioja	7%

(*) Each Autonomous Community may establish reduced tax rates when buyers meet certain criteria, such as the intended use of the property, the buyer's age, and other qualifying conditions.

V. OTHER CLOSING DOCUMENTS

Energy Performance Certificate *(Certificado de Eficiencia Energética):* Required by law,

this document can influence the marketability and value of the property.

Occupancy Certificate *(Cédula de Habitabilidad):* Necessary for confirming that the property meets all legal standards for habitation, crucial for both residential and commercial investments.

Title Insurance *(Seguro de Título):* While optional, it provides additional protection against title defects, an important consideration for foreign investors who may be less familiar with the Spanish legal system.

Activity License *(Licencia de Actividad): when the property to be acquired is not residential, e.g. a commercial premise or office building.*

VI. RECORDING REAL ESTATE DOCUMENTS

Regarding the necessity of recording real estate documents, it is important to keep in mind that, despite having conveyed the real estate property according to the *(teoría del título y del modo)* system, the new owner of the property will not be able to enforce its legal title as holder of the property until the Public Deed of the property transmission is correctly registered in the Land Registry. Thus, the recording of the Public Deed grants *erga omnes* effect regarding the real estate property and the registered owner of it can enforce its position against any third party.

To sum up, the Land Registry ensures that the buyer's ownership is legally recognized and protects against future claims. The registration process usually takes fifteen business days.

In the event of financing the operation, the mortgage registration is mandatory. Therefore, the creation of this lien on the property is not effective until the mortgage registration is fulfilled.

VII. COSTS FOR HOLDING REAL ESTATE

What tax aspects are directly involved when holding a property, for example, yearly land tax after the transfer of ownership and what is the percentage of it?

- Property Tax ("*Impuesto sobre Bienes Inmuebles –IBI*") is a yearly paid tax, managed by the Town Halls and calculated using the property cadaster value estimated by the Cadastral Office (Dependent of the Ministry of Economy/Tax Authority). The effective tax rates vary from each Town Hall as they are entitled to fix their own final rates within the range from 0,4% to 1,1% of the cadastral value.
- Special Tax on Property of Non-Resident Entities. Foreign entities holding real estate which do not fall within the following categories shall pay this annual tax. The taxable consideration is 3% of the real property cadastral value. Foreign entities exempt from this tax are: i) international public Institutions and foreign States, ii) entities entitled to apply a double tax treaty entered into with Spain containing information exchange clause, provided that the final individuals direct or indirectly holding the share capital of such entity are also resident in a country with a double tax treaty entered into with Spain containing information exchange clause, iii) foreign entities carrying out economic activities (other than mere holding or leasing of immovable property) in Spain on a regular basis; iv) listed companies and v) non-profit organizations recognized by countries with a double tax treaty entered into with Spain.
- Wealth Tax (*"Impuesto sobre el Patrimonio"*). Under certain

circumstances when the commercial real estate cannot be regarded as engaged in business or economic activities for the purposes of the Wealth Tax, this fiscal charge is imposed annually on individuals holding property in Spain. The effective tax rate varies depending on the value of the estate wielded by the individual in Spain. The tax is only applicable to individuals, not to entities holding the commercial property. However, there is some controversy at the moment between the Spanish Government and certain regions like Madrid and Andalucía where they had implemented certain tax allowances which are now challenged by the Spanish Government.

- Local Taxes for public services such as i.e., garbage collection; right of use of public property, etc. are generally payable annually. Considerations and prices vary from each Town Hall where the property is located. These local taxes are payable by the real estate owner.

VIII. ANNUAL COSTS FOR THE PROPERTY OWNERSHIP

Property Taxes *(Impuesto sobre Bienes Inmuebles, IBI):* An annual tax based on the cadastral value of the property, varying by location. Non-payment can lead to legal action, as it is a tax with real affectation, i.e., if it is not paid, the Town can seize the property.

Owners' Association Costs (Gastos de Comunidad): Applicable to condominium ownership, these complies costs of maintenance of common areas and services. They can significantly impact the profitability of the investment.

Rental income tax on rental income

Property Insurance

Relevant regulations

When acquiring Spanish real estate properties, either for personal or investing purposes, foreign investors must navigate several crucial regulations:

Spanish Civil Code (Código Civil Español): Provides the foundational legal framework for property rights and contractual obligations. Understanding its provisions is essential for ensuring compliance in property transactions.

Mortgage Law (*Ley Hipotecaria*): Ensures legal security in transactions involving mortgages. Foreign investors must be aware of the implications of mortgage registration, especially regarding priority of claims and the enforcement of mortgage rights.

Urban Planning Laws (*Leyes de Ordenación Urbanística*): Regulate land use and development. Foreign investors must conduct due diligence on whether a property complies with local planning laws, as non-compliance can lead to significant financial penalties or limitations on property use.

Tax Laws: Foreign investors must also consider potential double taxation issues, depending on their country of residence. In Spain, individuals who become tax residents are generally subject to Personal Income Tax (IRPF), Wealth Tax (IP), and (if applicable) the Solidarity Tax on Large Fortunes on their worldwide income and assets. Nevertheless, the potential application of special tax regimes—such as the so-called "Beckham Law," applicable throughout the national territory, or the "Mbappé Law," currently limited to the

Madrid region—may be assessed, as these regimes could significantly reduce the overall tax liability in Spain.

• Property Transfer Tax (ITP): Typically, between 6% and 10% of the purchase price, depending on the region of Spain.

• Capital Gains Tax (*Impuesto sobre el Incremento del Valor de los Terrenos de Naturaleza Urbana*): Applies to the profit made on the sale of a property.

Also, there are two requirements that it is important to highlight:

Número de Identificación de Extranjeros (N.I.E.) is a unique identification number assigned to foreign individuals who engage in activities of tax, social, or economic significance in Spain. Regulated by Ley 36/2006, it serves as a tax identification number for foreigners. To obtain an N.I.E., individuals must provide an apostilled copy of their passport, an apostilled notarized power of attorney authorizing the application, and proof of the necessity for the N.I.E. In urgent cases, a temporary N.I.E. may be issued, and the N.I.E. does not entail any ongoing obligations.

The **Número de Identificación Fiscal (N.I.F.)** is required for foreign legal entities involved in economic activities or with fiscal relevance in Spain, as per **Ley 58/2003 (Ley General Tributaria)**. This number is crucial for fulfilling tax obligations. To secure an N.I.F., entities must present an apostilled document proving their existence, the N.I.E. of their representative, an apostilled notarized power of attorney, and proof of the necessity for the N.I.F. A temporary N.I.F. can be issued in urgent situations to commence activities.

IX. FOREIGN INVESTORS

Why is it a good time to invest in Spain?

The strength of the labour market and the recovery in investment will boost GDP growth to 2.6%. The favourable environment of lower financing costs, a strong dollar and positive economic fundamentals is making real estate investment in Spain more attractive.[9]

Real Estate Keys[10]:

- Real estate investment in Spain experienced a 20% increase in 2024, and it is anticipated that in 2025 this dynamism will be maintained with growth between 10% and 15%. Investment will continue to focus on those assets with the capacity to generate more value, and cross-cutting aspects such as digitalization, AI or sustainability that will make the difference.
- In the office segment, space contracting in Madrid is expected to stabilize 550,000 square meters, while in Barcelona an increase of 20% is expected. Demand will be oriented towards quality space, driving up prime rents.
- The logistics sector will continue to show dynamism, with absorption stabilizing in the main markets in line with the average of the last five years. High demand and the limited supply of new product will maintain the upward trend in prime rents. In addition, the return of large portfolio deals to the market has revitalized investment, while prime

[9] Source: CBRE Real Estate Market Outlook Spain 2025

[10] Source: CBRE Real Estate Market Outlook Spain 2025

yields, which compressed at the end of 2024, will continue to tighten in the near term.

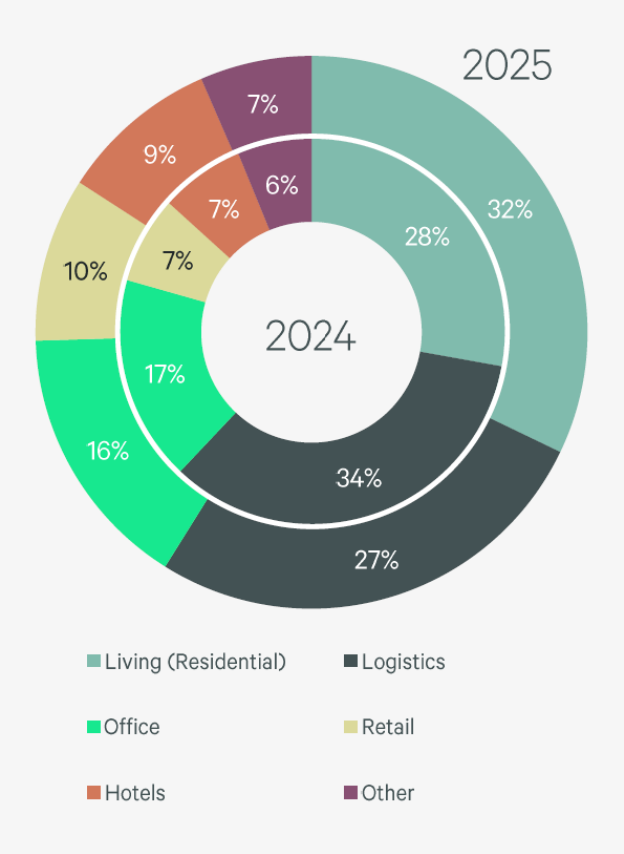
- Investment interest in the retail sector will continue, supported by the e-commerce slowdown and improvement in existing assets focused on customer experience. Annual retail sales growth of approximately 3.5% is projected for 2025, driven by rising private consumption and tourist arrivals.
- Living's main challenge will continue to be supply, which will continue to meet only half of demand, straining access to housing, but will position itself as the preferred sector for investment. A 5.3% growth in house prices is forecast for 2025, with around 680,000 sales.
- Tourism will continue to be a key driver of the economy, and the hotel segment will experience moderate growth in travelers, with a 3.4% increase and increases in ADR and RevPAR. Interest in the luxury market will persist, while more economical proposals and other alternative segments (Branded Residences, serviced apartments, and glamping) will be developed.
- The focus on ESG will continue to revolutionize the real estate sector, promoting the adoption of renewable energy technologies and sustainability standards across all asset classes.
- Despite the uncertain geopolitical context and the impact of tariff measures on global trade, the outlook for the agribusiness sector in the Iberian Peninsula remains positive. In 2024, Iberia reached the top position in agricultural production value in Europe, achieving record figures. It is the most institutionalized investment market, with growing geostrategic appeal.

Spain ranks second among European countries with the highest expected total property returns for 2025, surpassed only by the United Kingdom. This strong position is driven by the economic appeal of Madrid and Barcelona, which have attracted significant interest from investors. Notably, Madrid ranks second and Barcelona fourth in the list of the most attractive cities for cross-border investment.

