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Legal Handbook for Real Estate Transactions

2025 Edition

Foreword

The global real estate market has experienced a period of significant transformation over the past two years. While the immediate impact of the pandemic began to recede, lingering effects such as persistent inflation, rising interest rates, and geopolitical uncertainty have created a complex and dynamic landscape. The drive towards ESG compliance is also reshaping investment strategies, with a growing focus on energy, efficiency and sustainability.

Despite these challenges, the real estate market is adapting. This period of uncertainty has led investors to re-evaluate their strategies, seeking assets that offer long-term stability and value. The evolving macroeconomic environment requires a nuanced understanding of local market dynamics, regulatory changes, and emerging trends to identify opportunities and navigate potential risks.

With these factors in mind, we have updated the *Deloitte Legal Handbook for Real Estate Transactions*. Now in its fourth edition, it provides an overview of the main real estate regulations regarding transactions of different asset classes, and has been expanded to cover 47 countries, spanning from Europe, Asia, South America and also Africa.

Each chapter has been provided by a senior Deloitte Legal professional with a deep understanding of real estate in terms of the local legal, business, and administrative environment in their jurisdiction. Where possible, it also contains commentary from a local property organization, or the Deloitte sector leader.

Deloitte Legal addresses client challenges with comprehensive thinking, powered by experience and insights drawn from diverse business disciplines, industries, and global perspective. We bring together legal advice and strategy to develop innovative solutions, create value for you and your business, and with technology, transform the way legal services are delivered and consumed. Our real estate law professionals act as legal advisors for a significant number of REITs and property companies, investment funds, engineering and development companies, tenants, occupiers, and more.

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Emiliano Russo

Deloitte Global Real Estate Leader | Deloitte Legal

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Real Estate Law in Albania

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Overview of the Albanian Legal System

General introduction to the main laws that govern the acquisition of assets in Albania – real estate rights

The highest legal act governing property ownership is the Constitution of the Republic of Albania (Constitution), which stipulates the right to private property as one of its essential principles.

According to the Constitution, property may be acquired through donation, purchase, or any other means provided in the Law No. 7850, dated 29 July 1994, "On the Civil Code of the Republic of Albania" (Civil Code). The latter Code contains the main provisions regulating property ownership, usufruct, leases (different types of leases), emphyteusis, etc., in Albania.

As per the Civil Code, ownership is the right to possess, enjoy, and freely dispose of objects within the limits defined by the law.

Furthermore, the Civil Code stipulates that the real estate property may be acquired through the means provided therein, such as contract (purchase, donation, etc.), inheritance, adverse possession, acquisition of property rights by prescription, or through expropriation for public interests (which is regulated by a specific law, the law on expropriation, and taking into temporary use of private property for public interests dated 22 December 1999, as amended, along with its sub-legal acts), etc.

In addition, Law No. 111/2018, dated 7 February 2019, "On Cadaster", as amended (Law on Cadaster), establishes the rules for the creation and operation of the National Cadaster Agency, in the capacity of the keeper of the Cadaster Register, where the ownership titles and other rights over real estate are registered.
Despite the abovementioned legislation, there are also other laws and/or additional secondary legislation, governing real estate ownership or other aspects, depending on the type of the property (state-owned property, agricultural land, etc.).

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

The most commonly used form of acquisition of real estate in Albania is the direct transfer of the asset from the owner to the investor/buyer through a sale-purchase agreement (SPA), entered in front of a notary public and later registered with the State Cadaster Agency (SCA) for purposes of obtaining the ownership certificate in the name of the buyer.

In addition to the asset transfer, real estate can be obtained through the acquisition of the company owning the targeted real estate. In such a case, an SPA is entered and registered with the National Business Center, and if the transaction results in the change of the company name, the SPA should also be registered with the SCA. While legally possible, the second modality is not used often, unless in the case of major investment, due to the financial and legal burden for the performance of full due diligence on the company, which is more complex than due diligence performed on real estate.

Foreign individuals and entities can freely acquire residential/commercial units, while Albanian legislation imposes some restrictions in connection with the acquisition of lands located in the territory of Albania. Thus, foreign citizens and entities are not entitled to purchase agricultural land, forest, pasture, and meadows and their right is limited to the lease of such land for a period of up to 99 years. However, such limitations can be overcome, either by establishing an Albanian company, or by the acquisition of an already existing company.