2025 Trends: Investors' preference for the residential sector (32%), which has surpassed the logistics sector (27%) and offices (16%). Retail and hotels were chosen by 10% and 9%, respectively. Last year, logistics led the way (34%), followed by residential (28%) and offices (17%) as the preferred real estate sectors for European investors in 2024.

This shift is driven by expectations of increased tenant demand over the next three years. Additionally, the logistics and hotel sectors also stand out as key areas for capital allocation due to their attractive pricing levels and projected improvements in returns.

The Living sector stands out as the most attractive for real estate financing, both from banks and alternative lenders.



Source: Graphic provided in CBRE Real Estate Market Outlook Spain 2025

Are any individual person and legal entity allowed to buy property in Spain or are there restrictions with regard for example to nationality or registered office or legal entities? If there are restrictions, are there ways to organize a domestic entity for the purchase on a valid legal structure notwithstanding?

Spain has no restrictions to investment in this sense; all the same, investments from financial havens will be subject to notification to Spanish Authorities (previous to purchase). When completing transaction, current anti money-laundry regulations require the Notary Public to identify and record every (UBO) individual person holder of more than 25% of the legal entity party of the transaction (including all individuals' holders of the legal entities which hold the company, and so on).

Just to mention that the trusts, as legal entities, are not recognized under Spanish law. In this sense it is advisable to use other corporate figures to invest (especially in real estate as the Land Registry would not register transaction or property as the trusts are unknown to the Registrar).

If a foreign investor buys a plot of land in Spain to run a business there, what kind of official approvals are needed and what time and effort are needed normally to get it?

To invest in Spain, and operate in general, foreign companies need to obtain a Spanish Tax Id. No. ("*NIF*"), needed to operate in Spain. This number may be obtained by filing a standard form before the Tax Authority and provisional number –valid to operate- is obtained in a short term (several days). Definitive number are issued within a month. Depending on the business that the foreign investor is willing to conduct, further licence may be needed. If the investor is an individual, he or she shall obtain a ("*N.I.E.*").

Do foreign investors have to be entered into a transparency register or how are money laundering aspects to be checked and verified for the relevant authorities?

Regulation of foreign investment in Spain is now more complex, which is why it is necessary to obtain legal advice to determine whether a transaction is subject to authorization or whether there are additional requirements. This counsel is crucial if we consider that the lack of prior authorization results, among others, in the investment being void and having no legal effect, as well as the application of significant fines.

On September 2018, Law 10/2010 on the prevention of money laundering and the financing of terrorism was urgently modified to implement the 4th Anti-Money Laundering Directive, in order to comply with the ultimatum of the European Union. Also Order JUS/319/2018 of 21 March was issued to create the Spanish Transparency Register (*Registro de Titularidades Reales*). Additionally, although a new single Register of Real Property Ownership has been introduced by Royal Decree-Law 7/2021 of 27 April, it has not yet been implemented, as further regulation is necessary and is still pending to be passed.

Legal entities are responsible for filing UBO information with the Transparency Register (*Registro de Titularidades Reales*) when filing their annual accounts. Breach of the obligation to identify the UBO under Law 10/2010 may constitute a serious or minor infringement, entailing sanctions.

Assistance to foreign investors in Spain

López-Ibor DPM Abogados S.L.P. *personally knows several estate agents and advisors and works closely with them. These agents and advisors are well-known top-tier real estate firms who now the market and may advise when and where great opportunities can be found.*

López-Ibor DPM Abogados S.L.P. *has also advised numerous clients throughout the entire real estate development process.*

López-Ibor DPM Abogados S.L.P. *has advised in a great number of successful real estate transactions in all legal aspects including the drafting of all kind of property transfer agreements, finance of the transaction, tax issues, administrative requirements and registration of the transaction.*

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Buying and Selling Real Estate in Türkiye

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER TURKISH LAW

1. Agreement Types

Pursuant to Turkish laws, a real estate sale and purchase agreement shall be in an official form and the transfer of ownership of real estate is only possible with an official deed and registry, which is signed by the Land Registry Directorates.

It is also possible to sign a real estate sale commitment agreement that sets forth the conditions of the sale before a notary public. It is advisable to annotate this agreement to the relevant land registry records to assert personal rights arising from this agreement to third parties. In case the real estate has been acquired by third parties, a lawsuit for the nullification of the title deed can be filed. However, if the sale is not effectuated within five years of the annotation, the annotation will be automatically removed by the Land Registry Directorates under the Land Registry Law. As of July 2023, the sale and purchase of real estate can be carried out before notaries in addition to real estate sales commitment agreements. Real estate sales and purchase agreements to be carried out at notaries will be processed in the same way as the process followed by the Land Registry Directorates.

2. Buyer's Inspection

Due diligence at the Land Registry Directorates shall be carried out to determine if there are any encumbrances and limitations on the real estate, such as mortgages, attachments, rights in rem, lease annotation or any obstacle preventing the purpose of the sale. It is advisable for the buyer to inspect that the property tax for the real estate has been paid, and the real estate has been constructed in compliance with the zoning plan.

3. Financial Obligations

The transfer and acquisition of real estate may give rise to title deed fees, annotation fees, stamp tax, notary fees, value-added tax, income tax and corporate tax.

a. Title deed fee

The title deed fee is 4% of the purchase price and shall be paid equally by the seller and buyer. It is revised annually by the Ministry of Finance.

b. Notary and annotation fees

In case a real estate sale commitment agreement is signed before a notary public, a notary fee of 0,455% of the purchase price shall be applied. Unless otherwise agreed by the parties, the buyer and seller shall be jointly liable for the payment of the notary fee.

The annotation fee is 0,683% of the purchase price and shall be paid in case of annotation of a real estate sale commitment agreement to the land registry records.

The rates are revised annually by the Ministry of Finance.

c. Value-added tax

If commercial income is generated from the sale of real estate, the sale transactions shall be subject to VAT. VAT rates for residential real estate vary from 1% to 20% depending on the net area. On the other hand, the sale of commercial real estate shall be subject to VAT of 20%.

In the case that real estate has been owned by companies for at least two years, and was recorded in their assets before July 15, 2023, the sale of such real estate

shall be exempt from VAT. However, companies that are engaged in the real estate trading business cannot benefit from VAT exemption.

d. Income tax and corporate tax

Capital gains generated by individuals from the sale of real estate shall be subject to income tax, which varies from 15% to 40%. However, if the term of holding the title is longer than five years, the sale of such real estate shall be exempt from the income tax.

Capital gains generated by companies shall be subject to the standard corporate tax rate of 25%. However, 75% of capital gains shall be exempt from corporate tax provided that the real estate has been owned by the selling companies for at least two years.

4. Acquisition of Real Estate by Foreign Real Persons and Foreign Commercial Companies

The Land Registry Law regulates real estate acquisitions made by foreign real persons and foreign legal entities.

Foreign real persons are entitled to purchase real estate in Turkey, under the Land Registry Law. By Article 35/1 of the Land Registry Law, *"Foreign real persons who are citizens of countries determined by the President under international relations and the country's benefits may acquire real estates and rights in rem in Turkey provided that the legal restrictions are to be complied with."*

Foreign commercial companies, which are established under the relevant laws of their countries, are entitled to acquire real estate in Turkey only within the provisions of special laws such as the Law on Encouragement of Tourism.

However, according to Article 35/3 of the Land Registry Law, *"In case the country's benefits necessitate, the President is authorized to determine the acquisition of real estates of foreign real persons and foreign commercial companies which are established under the relevant laws of their countries in terms of country, person, geographical area, duration, number, proportion, qualification, area meter and quantity; limit, cease entirely or partially or forbid the acquisition."*

There are legal restrictions for foreign real persons and foreign commercial companies in the acquisition of real estate as follows:

- Areal restriction: The total area of the real estate that a foreign real person may purchase cannot exceed 10% of the total area of private real estate within the related district and 30 hectares in total within Turkey.
- Territorial restriction: If the area desired to be purchased is within the borders of a military forbidden zone or military security zone, foreigners cannot acquire such real estate.
- In case the acquired real estate is in landform, foreign real persons and foreign commercial companies should submit the project that will be developed on the unconstructed real estate to the relevant ministries for approval within two years.

The real estate is subject to liquidation provisions in the following cases:

- if the real estate is acquired in violation of the laws;
- if the relevant ministries and administrations determine that the real estate is used in violation of the purpose of purchase;

- if the foreigners do not apply to the relevant ministry within the required time in case the property is acquired with a project commitment;
- if the projects are not realized within the required time.

In the above-mentioned cases, if the liquidation process has not been conducted by the owner within the period given by the Ministry of Finance, which shall not exceed one year, the liquidation shall be carried out by the ministry and the amount acquired as a result of the liquidation shall be submitted to the holder of right.

5. Acquisition of Real Estate by Foreign Invested Turkish Companies

Foreign-invested Turkish companies as defined below are entitled to acquire ownership of the real estate in Turkey only if such acquisitions shall be about the scope of activities stipulated in their articles of association:

- If 50% or more shares are owned by foreign real persons, companies incorporated by the laws of foreign countries, international institutions; or
- If foreign real persons, companies incorporated by the laws of foreign countries, or international institutions have the right to assign or depose most of the persons having the management rights in that company established under Turkish laws.

However, the acquisition of real estate in a military forbidden zone or military security zone or strategic zone is subject to the approval of the commanderships. The acquisition is also subject to the governorate's approval if the real estate is in a special security zone.

The companies with foreign capital outside the scope of the above-mentioned companies are entitled to acquire real estate in Turkey with equal treatment to local investors.

It should be noted that if companies have real estate in Turkey and the shareholding structures have changed, and the companies fall within the scope of the foreign-invested Turkish companies as explained above; the companies shall notify such change to the Ministry of Industry and Technology within one month of following the transfer of shares.

The governorate checks whether the companies use real estate by their field of activity stated in their articles of association. If the governorate determines that the companies do not comply with such use, a period of six months will be given to the companies to provide compliance with the regulation. In case of failure by the companies, the real estate shall be liquidated.

6. Necessary Documents for Application

The owners of the real estate or authorized representatives shall make an application to the relevant land registry directorates. Applications can be made through a notary as well. The necessary documents for the application are as follows:

- Title deed of the real estate.
- Identification document or passport together with its translation.
- Property value statement document to be provided by the relevant municipality.
- Compulsory earthquake insurance policy.
- Photos of the seller and the buyer.
- If the transaction is to be carried out through a lawyer, a Power of Attorney is required. (If the power of attorney is prepared abroad, the original power of attorney and its certified translation.)

- Signature circular of companies.
- Certified of the authority of companies to acquire and sell real estate issued by relevant registry.

In addition to the above-given documents, buyers with foreign nationality shall also obtain potential tax numbers from Turkish tax offices.

7. Annual Cost for Ownership of Real Estate

The owners of real estate shall pay a real estate tax that varies from 0.1% to 0.6% of the tax-based market value determined by the relevant municipality and shall take out a mandatory earthquake insurance policy.

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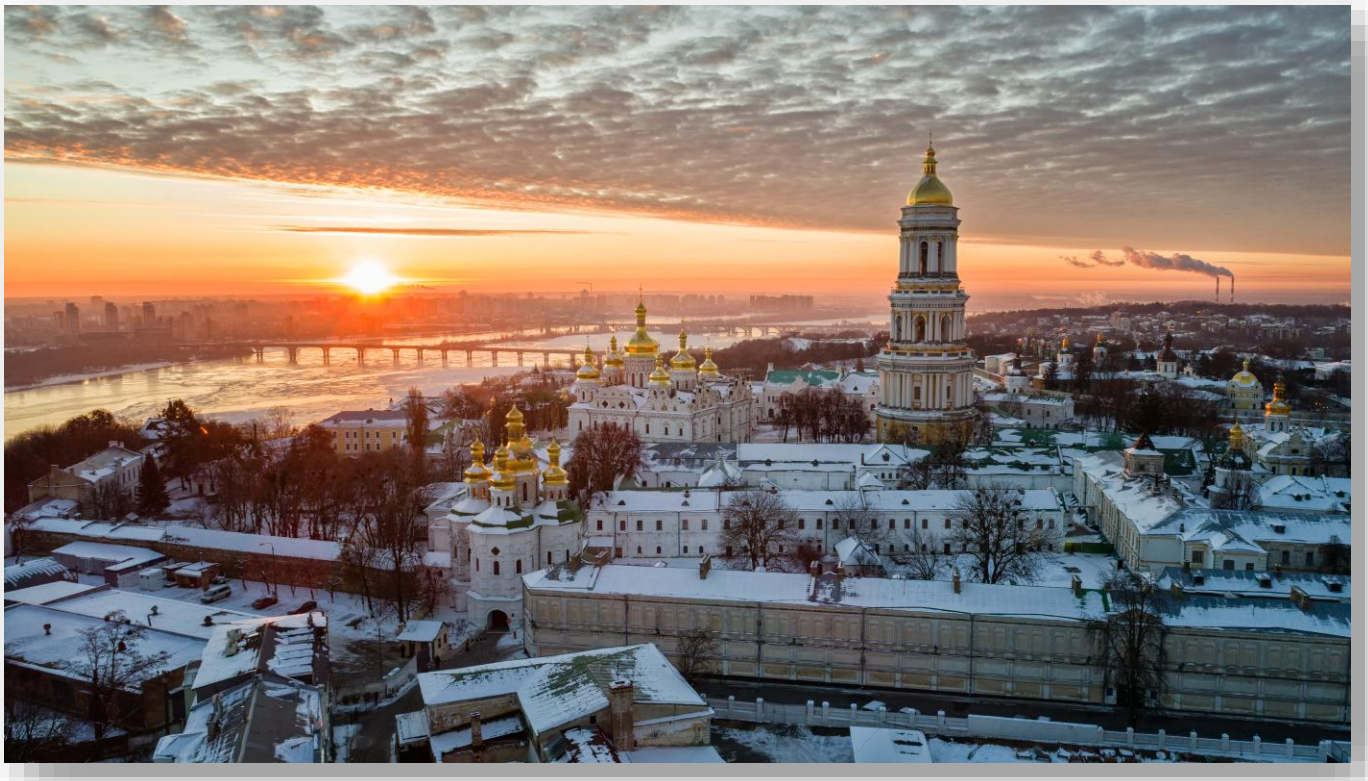

PETERKA & PARTNERS

BUYING AND SELLING REAL ESTATE IN UKRAINE

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER UKRAINIAN LAW

I. Types and specifics of real estate in Ukraine

The main types of real estate in Ukraine are the following:

- plots of land;
- other objects located on the plot of land that cannot be removed without their depreciation and change of their designation, such as buildings (residential and others), constructions, as well as their separate parts, apartments, premises (residential and non-residential).

The regime of real estate property may be extended by law to aircraft and ships, inland waterway vessels, and objects in space, as well as other property, the rights to which are subject to state registration.

For a long time, in Ukraine, a plot of land and a real estate object located on such plot of land (building, construction, etc.) were considered as two independent real estate objects. Thus, in practice, there are historical situations when a plot of land and a real estate object located on such plot of land are owned (or used on another title) by different persons and based on different titles (e.g., a person can own a building and lease the underlying plot of land which is initially owned by the state).

However, in recent years, the Ukrainian legislation headed at implementation in practice of the principle of "unanimous legal destiny of the plot of land and the real estate object located on it". Such principle shall ensure that in the case of acquisition of the real estate object (a residential building (except for an apartment building), other building or construction), object of unfinished construction located on a plot of land, into ownership, the right to the underlying plot of land shall in most cases be transferred simultaneously to the acquirer.

II. Ownership title to real estate

There are the following types of real estate ownership:

- State ownership

  Certain real estate objects are owned by the state of Ukraine (land for nuclear energy and the space system; military land; the land under state railways, objects of state ownership of air and pipeline transport; property of state authorities, state reserves, state entities, etc.). The state exercises its ownership right through the relevant public authorities (Cabinet of Ministers of Ukraine, State Property Fund of Ukraine, state administrations, etc.). As a general rule, state real estate which is not forbidden for sale shall be sold on a competitive basis (auctions).

- Municipal ownership

  Under the law, certain real estate objects are owned by local communities (e.g., all land within settlements, except for private and state-owned plots of land). As in the situation with state-owned real estate, municipal property (which is not forbidden for sale as well) is generally sold by municipal authorities on a competitive basis (auctions).

- Private ownership

  Real estate objects can be owned by individuals and legal entities on the basis of private ownership, which can be individual or co-ownership (when property is owned by two or more persons (co-owners)).

The co-ownership can be either shared (when each co-owner has a determined share in co-ownership) or joint (when the co-owners' shares in co-ownership are not specifically determined, e.g., co-ownership of spouses).

III. Restrictions for foreign investors

In general, foreign investors (both individuals and legal entities) may own real estate in Ukraine. However, foreign investors are limited in the acquisition of plots of land.

In case of non-agricultural land:

- foreign individuals are allowed to acquire ownership rights to non-agricultural plots of land:
  - within settlements
  - outside settlements where real estate objects belonging to such foreign individuals on private ownership title are located
- foreign legal entities (established and registered according to foreign state legislation) are allowed to acquire ownership rights to non-agricultural plots of land:
  - within settlements in the case of acquisition of real estate objects and for construction of objects related to business activities in Ukraine
  - outside settlements in the case of acquisition of real estate objects

In case of agricultural land, foreign investors are currently prohibited from acquiring (directly or indirectly) agricultural plots of land in Ukraine. However, subject to a positive decision of a referendum in the future, foreign investors (with certain exceptions) may be provided with an opportunity to acquire agricultural land through legal entities established and registered under the laws of Ukraine.

IV. Data and documents on titles to real estate

Prior to concluding a sale and purchase agreement (hereinafter – "***SPA***") for real estate, it is recommended that parties to the transaction obtain valid and up-to-date information about the real estate object in question, verify title to it and the existence of possible encumbrances as well as other details related to the real estate object.

In Ukraine, the right of ownership (as well as other rights to real estate), encumbrances of these rights, their commencement, transfer and termination are subject to state registration in the Ukrainian State Register of Proprietary Rights to Real Estate (hereinafter – the "***Register***"). State registration in the Register is considered to be official recognition and confirmation by the state of the facts of acquisition, change or termination of proprietary rights to real estate, and encumbrances of such rights. Information on proprietary rights, and encumbrances of proprietary rights recorded in the Register shall be considered reliable and may be used in a dispute with a third party until the state registration of termination of such rights, and encumbrances within the procedure prescribed by the applicable laws on real estate.

According to basic rules, information on registered rights to real estate and their encumbrances contained in the Register is open, publicly available and is charged for. For individuals and legal entities, information on a real estate object and the subject of proprietary right is provided in electronic form through the official state website, subject to identification of such person (individual or legal entity) by using an electronic digital signature or other alternative means of identification of a person, or in paper form (in particular, through the

notary). However, during martial law in Ukraine different restrictions to such access and information provided may apply.

In some cases, in order to verify title to real estate, it is also necessary to examine other documents related to such real estate such as a sale-purchase agreement of such real estate by which it was initially acquired by the seller, certificate on ownership title to such real estate, etc.

V. Sale and purchase of real estate

Due diligence

Before execution of a real estate sale-purchase transaction, it is usually recommended to undergo a real estate due diligence procedure to verify possible risks or consequences related to the acquisition of certain real estate which may have a material adverse effect on the transaction.

Due diligence usually includes verification of the following aspects:

- validity of a title to real estate property;
- existence and details of other proprietary rights to real estate property (lease, easement, etc.);
- existence and details of encumbrances (mortgage, tax lien, etc.);
- history of title transfer;
- unrestricted right to transfer real estate property;
- disputes, litigations in respect of real estate property;
- permitting situation;
- other details related to real estate (designation purpose of the plot of land, etc.).

Preliminary agreement

Before entering into the main sale and purchase agreement for real estate, the parties may be interested in concluding a preliminary agreement.

By concluding such preliminary agreement, the parties undertake, within a certain period, to conclude a main sale and purchase agreement in the future based on the terms and conditions established by the preliminary agreement.

The essential terms and conditions of the main sale and purchase agreement that are not established by the preliminary agreement shall be agreed upon in the manner established by the parties in the preliminary agreement, unless such manner is established by the legislation. Under the basic rule, the preliminary agreement shall be concluded in the form established for the main sale and purchase agreement.

The obligations established by the preliminary agreement shall be terminated if the main sale and purchase agreement is not concluded within the period established by the preliminary agreement, or if neither party sends a proposal to the other party to conclude it.

The party who unreasonably evades the conclusion of the main sale and purchase agreement provided for by the preliminary agreement, shall reimburse the other party for damages caused by delay, unless otherwise established by the preliminary agreement or legislation.

Contrary to the preliminary agreement, the agreement of the parties on intentions (protocol of intentions, etc.) is not considered as a preliminary agreement and does not entail legal consequences.

Sale and purchase agreement (SPA)

Under the SPA for real estate, one party (a seller) shall transfer a real estate property (plot of land,

building, etc.) to the ownership of the other party (a purchaser), and the purchaser shall accept the real estate property and pay for it a certain amount of money.

- The form of the SPA

As a general rule, an SPA for real estate shall be concluded in written form and is subject to notary certification.

- Essential and other important terms and conditions of the SPA

In order to consider the SPA concluded, the parties shall agree on all essential terms and conditions of such agreement – its subject matter, terms and conditions determined by law as essential or needed for such types of agreements (like price, term, cadastral number of underlying plot of land) as well as all other terms and conditions which shall be agreed at the request of at least one of the parties.