In addition, foreign individuals or entities will be entitled to acquire land located in the territory of Albania only if they have made an investment pursuant to the applicable law on foreign investment that, according to their construction

permits, has a value of not less than three times the value of such land, as stipulated by the Council of Ministers. The entitlement to purchase such land becomes available after the investment is finalized in accordance with the construction permit.

Also, the right to acquire the ownership of land is granted to foreign individuals or entities that have acquired or constructed on such land an object with a value exceeding three times the value of such land.

On the other hand, land that comprises museums, archeological and historical, natural parks, flora, and fauna reserves values, as well as lands with special environmental values and military nature are forbidden to be acquired by foreign individuals/entities, in any case.

Real estate registry system

Ownership and other rights over immovable property are registered with the Cadaster Register, being held by the SCA, a governmental agency under the supervision of the Prime Minister. The Cadaster Register is a public, manual, and digital register, consisting of a set of cadastral cards and maps, which record data on ownership, real rights, geographical position, size, and monetary value of real estate.The cadastral cards, constituting the Cadaster Register include, inter alia, the following information:

- The geographical position of the property;
- The surface area of the property;
- Type of immovable property (building, land, pasture, etc.);
- Identification data of the owner of the property;
- The act by which the title of ownership over the property was issued;
- The rights of third parties over the property and the acts from which they derive;
- The value of the property;
- Any other act that changes the legal regime of the property, or creates rights or obligations over property; and
- Other data stipulated by decision of the Council of Ministers.

The information in the aforementioned register is not publicly available; however, such information may be accessed by public notaries (for the purposes of effecting real estate transactions), the relevant state authorities, prosecutions, or courts based on a valid legal reason.

Further, the Law on Cadaster stipulates that any transaction or legal action which is necessary to be registered with the Cadaster Register, as per the provisions of the Civil Code, or a specific law, should be registered with the SCA within 30 days from the execution of the agreement/action, otherwise, penalties may apply, amounting to 10% of the registration fee, but not more than ALL 300,000 (approx. €3,000). It is to be noted that the registration is not a precondition related to the validity of such legal actions.

Pursuant to the Civil Code, the following transactions related to immovable properties should be registered with the SCA:

- Contracts for the transfer of ownership titles and acts for their voluntary separation;
- Contracts that establish, recognize, amend, or cease real rights over immovable properties, such as usufructs, usage, emphyteusis, easements, and other real rights;
- Legal acts by means of which the aforementioned real rights are waived;
- Court decisions where the heir is recognized, and the inherited property is acquired;
- Legal acts establishing a commercial entity, with ownership of real estate, or enjoys other rights in rem over these properties;
- Court decisions related to real estate matters and bailiff actions for the seizure or sale of real estate at an auction;
- Legal acts which create or cease mortgage over immovable property; and
- Lease contracts with a term of up to nine years and entered in the form of a notarial deed.

Apart from the above-listed transactions, the Law on Cadaster provides certain acts in relation to real estate, which should be registered, such as the construction permits, undertaking agreements with the aim to transfer ownership in the future, of the object under construction, etc.

Notary role in the real estate transactions

The Albanian legislation has provided an important role for the notary public in real estate transactions, from the initial phase up to the registration of the transaction with the SCA and the payment of the purchase price. This role is regulated, inter alia, by Law No. 110/2018, dated 7 February 2019, "On the Notary", as amended.

In addition to the preliminary legal checks performed by the lawyer, the notary public has the legal obligation to duly verify the title of ownership of the selling party, as well as any liens, restrictions, encumbrances related to the said real estate, by accessing the electronic register of immovable property held by SCA (including herein other needed public registers), before the SPA (or any other agreement for the transfer of ownership, e.g., donation agreement) is signed by the respective parties in front of the notary public.

Once verified, and upon signature of the relevant agreement for the transfer of ownership of immovable property, the notary public informs the parties about the payment of the purchase price as agreed to the notary public's escrow account.