- The **subject matter** of the SPA shall be well defined and described, so that it is possible to distinguish the real estate object from among other similar real estate objects. Usually, the SPA of real estate shall contain information on the location of the real estate, its address, purpose, area and other parameters that allow it to be determined unambiguously.
- Usually, the **price** is set by agreement of the parties, which shall not be less than the value of such real estate property as defined by an independent appraiser.
- Transfer of rights to the underlying plot of land
- Following the principle of "unanimous legal destiny of the plot of land and the real estate object located on it", **a plot of land (or a share in co-ownership right to it)** must be the subject matter of the SPA, which provides for the transfer of the right of ownership to the real estate object (residential building (except apartment building), other building or structure, object of unfinished construction or share in the right of co-ownership to such object) located on such plot of land owned by the seller of such object. The condition on simultaneous transfer of ownership right to such plot of land (a share in co-ownership right to it) from the seller to the acquirer of such real estate object shall be an essential condition of the SPA, which provides for such transfer of ownership right.
- Also, an essential condition of the SPA under which the right of ownership (shares in co-ownership) to the real estate object (residential building (except an apartment building), other building or structure), or the object of unfinished construction connected with the transfer of ownership right to the plot of land is acquired, is a **cadastral number** of a plot of land, the right to which is transferred in connection with the acquisition of ownership right to such real estate object.
- If under such real estate SPA, the right shall be transferred only to part of a plot of land, the conclusion of the real estate SPA shall be made after the allocation of such part into a separate plot of land and assigning a cadastral number to it.
- The **size of the underlying plot of land** to be transferred shall also be specified in the SPA.
- Warranties
- According to Ukrainian legislation, the parties to an SPA may agree on a list of

warranties provided by one party or parties regarding the circumstances significant for conclusion, performance or termination of such agreement.

- A party who intentionally or negligently provided the other party with false warranties about the circumstances significant for conclusion, performance or termination of the agreement, is obliged to reimburse the party who relied on such warranties for damages caused by the falsity of such warranties, unless otherwise provided by the agreement.
- The typical warranties in a real estate SPA are the following:
  - clear title to the real estate;
  - the seller is the sole owner of the property;
  - absence of encumbrances (mortgage, tax lien, prohibition on alienation, etc.);
  - absence of third-party rights to real estate property (leases, easements, etc.);
  - absence of pending disputes, litigations in respect to real estate property;
  - absence of any quality defects;
  - absence of necessity of capital repair;
  - the parties or their representatives have all the authorization needed to enter into a real estate SPA;
  - others.
- The parties to the SPA shall also pay attention to other terms and conditions of the SPA such as liability of the parties, payment conditions, bank details of the parties, allocation between the parties of possible expenses related to the SPA (notary fee, bank commissions, etc.) and others.

VI. State registration

As was noted above, the right of ownership (as well as other rights to real estate), encumbrances of these rights, their commencement, transfer and termination are subject to state registration in the Register.

Usually, the state registration of rights to real estate in the Register is made by the notary, who certifies the SPA, simultaneously with the performance of such notary action.

Following state registration of rights to real estate property in the Register, a new owner is provided with the related excerpt from the Register.

VII. Costs and taxes (general notes)

1. Natural persons:

1.1. Seller:

- Personal income tax (PIT):
  - for sale of certain residential real estate/certain categories of plots of land owned for more than 3 years (one sale within the reporting tax year) – 0%
  - for sale of a second real estate object among certain residential real estate/certain categories of plots of land or an object owned less than 3 years – 5%
  - for sale of a third and following real estate objects or in other certain cases – 18%

- for non-residents, an increased rate of 18% may apply in certain cases
- Defence contribution (applies if PIT rate is not 0%): 5%

1.2. Buyer (natural person):

- A pension fund levy of 1% (for certain types of real estate)

1.3. To be distributed between the parties upon their agreement:

- state fee of 1%;
- notary fee (depends upon exact notary);
- broker's fee (depends upon exact broker, usually around 5%)

As a general rule, the base for the above accruals is a contractual price, which shall be not less than the price identified by an independent appraiser. In some cases, the tax base for PIT and defence contribution purposes can be reduced by the expenses incurred upon acquisition of the respective real estate object.

2. Legal entities

In general, paragraphs 1.2 and 1.3 (re: pension fund levy, state, notary and broker's fees) apply to legal entities as well.

In addition, it should be considered whether the transaction is subject to withholding tax (if the seller is a foreign legal entity), and to VAT.

The statutory WHT rate is 15%; double tax treaty benefits are available in some cases.

The VAT rate is 20%. As a general rule, the sale of land is VAT exempt, while the sale of other real estate objects is usually VAT-able.

VIII. Agents

The seller and purchaser can both use the services of a real estate agent (broker). Currently, the use of a real estate agent (broker) in Ukraine is voluntary.

IX. Donation

Real estate property can also be acquired by means of a donation agreement. Due to the specific nature of the donation, there are some cases when a donor can demand termination of the donation agreement (e.g., if the beneficiary intentionally committed a criminal offence against the life, health, property of the donor, his/her parents, wife (husband), or children).

X. Share deal

Real estate property can also be acquired by way of a share deal – acquiring a share/participatory interest in a company holding title to real estate property. In some cases, real estate acquisition through a share deal may be preferable for the purchaser due to the tax and other advantages of such a transaction. Sale of shares in a joint stock company or participatory interest in a limited liability company is not subject to VAT.

A share deal does not entail registration of transfer of ownership title to real estate, though within the share deal a target company is acquired by the purchaser along with all its rights, obligations and liabilities.

Contrary to an asset deal, a share deal may be governed by foreign law according to the parties' choice.

XI. Acquisition of future real estate objects

The Ukrainian legislation also provides for the specific regulations and establishes the set of guarantees for the buyers on the primary real estate market, who intend to purchase the real estate objects which are already under construction or which are to be constructed in the future. These regulations relate mostly to

residential real estate objects such as apartments in the multi-apartment buildings.

Under the law, the most of such real estate objects are allowed for sale to investors when the seller (e.g. developer) initially registers a special property right to such objects in the Registry (including to all separate apartments/other residential or non-residential premises in such object if any). Such special property right is terminated after the commissioning of the completed object and the state registration of ownership title to the corresponding real estate object.

The special property right is covered by guarantees regarding the protection of the ownership title, including the removal of obstacles to the exercise of the special property right, recognition of the special property right in case it is being disputed, recognition of the ownership title after commissioning the object, etc.

Upon conditions and regulations established by laws, the special property right to the object is transferred and re-registered to the buyer. In particular, upon first sale of the object, the special property right to the object is transferred to the buyer upon full payment of the object price by the buyer if earlier transfer of such right to the buyer is not prescribed by SPA.

The law also establishes the set of specific regulations related to the sale-purchase of such objects (including requirements to the SPAs) depending on the particular object and sequence of alienation of the object (first/second/next sales). In particular, the SPA for the first sale shall contain, among others, the following essential terms and conditions: main technical characteristics of the real estate object (including description of the main structural elements and engineering equipment, energy efficiency class), graphical representation of the location of the object on the general plan of the construction site, the term for returning funds to the buyer in case of early termination of the SPA (not more than 60 calendar days from the date of termination of the SPA), the term for returning the overpaid funds to the buyer, if, according to the results of the technical inventory, the actual total area of the real estate object turns out to be less than the area specified in SPA (not more than 60 calendar days from the day of state registration of the ownership title to the relevant real estate object to the buyer), etc.

***

The above information is provided for general understanding and information purposes only. Real estate acquisition may also involve other legal and tax aspects.

In general, information is provided according to the standard legislation of Ukraine and does not focus on specific regulations that may from time to time be introduced into the legislation of Ukraine due to the martial law introduced in Ukraine since February 24, 2022, in response to the military aggression of the Russian Federation against Ukraine.

We strongly advise that legal and tax advisors be involved in order to ensure that each specific case is dealt with comprehensively. If you need any further information on the issues covered by this overview, please contact Mr. Taras Utiralov (utiralov@peterkapartners.ua) or Ms. Halyna Melnyk (melnyk@peterkapartners.ua).

PETERKA & PARTNERS is a full-service law firm operating in Central and Eastern Europe providing one-stop access as an integrated regional service.

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Buying and Selling Real Estate in the United States - Florida

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER FLORIDIAN LAW

I. STANDARD FORMS OF AGREEMENTS

A. Purchase and Sale Agreement sets forth the complete terms of the purchase and sale including, among other things, price, security deposit, allocation of costs of the transaction, date for closing, inspection period, financing, title contingencies, escrow information, representations, warranties, covenants, and default provisions.

1. Either party's attorney can prepare the initial draft of the Purchase and Sale Agreement.

2. FARBAR Form – this is the pre-printed form of Purchase and Sale Agreement typically used in Florida for residential real estate transactions; parties can freely negotiate the terms and provisions contained in the FARBAR.

3. The assignment of a Purchase and Sale Agreement can be prohibited or restricted if expressly stated in the document (for example, seller can restrict buyer to only being able to assign contract to an entity related to buyer).

B. Letter of Intent, like a term sheet, is sometimes utilized in commercial transactions to outline the basic terms of a transaction before drafting and negotiating a Purchase and Sale Agreement.

1. Beneficial because allows parties to put to paper key terms to deal, which helps facilitate agreement on the remaining terms.

2. Signing letter of intent adds level of formality and gravitas to negotiations.

3. Letters of Intent may or may not be binding depending on the language utilized; they are usually non-binding.

C. While utilized in other states, an Offer to Purchase is not commonly used in Florida.

II. BROKERS

A. There are four general types of brokers:

1. Residential Brokers

a. Sell homes, condos, vacant lots

2. Commercial Brokers

a. Office buildings, vacant land, shopping centers, apartment buildings, raw land, warehouses, industrial facilities. Multi-family Apartments: include Retail, Office, and Industrial subcategories.

3. Leasing Brokers

a. Specialize in leased properties (tend to focus on commercial properties, which include retail, office, and industrial).

4. Mortgage Brokers

a. Facilitate mortgage lending in both residential and commercial transactions

b. They typically receive commission based on a percentage of the loan amount or a flat fee

B. Must be licensed in Florida and they are regulated by state law

C. Real estate brokers usually enter into listing agreements with sellers, and they typically receive a commission based upon a percentage of the sales price (generally 6%, but commonly negotiated); if there is

a co-broker, the listing broker will usually share the commission with the co-broker.

D. Real estate brokers are paid by the seller, and they owe fiduciary duties to the party that they represent.

III. BUYER'S INSPECTIONS

A. Residential: Prior to Closing, the Buyer will typically perform property inspections including inspection for structural issues, radon, asbestos, pest infestation or damage, title searches, survey, and in certain rare circumstances, lead paint, and underground storage tanks (for oil or propane). Buyers should also order municipal lien/open permit searches to confirm there are no outstanding governmental violations, liens, or fines and to confirm that all alterations and renovations have been completed in compliance with permits and all permits are properly closed out.

B. Commercial: In addition to the inspections described above for residential buyers, commercial buyers also usually obtain an environmental inspection (Phase I, and if necessary, Phase II), and a land use and zoning/permitting analysis.

C. The Purchase and Sale Agreement typically designates an inspection period (also known as due diligence period), during which buyer has a specified amount of time (usually 30-45 days) to conduct the above referenced inspections as well as investigate any title issues or zoning and land use concerns; buyer generally may terminate the contract during this inspection period for any or no reason and receive a return its initial deposit.

IV. SURVEYS

A. As-Built Surveys – depict the improvements over a given parcel of land and can be utilized both prior to construction and post-construction.

B. ALTA/ACSM – standards by which surveyors are held; many lenders require that the surveyors meet these standards and requirements (these are national requirements, not just Florida).

C. Benefits of Surveys

1. Ensure property actually exists
2. Determine relationship of property to other properties
3. Ensure the record boundary lines are actually the ones being occupied/ used
4. Determine physical location of improvements and easements
5. Determine whether there are any encroachments on the property

V. FORMS OF OWNERSHIP

A. Residential Property is usually held in a nominee trust, an estate planning trust, or an individual's own name (especially if the property is the owner's homestead so that the owner is afforded certain homestead rights and protections provided under Florida law). Joint owners may take title as:

1. Tenants in Common (each own 50%);
2. Joint Tenants with rights of survivorship (they own the property jointly and upon the death of one of the joint tenants, the property automatically passes to the surviving joint tenant(s)); or
3. Tenants by the Entirety if the owners are married (they each own the undivided whole of the property and if

one spouse dies, the property automatically passes to the other spouse).

B. Commercial Property may be held as follows:

1. As the Owners pursuant to the forms set forth in A above, (highly unusual for commercial properties to be held in an individual's personal name for liability purposes)
2. General Partnership/Joint Venture
3. Limited Partnership
4. LLPs
5. LLCs (has become the most common form of ownership)
6. Business Trusts
7. Business Corporations
   (i) C corporation
   (ii) S corporation

VI. FORM OF DEED

A. General warranty deed – most protection for buyer

1. Grantor warrants title for all times that the property has existed, including before grantor took title to the property
2. Most likely to see this form of deed in the residential context

B. Special warranty deed – middle-level protection for buyer

1. Grantor warrants title for the period that grantor has owned the property
2. Most likely to see this form of deed in the commercial context

C. Quitclaim deed – least protection for buyer

1. Contains no warranties of title
2. Typically used for gifting property or for situations where necessary to correct title defects or issues
3. Title companies do not like to insure quitclaim deeds

VII. CLOSING COSTS/ADJUSTMENTS

A. Documentary Stamp Taxes (Doc Stamps) – levied on documents that transfer interest in Florida Real Property (i.e., deeds)

1. In most counties in Florida, the documentary stamp taxes are calculated at the rate of $0.70 per $100 of purchase price; in Miami-Dade County the rate is $0.60 per $100 of purchase price plus an additional $0.45 surtax per $100 of purchase price on documents transferring property other than a single-family residence
2. The documentary stamp tax and, if applicable, the surtax, is paid to the Clerk of Court when the deed is recorded; the Clerk then sends the money to the Department of Revenue.

B. Title Insurance Commitment, Title Policy, and Municipal Lien Searches

1. The cost of the title insurance commitment is usually paid by Seller, even if ordered by the Buyer or Buyer's attorney.
2. The premium for the title insurance policy is a promulgated rate based upon the purchase price for the property being purchased. The attorney for the party that is responsible for paying for the title insurance premium generally is the agent that issues the title insurance policy. Whether the Buyer or the Seller pays for the title insurance premium is

negotiable, but in most counties in the Florida, the custom is for the Seller to pay for the title insurance premium. The main exceptions are Miami-Dade County and Broward County, where the custom is that the Buyer is responsible for paying the title insurance premium.

3. The cost of the municipal lien searches (also known as lien letters) is usually paid by the Seller.

C. Inspections, Survey, Due Diligence, and Financing Costs are usually the responsibility of the Buyer.

D. Real property taxes, association maintenance fees, special assessments, rents, and operating expenses are usually prorated as of the closing date, with the Seller responsible for those costs/revenues incurred prior to the closing date and the Seller responsible for those costs/revenues incurred from and after the closing date.

VIII. OTHER CLOSING DOCUMENTS

A. Bill of Sale – conveys personal property (i.e., refrigerator, washing machine, appliances, equipment, etc.); usually does not get recorded.

B. Seller's Affidavit – also can be referred to as title affidavit, lien affidavit, gap affidavit, or some combination of these terms i.e., title, lien, and gap affidavit.

1. Title Company will typically require Title Commitment as a requirement for Title Policy to be issued.

2. Purpose of the Affidavit is for Seller to provide assurance to the Title Company and the agent for the Title Company that no liens or other encumbrances have been placed on the property in the past 90 days and that no work has been performed the cost of which is remains unpaid; this is important because there is a gap period between when the Title Commitment is issued by the Title Company and when the Title Policy is issued.

C. FIRPTA Affidavit – IRS requires

1. Proof that grantor is a US entity paying US taxes

2. If Seller is a foreign entity not paying US taxes, the transferee/settlement agent must withhold 15% of the purchase price and remit it to the IRS to ensure that taxes will be paid on the income if any taxes are owed.

3. One important exception to FIRPTA withholding is a transferee/settlement agent is not required to withhold when the Buyer is purchasing a home, and the purchase price is not more than $300,000.

D. Assignments

1. Can include Assignment of Leases, Assignment of Contracts, Assignment of Bulk Buyer Rights, etc.

(i) Would typically see these in the context of buying and selling a commercial building

(ii) Both buyer and seller usually sign these assignments.

E. Closing Statement – also typically called Settlement Statement

1. Sets forth the purchase price, closing costs and prorations of the transaction as debits and credits to Buyer and Seller.

2. Will usually include the financing costs for the Buyer's loan; provided, sometimes in a commercial transaction, the Buyer's lender will have its own, separate loan closing statement.

IX. RECORDING REAL ESTATE DOCUMENTS

A. Deeds need to be witnessed by two witnesses and notarized

1. Only the Grantor signs the deed (not the grantee)
2. Regarding recording, Florida is a Notice state, i.e., last bona fide purchaser without notice who pays value has priority
3. Must record the original of the deed (cannot record copies, except with e-recording but must have original in possession)

B. Other than the Deed, most other conveyance documents are not recorded; sometimes a limited liability company affidavit is recorded to evidence authority for execution of the Deed

C. If the conveyance is a condominium unit which requires the approval of the condominium association, then the condominium association approval is usually recorded with the Deed

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INTERNATIONAL LAWYERS NETWORK

DAVIS MALM

Buying and Selling Real Estate in the United States - Massachusetts

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER MASSACHUSETTS LAW

I. STANDARD FORMS OF AGREEMENTS

A. Offer to Purchase sets forth buyer's offer of price, date for closing, contingencies for inspections, financing etc. and date for signing a formal purchase and sale agreement. Seller may accept or reject.

B. Purchase and Sale Agreement sets forth the complete terms of the purchase and sale.

C. **Note**: In Massachusetts, an Offer to Purchase may be enforced as a binding contract even if it contemplates the execution of a Purchase and Sale Agreement.

II. BROKERS

A. All brokers in Massachusetts, whether they are working with the buyer or the seller represent the seller unless the buyer enters into a separate Buyer's Broker or Dual Agency Agreement.

B. Seller usually pays the broker's commission unless negotiated otherwise.

III. BUYER'S INSPECTIONS

A. Residential: Prior to Closing, the buyer performs property inspections including inspection for structural issues, radon, asbestos, pest infestation or damage, title, and in certain rare circumstances, lead paint, and underground storage tanks (for oil or propane). Buyers should also check the town/city building file on the property to make sure all alterations and renovations have been completed in compliance with permits, and all permits are properly closed out. Buyer or its lender will also obtain a plot plan of the premises.

B. Private Septic. If the property is on a private septic system (rather than municipal sewer), then seller has to provide buyer with a Title V inspection (with passing results) from the town in which the home is located.

C. Commercial: In addition to the inspections performed by residential buyers, commercial buyers also usually obtain a survey, an environmental review, and a use and zoning/permitting analysis.

IV. FORMS OF OWNERSHIP

A. Residential Property is usually held in a nominee trust, an estate planning trust, or an individual's own name. Joint owners may take title as:

1. Tenants in Common (each own 50%);
2. Joint Tenants with rights of survivorship (they own the property jointly and the survivor ends up with 100%); or
3. Tenants by the Entirety if the owners are a married couple (they each own the undivided whole of the property).

B. Commercial Property may be held as follows:

1. As the Owners pursuant to the forms set forth in A above, (highly unusual for liability purposes)
2. General Partnership/Joint Venture
3. Limited Partnership
4. LLPs
5. LLCs (most common)
6. Business Trusts
7. Business Corporations
   i. C corporation
   ii. S corporation

V. THE "CHECK-THE-BOX" REGULATIONS

A. Treas. Reg. §1.7701-1 *et seq*. provides that domestic business corporations are *always* classified as corporations for Federal income tax purposes; GPs, LPs, LLCs, LLPs, and business trusts are automatically classified as partnerships (with pass-through treatment) *unless* they "check-the-box" on Form 8832 electing to be taxed as corporations.

B. C corporations are subject to a "double tax," once on the corporate level, and again on dividends or distributions to shareholders. S corporations are taxed only at the shareholder level, with a few exceptions. Partnerships "pass-through" income or loss to the partners. Single-owner LLCs and business trusts are "disregarded entities."

VI. DISTINGUISHING FEATURES

A. Nominee Trust

1. Fiduciary relationship between "trustee" and beneficiaries listed on an unrecorded schedule.
2. Trustee has no power to deal with the trust property except as specifically directed by beneficiaries – legally an "agent" for beneficiaries.
3. Third parties are entitled to rely on certificates signed by trustees of record.
4. Beneficiaries may terminate or amend trust at any time.
5. On termination, the trust property is conveyed to beneficiaries.
6. Advantages
    1. Beneficiaries are undisclosed (privacy).
    2. Trust property can be effectively conveyed by assignment of beneficial interests. Useful for intra-family gifts.
    3. No income taxation on trust level; "pass-through" to beneficiaries.
7. Disadvantages
    1. No limited liability for beneficiaries.
    2. Sole trustee and sole beneficiary may not be identical – merger will result.
    3. Poor draftsmanship can result in trust being treated as a "true trust," which may result in the trust being subject to tax on capital gains and undistributed income and inability to pass through losses.
    4. Ancillary probate for deceased non-Massachusetts beneficiaries (who are deemed to own Massachusetts real estate).
    5. Potential for fraud by beneficiaries.
    6. Creation of a partnership if two or more beneficiaries.
    7. Deeds excise tax on transfer of beneficial interest (DD 95-2).

B. General Partnership/Joint Venture

1. GP is an agreement (oral or written) among two or more people to engage in business.
2. A joint venture is a GP which is limited to a specific project or business.
3. Governed by Massachusetts Uniform Partnership Act, G.L. c. 108A.
4. In absence of written agreement, a numerical majority of partners control decision-making.
5. Limited transferability of interests.
6. Limited life. Withdrawal of partner dissolves partnership, but partnership can be reconstituted.

7. Advantages

    1. Simplicity, informality.

    2. Pass-through treatment.

8. Disadvantages

    1. No limited liability. Partners are jointly and severally liable for partnership liabilities. New partners liable only for future obligations; retired partners for past obligations.