Subsequently, upon payment of the purchase price, the notary public will transfer the amount deposited by the purchasing party while deducting applicable bank commissions and the amount of tax due (if applicable) to the seller's bank account, provided, however, that the relevant agreement is registered with the SCA, and the ownership certificate issued by SCA is obtained. To finalize the transaction and based on the obligations stipulated by the relevant legislation to the notary public, the latter is obligated to have an escrow account in any second-level bank in Albania, dedicated only for notarial activities, including the transfer of titles for immovable property. In addition, the notary public has the obligation to electronically declare the acts related to real estate matters (e.g., acquisition, change, cease of an ownership right, etc.), with the SCA. Apart from such declaration, the notary public should deliver a written copy of such acts, within 10 days from its conclusion to the local directorate of SCA.

While it is not provided as a legal obligation, in practice, the notary public also assists the parties in registering the relevant agreements with the SCA in exchange for a service fee, in addition to public notaries' fees applicable for the transaction procedure, as stipulated by the relevant legislation and calculated, as a percentage of the sale price.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

According to the Civil Code, the seller is under duty to act in good faith and guarantees that they have full and absolute ownership of the real estate, and at the moment of alienation thereof, such ownership is free of liens, burdens and/or any rights enforceable by third parties against the buyer.

Based on such warranties, the buyer may hold the seller liable, in case of misinterpretation of the latter, by exercising the right of opposing such defects, within five years from the moment of handover of the real estate/property.

Based on Article 752 of the Civil Code, in cases when the sale contract of an immovable property indicates the size and price set per unit of measurement of the immovable property, the buyer has the right to a reduction in price, provided that the effective size of the immovable property is smaller in size than shown in such contract. Conversely, when the effective size of the immovable property is larger in size than shown in such contract, the buyer will be required to pay the additional price.

To avoid worsening the position of the buyer, the Civil Code has provided that the buyer has the right to withdraw from the contract when the effective size is greater than one-twentieth of the declared size of the immovable property.

Furthermore, when the price is stipulated in relation to the immovable property itself and not its size, there is no room for a reduction or increase in price, unless the real size is smaller or greater than one-twentieth of the indicated size of the immovable property in the contract. In all cases, where an additional price is to be paid, the buyer has the right to either:

- Withdraw from the contract; or
- Waive paying the additional price.

Both the seller's right to request a price increase and the buyer's right to request a price reduction, or waiver from the contract will become time-barred within two years, from the delivery of the immovable property.

Mortgages and other usual guarantees adopted in financing assets

The most common form of security taken regarding immovable property in Albania is the mortgage. The Civil Code defines a mortgage as the real right which is placed over the debtor's property in favor of the creditor, in order to ensure the fulfillment of an obligation.

A mortgage deed should be signed in front of the notary public and registered with the SCA. The registration is valid for up to 20 years from the date of registration, provided that it has not been renewed. In the latter case, the mortgage is preferred towards third parties based on the new registration date.

Additionally, pledges or securing charges are used along with the mortgage as additional guarantees for creditors in real estate financing. A pledge, in principle, grants to the creditor, or to a third party, possession over movable property or titles.

Securing charges are real rights on intangible property or tangible movable property by a written agreement and perfected through registration with the Securing Charges Registry. A securing charge agreement is an executive title, and, in case of default, the asset may be executed by the bailiff upon an order of the competent court.

Another frequently used method in real estate financing for creditor protection is a personal/real guarantee.

Lease of assets and lease of business

The Civil Code defines a lease agreement as a contract where one party (landlord) agrees to make available to the other party a certain property item, for temporary enjoyment against a certain remuneration, and does not make a major distinction between the properties leased for commercial reasons and the ones leased for other purposes, such as living purposes. However, it makes a distinction between real estate used for agricultural purposes and other real estate used for different reasons.

The Civil Code provides general rules regarding the term of validity (maximum 30 years except in the case of living premises, the terms of which cannot exceed five years), legal form (written form for lease agreements concluded for a period of more than one year and in case of the lease agreement for real estate over nine years, the notarial deed and registration with the SCA), rights and obligations of the parties, termination clause, etc.

The leased assets can be transferred through a sublease agreement, provided that the parties have not agreed otherwise, and the written consent of the lessor is obtained in advance.

Apart from the Civil Code, the lease of assets is also provided in other legal acts, in particular the lease of forests, pastures, and agricultural lands in state ownership.

Administrative permits applicable to construction or restructuring of assets

In principle, there are three types of permits/declarations applicable to construction or restructuring of assets: a development permit, a construction permit, and a preliminary declaration on works performance. These permits are governed by Law No. 107/2014, dated 31 July 2014, "On Territorial Planning and Development", as amended (hereinafter referred to as the "Law on Territorial Development"), accompanied by the relevant sub-legal acts issued for its implementation.