    2. Limited transferability of interests.

    3. Conveyancing issues:

        (i) If title to real estate is in the name of the partnership, any partner may convey title in the name of the partnership. A BFP may rely on the deed, notwithstanding any limitations on the partner's authority (G.L. c. 108A, §10(1)).

        (ii) If title is in the name of less than all partners (and the record does not disclose the partnership's rights), the named partners may convey title to a BFP, notwithstanding the existence of an undisclosed partner (G.L. c. 108A, §10 (3)).

        (iii) If title in the name of all the partners, all must sign the deed. (G.L. c. 108A, §10 (5).

        (iv) Attachments against partners individually can affect the partnership's title if the claim relates to a partnership liability.

    4. Fiduciary duties – self-dealing, corporate opportunities. Can be modified by contract.

C. Limited Partnerships

    1. A statutory entity governed by G.L. c. 109. Creation requires filing of a brief certificate of limited partnership.

    2. Limited partnership is managed and controlled by general partners (GPs). Limited partners (LPs) are passive investors.

    3. Certain extraordinary actions can require approval of LPs.

    4. Written limited partnership agreement is not required but highly advisable.

    5. Advantages

        1. Limited liability for LPs.

        2. "Pass-through" tax treatment. No entity-level tax.

        3. Names of LPs not publicly disclosed.

    6. Disadvantages

        1. Unlimited liability for GPs, but a limited liability entity, such as an LLC or a corporation, can be a GP.

        2. Unlimited liability for LP who takes part in control of business or knowingly permits his name to be used in the name of the limited partnership.

        3. Limited transferability of interests requires consent of all partners to admit a new LP; unadmitted transferees are entitled to distributions but have no other rights as LP.

        4. Fiduciary duties.

D. LLP

    1. A general partnership that files a registration form with the Secretary of State under G.L. c. 108A, §§45-47.

2. Same advantages and disadvantages as a general partnership, but partners have limited liability.
3. Must renew LP status by annual filing with Secretary of State.

E. LLCs

1. Governed by G.L. c. 156C. Requires filing of certificate of organization naming manager (of if no manager, at least one person authorized to sign filings with the Secretary of State).
2. Very flexible, can be member-managed or manager-managed.
3. "Pass-through" tax treatment unless it elects to be taxed as a corporation.
4. Single-member LLCs can be treated as "disregarded entities" for tax purposes.
5. Written operating agreement is unnecessary, but highly desirable in most cases.
6. Advantages
    1. Limited liability and pass-through tax treatment.
    2. Less formality than a corporation. No minute book, stock ledger, etc. Query: Is that an advantage or disadvantage?
    3. Flexibility. Operating Agreement can create (i) a "corporate model" LLC, with officers and a board of managers elected by members (like a corporation); (ii) a "partnership model" LLC, with management by the members (like a general partnership); (iii) an "autocratic model" LLC, with one or more managers having sole control of the LLC (like a limited partnership); or (iv) any combination of the above.
    4. Can limit or eliminate fiduciary duties.
7. Disadvantages
    1. Limited transferability. Effectively disqualifies LLCs from being public companies.
    2. Operating agreements can be complex and expensive to create.
    3. Uncertainty as to "corporate veil" doctrine.
    4. Uncertainty re legal status in other states.

F. Business Trust

1. An unincorporated organization governed by the common law, but subject to regulation under G.L. c. 182.
2. Written declaration or agreement of trust and all amendments must be filed with the Secretary of State and the clerk of every municipality in which trust has a usual place of business and recorded in the registry of deeds if it owns real property.
3. Trustees are the managing body of the trust and may delegate duties to officers. Shareholders may elect trustees, but this may give rise to personal liability. *See* Paragraph 4 below.
4. Trustees have personal liability for contracts, but typically limit liability to the trust assets. Shareholders who participate in excessive control or management may be personally liable, as partners, for the debts of the trust.
5. Shares are represented by certificates, which are freely transferable subject to applicable securities laws.
6. The existence of a business trust may be subject to the Rule against Perpetuities.

Many trusts have specified dates of termination.

7. Advantages
    1. Free transferability of interests.
    2. Limited life.
    3. May elect "pass-through" treatment.
    4. Once popular, it is now uncommon outside the utility, mutual fund, and REIT industries.
8. Disadvantages
    1. Potential unlimited liability.
    2. Fiduciary duties.

G. Business Corporations

1. Statutory entity – G.L. c. 156D.
2. C corporation taxable as an entity (max. Federal tax, 35%; Mass., 8%).
3. S corporation gives pass-through of income and loss (Federal and Mass.) *pro rata* based on shareholdings.
    1. Requires election by all shareholders.
    2. One class of stock.
    3. 100 shareholder maximum.
    4. Shareholders must be individuals (no non-resident aliens), certain trust and estates, certain tax-exempt entities.
4. Advantages
    1. Limited liability of shareholders by statute.
    2. Free transferability of stock.
    3. No deeds excise tax on sale of stock.
    4. Pass-through treatment for S corporations.
    5. S corporation dividends are tax free to extent of basis.
5. Disadvantages
    1. Double taxation for C corporation.
    2. No pass-through of C corporation loss. S corporation losses limited to shareholders' basis (*plus* loans to corporation and corporate liabilities assumed by S corporation shareholders). Guaranties are not considered as debts.
    3. Unlike partnership, S corporation allocation of income and loss is inflexible.
    4. Mass. "sting tax" to "big" S corporations with over $6 million in income (1.87%) or $9 million (2.8%). (G. L. c. 63, §32(b)).
    5. Corporation excise tax lien (G.L. c. 62C, §51).
        i. (NOTE: excise tax lien now also applies to *unincorporated entities* electing corporate tax status).
    6. Two-thirds shareholder vote required to approve sale of all or substantially all assets. (G.L. c. 156D, §12.02).
    7. Dissolution by Secretary of State – but reinstatement possible. (G.L. c. 156D, §108). Note that assets can be sold after dissolution as part of "winding up."
    8. Corporate signatories: President or Vice President *and* Treasurer or Asst. Treasurer, who may be the same person. (G.L. c. 156D, §8.46). Corporate vote authorizing other officers may be recorded.

VII. FORM OF DEED

A. The common deed in Massachusetts is the Quitclaim Deed whereby the Seller gives covenants as to Seller's period of ownership only.

VIII. CLOSING COSTS/ADJUSTMENTS

A. Seller usually pays the transfer taxes due at the time of the conveyance to the Commonwealth of Massachusetts. The tax is $4.56 per $1,000 of sale proceeds.

B. **Note**: In a few jurisdictions in Massachusetts the tax is higher.

C. **Note**: In Nantucket and Martha's Vineyard, there is an additional land bank tax that is paid at the time of conveyance.

D. Buyer and Seller adjust for water, sewer, gas/oil, electricity, and taxes. In addition to the foregoing, if the property is commercial property, adjustments are also made for rents, third party operating expenses and common area maintenance expenses.

E. Land that has been subjected to agricultural purposes may be subject to certain taxes and payments if the agricultural purposes are terminated.

F. Withholding Tax – Foreign Seller

- 10% of amount realized (subject to reduction in certain situations (i.e., maximum tax liability on disposition is less than amount required to be w/held; installment sales rule exception, l/c or bond is posted etc.)
- Buyer becomes withholding agent and must remit by the 20th day of the date of transfer; file Form 8288

IX. OTHER CLOSING DOCUMENTS

A. Residential Properties: Seller has to have a smoke/carbon monoxide inspection performed by the town/city fire department and provide a certification at Closing.

B. Title V Inspection Certificate – if the property is on a private septic system.

C. Buyer has to obtain a municipal lien certificate from the Town/City where the premises are located stating the current status of real property taxes payments and balances due. This certificate also advises if water and sewer charges are due.

D. Residential Property – If the property is to be used as a principal place of residence, the buyer may want to consider filing a Homestead Exemption.

E. Sales by a Corporation are subject to the seller's procurement of a Tax Lien Waiver. The Commonwealth of Massachusetts has an inchoate lien on the real and personal property of a seller if the sale of the property constitutes a sale of all or substantially all of the seller's assets in the Commonwealth and the waiver advises the buyer that the lien has been waived and all taxes have been paid.

X. RECORDING REAL ESTATE DOCUMENTS

A. Title Documents are recorded on a county basis in Massachusetts. In other states, title documents are recorded in the towns and city records.

B. Unlike most other states in the United States, Massachusetts has two recording systems.

1. Registered Land. Some property is registered land whereby real estate documents are filed with the Registry District of the Land Court within each county in which the premises are located. Registered Land means that the land has been certified, all documents affecting registered land are confirmed at the time of filing, and the

Commonwealth of Massachusetts guarantees the title to the property. The Land Court issues a certificate of title certifying title to the owner of each registered property.

2. Recorded Land. Unless the property is registered, it is recorded land and is recorded with the Registry of Deeds in the County where the premises are located.

XI. ANNUAL COSTS FOR PROPERTY OWNERSHIP

A. Property Insurance

B. Real Estate Taxes

   A. Ad Valorem/Town & City Assessments

   B. Rental Properties (Florida – tax on rental income)

   C. Personal Property Taxes (Cars, Boats, etc.)

NOTE: The tax implications of Foreign Purchases and ownership of US-based real estate are outside the scope of this outline.

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INTERNATIONAL LAWYERS NETWORK

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Buying and Selling Real Estate in the United States - Michigan

ILN REAL ESTATE GROUP

KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER MICHIGAN LAW

I. STANDARD FORMS OF AGREEMENTS

A. Offers to Purchase that are accepted by sellers are the typical form of purchase contract for residential properties. The offer, often negotiated before being signed by all parties, typically sets forth the offered price, proposed closing date, buyer's inspection and financing contingencies, type of deed conveyance (warranty, special or quit claim), and certain other terms of the transaction. Any proposed change by seller to the buyer's offer is considered a counteroffer.

B. Negotiated Purchase and Sale Agreements are typically utilized when commercial or industrial properties are bought and sold.

II. BROKERS

A. Buyers and sellers are not required to use a real estate broker or real estate salespersons (a/k/a agents) in connection with the sale of real estate. All real estate brokers and agents must be licensed by the state of Michigan. All real estate agents, while being licensed themselves, must be associated with a licensed broker.

B. In most residential transactions, the broker and agent must disclose which party they are representing. Brokers and agents may, through a statutory dual agency disclosure, represent both the buyer and the seller in a residential transaction.

C. In the typical transaction, the seller pays its broker a full commission and seller's broker will share that commission with the buyer's broker, if any.

III. BUYER'S INSPECTIONS

A. Residential. It is typical that a buyer is provided with a 5 to 7-day window to have the property inspected. The skill level of residential home inspectors varies greatly. Inspectors should review the structural elements, roof, windows, soundness of foundation, mechanical equipment (AC and heating units, hot water tanks, etc.) and check for radon gas, asbestos, and pest infestation. In older homes, especially in rural areas, the inspection should look for old fuel oil tanks that can lead to environmental issues if they are not properly closed. It is wise to hire an attorney to review the seller's title to the property and that review (whether or not an attorney is hired) is much more definitive if a survey of the property is obtained (showing encroachments, easements or restrictions that might affect the ability to add on to the home later, etc.).

B. Adverse Possession/Boundary Disputes. A survey obtained during the inspection period should assist in determining any potential adverse possession claims or boundary line disputes (*e.g.*, encroachments by a fence, a shed, etc.). Adverse possession and acquiescence to a particular boundary line may happen after 15 years of uninterrupted possession (or location of a fence or boundary marker). A boundary line can be re-established by agreement (through conduct or writing) without a 15-year waiting period.

C. Private Septic. If the property is on a private septic system (rather than a municipal sewer), then, depending on the locale, a certificate of inspection

from the local municipality or health department may be required.

D. Seller's Disclosures. For improved residential property, the seller is required to provide a seller's disclosure statement where the seller discloses certain conditions (water infiltration, condition of heating unit, etc.) of which it is aware. For houses built before 1978, a lead paint disclosure is also required. ***See also*** Paragraph G. "As Is Clause".

E. Certificates of Occupancy and Building Permits. Some cities and townships require that a home be inspected to verify that it meets the applicable building codes before it can be sold. If code violations are cited, the parties often negotiate a price reduction if the seller is not willing or able to cure the violation(s). A buyer should also check the municipality building department to determine if there are any open permits for work that have not been approved through a final inspection.

F. Commercial: In addition to the inspections performed by residential buyers, commercial buyers also usually obtain a survey, an environmental review, and a use and zoning and/or permit compliance review. Depending on the municipality, a certificate of occupancy may also be needed before commercial property can be transferred. If commercial tenants occupy the premises, a thorough review of the leases is advised (buyers are advised not to rely on rent rolls or lease summaries) and it is not uncommon for commercial leases to contain a right of first refusal to buy the property that must be complied with or waived before a sale can proceed. A certificate from the commercial tenants certifying the exact lease and all amendments thereto and that the seller-landlord is not in default are often obtained as part of the due diligence.

G. "AS IS" Clause. "As Is" clauses are common and for a seller, always recommended. "A contract may be rescinded where, at the time the contract was entered into, both parties were under a misapprehension of present fact that materially alters the essence of the agreement and the performance of the parties. [citations omitted]. "Rescission is not available, however, to relieve a party who has assumed the risk of loss in connection with the mistake." *Id*. at 30. An "as is" clause in the parties' contract constitutes persuasive evidence that the purchaser assumed the risk of loss. [citation omitted]. However, an "as is" clause does not "transfer the risk of loss where a seller makes fraudulent misrepresentations before a purchaser signs a binding agreement." [citations omitted]. Therefore, *if* [buyer] was aware of the [defect], the "as is" clause would be a nullity as to plaintiffs' fraud claim." Coosard v Tarrant, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 357950); slip op at 7.

IV. FORMS OF OWNERSHIP

A. Typically, residential property is held in a trust or an individual's name. If held in a trust, the trust may be either irrevocable or revocable. Irrevocable trusts typically cannot be modified or terminated by the grantor without the consent of all of the beneficiaries or court approval. In Michigan, trusts are generally governed by the Michigan Trust Code, MCL 700.7101 *et seq*. Joint owners to property may take title as:

1. Tenants in Common. Tenants in common each hold a separate and distinct interest in property but share a right of possession. There is no right of survivorship. In other words, if property is owned by two individuals, and one individual dies, the deceased's interest reverts to his or her estate, and not the other owner.
2. Joint Tenants. Joint Tenants hold equal and undivided interests in property, with a right of survivorship. In other words, if property is owned by two individuals, and one individual dies, the deceased's interest reverts to the other owner of the property.
3. Tenants by the Entirety. A married couple can hold real property as tenants by the entirety, where each spouse holds equal and undivided interests in the real property, with rights of survivorship.

B. Commercial property may be held as follows:

1. By an individual pursuant to the forms set forth in IV A. above (not recommended for liability purposes).
2. General Partnership ("GP")/Joint Venture.
3. Limited Partnership ("LP").
4. Limited Liability Partnership ("LLPs").
5. Limited Liability Company ("LLCs") (most common).
6. Corporation:
   (i) C corporation; or
   (ii) S corporation.

V. TREASURY REGULATIONS

A. Under Treas. Reg. §301.7701-1 *et seq.,* corporations are always classified as corporations for federal income tax purposes. On the other hand, GPs, LPs, LLCs (with more than one member), and LLPs are classified as partnerships for federal income tax purposes, unless they elect to be taxed as corporations.

B. C corporations are subject to a "double" income tax because they are taxed at the corporate level, and shareholders are taxed on the dividends they receive from the corporation. Subject to certain exceptions, S corporations are generally taxed only at the shareholder level. Partnerships and LLCs pass through their income and losses to the partners of the partnership. All entities except for C corporations generally avoid double taxation.

VI. DISTINGUISHING FEATURES

A. GP/Joint Venture

1. A partnership is an association of two or more persons to carry on as co-owners of a business for profit. MCL 449.6. A partnership is a distinct legal entity, separate from its owners.
2. GPs (sometimes referred to as copartnerships) generally must file a certificate of partnership in the county where the partnership conducts its business. MCL 449.101.
3. A joint venture is a partnership which is limited to a specific duration or scope.
4. GPs are governed by the Michigan Uniform Partnership Act, MCL 449.1 *et seq.* ("MUPA").

5. Although not required by statute, it is strongly recommended that partnerships have a Partnership Agreement. A Partnership Agreement sets forth the duties and obligations of the partners towards one another and to the partnership. Absent a Partnership Agreement, the MUPA creates default rules governing the relationship between partners. For example, absent an agreement to the contrary, the MUPA provides that partners will share equally in the partnership's profits and losses, and that all partners have equal rights in the management of the partnership. MCL 449.18 (a); MCL 448.18(e).

6. Absent a Partnership Agreement to the contrary, partnership interests are generally transferable. However, the transfer of an ownership interest in a partnership only transfers the right to receive distributions, and not any other rights of ownership (including the right to participate in management). MCL 449.27.

7. The withdrawal of a partner dissolves the partnership. MCL 449.29

8. Advantages

    1. A partnership is a pass-through entity. The partnership passes through its profits and losses to the partners and there is no entity level income tax.

    2. Partnerships can be informal, depending on the partnership agreement (or lack thereof).

9. Disadvantages

    1. Partnerships are not limited liability entities (like an LLC or a corporation). The partners of a partnership are jointly and severally liable for partnership liabilities. MCL 449.15.

        Conveyancing issues:

        (i) Any partner of a partnership may generally convey title to partnership real estate (*i.e.*, title to the real estate is in the partnership's name). A purchaser may rely on a deed signed by any partner, so long as the partner who executed the deed is carrying on in the usual way of business of the partnership, unless (i) the conveying partner lacks the authority to make the conveyance, and (ii) the purchaser has actual knowledge of the fact that the conveying partner lacks such authority. MCL 449.9.

        (ii) If title to real estate is in the name of multiple partners in their individual capacities, all such partners must sign the deed.

    2. Fiduciary Duty. Partners have a duty to render true and full information to the partnership. MCL 449.20.

B. LPs

1. A LP is a statutory entity governed by the Michigan Revised Uniform Limited Partnership Act ("MRULPA"), MCL 449.1101 *et seq*. The MUPA also

applies to LPs, except to the extent that it conflicts with the MRULPA.

2. In order to form an LP, a Certificate of Limited Partnership must be filed with the Michigan Department of Licensing and Regulatory Affairs ("LARA"). MCL 449.1201(a).

3. A LP must have at least one general partner and one limited partner. MCL 449.1101(8). General partners have managerial authority over the business. Limited partners are generally not liable for the obligations of the partnership, unless (i) the limited partner is also a general partner or, (ii) the limited partner takes part in the control of the business. MCL 449.1303(a).

4. Certain actions may require approval of the limited partners.

5. A written limited partnership agreement is not required but strongly recommended.

6. Advantages

    1. The limited partners of the partnership have limited liability. MCL 449.1303(a).

    2. An LP is a pass-through entity. The LP passes through its profits and losses to the partners and there is no entity level income tax.

7. Disadvantages

    1. Full liability for general partners, however, a limited liability entity, such as an LLC or a corporation, can serve as a general partner. MCL 449.1403.

    2. A limited partner who takes part in the control of the business may be subject to unlimited liability. MCL 449.1403(a). A limited partner who "knowingly permits his or her name to be used in the name of the limited partnership", except under certain circumstances permitted by statute, is liable to creditors of the LP, provided that the creditors do not have actual knowledge that the limited partner is not a general partner. MCL 449.1303(d).

C. LLP

    1. Similar to GPs, except with more limited liability for partners. Specifically, except for certain carve outs, a debt, obligation, or other liability of a LLP is solely the debt, obligation, or other liability of the registered LLP. MCL 449.46(1). However, a partner in a registered LLP will be liable for the partner's own negligence, wrongful acts, omissions, misconduct, or malpractice, or that of any individual who is under the partner's direct supervision and control, that results in a debt, obligation, or other liability of the registered LLP. MCL 449.46(2).

    2. Partners in an LLP have some liability protection, but not as much protection as limited partners in an LP.

    3. Must file an application to register an LLP with LARA.

D. LLCs

    1. Governed by the Michigan Limited Liability Company Act, MCL 450.4101 *et seq*. An LLC must file Articles of

Organization with LARA. MCL 450. 4202.

2. LLCs are very flexible and can be tailored to the needs of the members. LLCs can be member-managed or manager-managed. Profits, losses, and distributions can generally be divided in any manner agreed upon by the members with certain restrictions.

3. LLCs receive pass-through income tax treatment unless the LLC elects to be taxed as a corporation or is a disregarded entity.

4. A written Operating Agreement is unnecessary, but strongly recommended. This document describes how the LLC will be managed and operated. Operating Agreements can be drafted in a manner that best suits the needs of the company and its members.

5. Advantages

    1. Unless otherwise provided by law or in an operating agreement, the members and managers of an LLC have limited liability. MCL 450.4501(4).

    2. There is no entity level income tax on an LLC. The profits and losses of the partnership are passed through to the members.

    3. LLCs have fewer statutory requirements than a corporation and are generally more flexible.

    4. There are very few statutory requirements concerning what must be contained in an Operating Agreement. Operating Agreements can be as simple or as complex as the member's desire. However, Operating Agreements generally cover issues like management, membership, income or loss allocations, cash and property distributions, mandatory and permissive capital contributions, dilution, and transferability of ownership, among others.

    5. The Operating Agreement can limit or eliminate the duties members owe to each other.

6. Disadvantages

    1. In order to enjoy some of the benefits of a LLC, the members must create a tailored operating agreement. A knowledgeable attorney should be retained to draft a complex operating agreement.

E. Corporations

1. A corporation is a statutory entity. Corporations are governed by the Michigan Business Corporation Act, MCL 450.1101 *et seq*.

2. Corporations must file Articles of Incorporation with LARA. MCL 450.1202 *et seq*.

3. A "C" corporation is subject to double income taxation. It is taxed at the entity level, and then the shareholders are taxed on dividends.

4. An "S" corporation passes through income and losses *pro rata* based on ownership. S corporations are generally not taxed at the entity level. S corporation status requires:

    1. Election by all shareholders.

2. The filing of form 2553 with the Internal Revenue Service.
3. Only one class of stock.
4. A maximum of 100 shareholders.
5. Only certain individuals or entities may be shareholders. Shareholders may be individuals, certain trusts, and estates, and may not be partnerships, corporations, or non-resident aliens.

5. Directors and officers owe a fiduciary duty to the corporation. They must: (i) perform their duties in good faith, (ii) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (iii) in a manner he or she reasonably believes to be in the best interests of the corporation. MCL 450.1541a(1). Shareholders generally do not owe a fiduciary duty to other shareholders (unless the duty is set forth in a shareholder agreement).
6. Advantages
    1. Shareholders have limited liability for acts of the corporation.
    2. Shareholders can generally freely transfer their stock (unless subject to a shareholder agreement stating otherwise).
    3. S corporations receive pass through income tax treatment (no double taxation)
    4. S corporations may lead to savings on self-employment taxes.
7. Disadvantages
    1. C corporations are subject to double income taxation.
    2. A C corporation cannot pass through its losses to its shareholders. IRC 172.
    3. Unlike an LLC, S corporation allocations of income or loss are rigid.
    4. The Michigan Business Corporation Act is more stringent than other applicable entity statutes in terms of requirements applicable to corporations.
    5. Certain corporate activities require shareholder approval including amending the Articles of Incorporation (except under certain circumstances) (MCL 450.1611(3)), adopting a plan of merger or share exchange (MCL 450.1703a(1)), and selling all or substantially all of the corporation's assets outside of the ordinary course (MCL 450.1753). Most changes require approval from the majority of shareholders and may require approval from an affected class of shareholders. Shareholder agreements may require approval from a greater percentage of shareholders for certain actions.

VII. FORM OF DEED

A. The common deed in Michigan is the "warranty deed" where the seller warrants title. The "Special Warranty Deed" (sometimes called a "Covenant Deed") is becoming more accepted and popular whereby the seller gives

warranties against title defects arising during seller's period of ownership only. Most title insurers do not see this type of *limited* warranty deed as an impediment to issuing title insurance. Quit claim deeds are also frequently used where the seller conveys whatever interest it has and provides no warranties of title, in which case the buyer should obtain and would be relying entirely on title insurance to address title defects.

VIII. CLOSING COSTS/ADJUSTMENTS

A. Seller usually pays the transfer taxes due at the time of the conveyance. There is a standard county tax of $0.55 per $500 of consideration, however, a county with a population over 2 million may charge as much as $0.75 per $500. The state transfer tax is $3.50 per $500 in consideration. There are several transfer tax exemptions mostly involving family or related party transactions with little consideration.

B. Buyer and seller adjust for water, sewer, gas/oil, electricity, and taxes. Depending on what part of the state the property is located in, proration of taxes varies by local custom. The most common methods for pro rating taxes are: (1) paid in advance, due date basis (favors seller), (2) calendar year and (3) paid in arrears, due date basis (favors buyer). With retail or multi-family commercial properties, closing adjustments also include, among others, rents, management/operating expenses and common area maintenance expenses.

C. Certain lands used for agricultural purposes pay reduced taxes that, in some instances, may be clawed back if the agricultural use is terminated.

D. Standard federal income tax withholding is required for sellers who cannot provide a non-foreign FIRPTA affidavit.

IX. OTHER CLOSING DOCUMENTS

A. Residential Property – If the property is to be used as a principal residence, the seller should rescind any PRE, or "Personal Residence Exemption" seller may have (results in lower property taxes), and the buyer should promptly file a PRE form with the local assessing unit.

B. If the property is leased (residential or commercial/industrial) and if the lease is to be terminated at or before closing, a lease termination instrument signed by the tenant should be provided. If the lease(s) is to continue after the sale and purchase, an "assignment and assumption of lease(s)" instrument should be executed by the seller and buyer.

C. Title insurance is always recommended and an effective review of title to the property is nearly impossible without a title commitment (and copies of all exceptions to the seller's title that survive closing) being provided, which commitment is the basis for the title policy issued at closing. Typically, the seller pays the premium charged to issue the title insurance policy. Buyer is responsible for a title policy required for any purchase money financing.

X. RECORDING REAL ESTATE DOCUMENTS

Deeds and any other documents evidencing an encumbrance on title are recorded at the Register of Deeds for the County where the property is located.

XI. PROPERTY TAXES

A. Real Estate Taxes

1. Real property is assessed for taxes based on its true cash value that is to be determined annually by the local assessing unit. The assessed value is to represent 50% of the true cash / fair market value.

2. Michigan has a "cap" on increases in a property's taxable value that is tied to inflation. The taxable value stays low (no more than 5% increase annually) regardless of any increase in the fair market value of the property and is reset to equal assessed value anytime there is a non-exempt "transfer of ownership." A transfer includes (with a few exceptions) the sale of stock or membership/partnership interests (not a deed) in the entity having title to the property.

3. Only businesses pay personal property taxes, and they are structured the same way and subject to the same "cap" as real property. There are many exemptions and certain value thresholds that apply to personal property, depending on the value and/or the type of personal property involved.

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SYLS FERRARI

Buying and Selling Real Estate in Uruguay

ILN REAL ESTATE GROUP

ESTABLISHING A BUSINESS ENTITY IN URUGUAY

Please find below a quick summary about acquiring real estate in Uruguay.

This Memorandum has three main chapters: 1) Steps for buying real estate property; and 2) Other issues to keep in mind when acquiring real estate property in Uruguay.

1. Steps for the acquisition.

1.1. Compliance.

Following Uruguayan legal requirements, all buyers must go through a compliance procedure which includes informing the source of the funds to be used for the acquisition.

All documents provided for such purpose, will be held by the Notary in charge of the issue. However, local authorities could request such documents. In addition, Notaries are obliged to report any suspicious activity to a special office of the Uruguayan Central Bank.

1.2. First stage: Signing of a private document called "Boleto de Reserva".

Firstly, it is most common that a "Boleto de Reserva" is signed by the two parties (purchaser- seller). In this preliminary agreement, the most important terms and conditions of the deal are established (characteristics of the real estate asset, price, deadline for signing the contract of sale, fines in case of non-fulfilment).

After signing this document, the Notary appointed by the purchaser can start the due diligence process that will determine if the land can be bought without any encumbrances or liens.

The signing of this private document is not compulsory but recommended to allow the parties to have certain obligations (the customary fine for the non-fulfilment of the terms and conditions established is the 10% of the real estate asset's price).

It is not necessary to register this document at the National Registry.

At this stage, the purchaser should not pay a part of the price, but should make a 10% money deposit (this amount can vary) in his Notary's hands, while the seller should deposit the original deeds for the property, being both guaranties of their respective obligations.

The aforementioned 10% will be credited to the total price of the operation at the moment of executing the contract of sale.

1.3. Second Stage: Execution of the Contract of Sale.

After signing the "Boleto", Purchaser´s Notary will perform a Due Diligence of the last 30 years of ownership of the real estate asset as well as a review of the deeds and plans of the same, in order to confirm that both the asset and its owner are not affected by encumbrances.

If the due diligence is approved and all conditions set in the Boleto de Reserva are achieved, then the final deed can be signed, the whole price is paid, and the property is transferred to the Purchaser. Only a Uruguayan Notary can authorize this transaction.

When not all the price is to be paid, there is a possibility of signing a Promise of Sale ("Compromiso de Compraventa") in which part of the price (i.e. 50%) is paid (sometimes de land is transferred at such moment). The registration of this contract does protect the future owner from eventual encumbrance.

2. Other issues to keep in mind

2.1. Preference acquisition right in favor of the Municipality

Pursuant to Article 66 of Law 18.308, the Municipalities in Uruguay have a preference right to buy real estate. In this sense, it is mandatory for the seller to offer the property to the corresponding Municipality under the same terms that those agreed in the "Boleto de Reserva" entered into with a third buying party.

If the Municipality considers that it is a good offer, it can buy the plot, and the buyer will have no possible claim. However, in the practice this is not common.

2.2. Colonization Institute for rural land

Article 35 of law 11.029 as amended by law 18.187 establishes the obligation before its sale, of offering any rural property with an area equal to or greater than 500 hectares with a coneat index of 100 (good lands), for sale to the National Institute of Colonization (these requirements could vary in some municipalities).

The hectares must be multiplied by the coneat index of productivity and if the result is greater than 50.000, the referred Institute has a first right refusal.

The National Institute of Colonization will have preference for the purchase in the same value and term of payment, that is, in the same conditions established in the deal without being able to modify them and will have a period of 20 working days to make a statement, after which, a tacit rejection shall be understood in absence of reply from the Institute.

Consequences of not offering it: absolute nullity of the legal business between seller and buyer, which will operate in full right. Besides, the seller will pay a fine equivalent to 25% of the real value for each of the plots included in the transaction. The other parties of the legal deal, as well as the Notary Public acting in the transaction will be collaterally responsible. In addition, the Institute understands that if after it accepts the offer, the seller decides not to sell, then such seller could be fined in an important amount.

In cases where the offer must be made to the National Institute of Colonization (INC), it is not necessary to make the offer to the Municipality mentioned in the previous paragraph.

2.3. Ownership of rural real properties and farms

Ownership of rural land and performance of agribusiness activities in Uruguay are subject to a specific regime. Such regime mainly regulates and restricts the persons entitled to be owners of rural estate or to develop agricultural activities.

In this sense, act 18.092 declares of general interest that the holders of property rights over rural real estate and agricultural exploitations where rural activities are developed, be natural persons or companies which membership interest or shares are in registered form and owned by individuals.

However, act 18.092 entitles the Executive Power to authorize certain entities to own rural real estate or engage in agricultural activities as long as such entities prove that the number of shareholders, the members of the legal person or its legal form, prevent the capital stock to be owned exclusively by individuals.

In that sense, section 2 paragraph "A" of decree 225/007, as amended, establishes a

list of entities that are in the position to obtain such authorization from the Executive Power and includes, among others, pension or retirement funds (both incorporated in Uruguay or abroad) as well as companies proving through their nominative share that they are directly or indirectly owned by the aforementioned funds.

Likewise, it should be noted that some entities may request authorization from the Executive Power to own rural land whenever the activities performed by them are part of a project deemed as a priority for the productive development of the country (a "Productive Project"). As per section 3 of decree, when submitting a Productive Project, the petitioner should include "a responsible and sustainable management and production plan over the natural resources as well as an environment's protection plan".

It should be noted that this authorization, that when first requested could take between 3 to 9 months, must be requested each time the entity wishes to acquire new land.

Finally, please also be aware that in case of properties located within the protected areas system, there is another procedure to be submitted to the Ministry of Housing, Territorial Planning and Environment (MVOTMA).