Depending on the type and complexity of the project, the development and construction permits are issued by one of the responsible authorities on territorial development: National Territory Council, or the mayor of the relevant municipality.

A development permit is an act issued by the responsible authority that determines the development conditions for a certain plot/property and serves as a basis for obtaining a construction permit. The development permit is issued for new constructions unless a detailed local plan is approved for the area where the construction will take place. In the latter scenario, the development permit

consists of the extracts from the detailed planning document.

A construction permit is an act issued by the responsible authority approving the construction request and setting the rules for carrying out the relevant works. A construction permit is issued in cases of the establishment of new constructions (including temporary ones), reconstruction and restoration that creates partly or wholly a different structure, resulting in the addition of units and/or change of construction area/external appearance, the action of extraordinary maintenance accompanied by changes to the constructive system of the building, and in cases of the demolition of buildings.

The procedure is finalized with the issuance of the certificate of use, which is issued by the responsible development authorities, upon the applicant's request, which certifies the completion of works, in accordance with the conditions of the construction permit as well as the implementation of the criteria of development planning and control documents.

Additionally, in case of a change in the activities and functions of the individual unit, a permit to change the activities/functions is issued by the development authority, provided that the constructive system is not changed.

On the other hand, some construction works do not need to be issued with a construction permit, and a preliminary declaration of works performance is more than sufficient. A preliminary declaration is a declaration filed with the responsible authority on the development of works that do not require a construction permit to be obtained in advance, such as in cases of changes to the organization of space in the building, existing apparatus and equipment are replaced, or in cases where the changes do not affect the sustainability and safety of the object do not change the structural supporting elements. A more detailed list of the construction work that falls under a preliminary declaration is stipulated in the relevant regulation on territorial development.
Depending on the type of project and the development area, additional authorizations or permits may be required while applying for a construction permit, e.g., prior authorization and/or permit by the relevant authorities in the cultural heritage.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

While there is not a separate set of ESG-related regulations, Albanian legislation, in general, includes some principles and rules that can be applicable to ESG, especially during the initial phase of construction and performance of civil works.

Therefore, any development/construction permits issued pursuant to the Law on Territorial Development, should follow the principles and related goals, inter alia, to ensure the sustainable development of the territory through the rational use of land and natural resources, create appropriate and fair conditions and equal opportunities for housing, economic, and social activity for all social categories, economic and social cohesion, and enjoyment of property rights.

Certain constructions, depending on the type, size, complexity, and location of the construction, might need to undergo evaluation for environmental impact as a precondition for obtaining the development/construction permit, the absence of which can constitute a valid ground for the refusal of the development/construction permit.

Also, for certain constructions, an environmental permit is required. Both cases, when the project undergoes an environmental impact assessment or when an environmental permit is required to be obtained, are regulated by the legislation in force on the environment. In general, environmental permits are obtained upon completion of the construction, and at the moment when the subject, depending on the type of business activity, will initiate such activity.

In addition to the environmental permits, an energy performance certification must be obtained for:

- All buildings or units of building which will be sold or leased;
- All buildings which will be built, or will undergo significant renovation; and
- All buildings that are in use by a public authority or by institutions providing a service to the public and often frequented by the public, which have a usable area of over 500 square meters.

Furthermore, when a building or a unit of building is sold or rented before it is built, the building owner must obtain, at the design stage, a temporary certificate of energy performance of these buildings or building units. Upon termination of the construction works, buildings/unit buildings will be granted an energy performance certificate.

The energy performance certificate is transferred to the buyer, or the lessee, in case the building or the unit of building is built, sold, or leased. The certificate is valid for up to 10 years from the issuance date and becomes valid upon registration in the Energy Efficiency Agency's registry.

Direct taxes applicable to sales

Depending on whether the transaction is being carried out by individuals or legal entities, different taxes apply. Individuals are subject to a personal income tax at a rate of 15% applicable to the difference between the registered value of the immovable property and the sale price (capital gain). While parties can freely negotiate the sale price, for tax purposes, the price cannot be lower than the references issued by the relevant authorities.

In the case of legal entities, a local tax on the transfer of immovable properties will be paid. In the case of buildings, such obligation is calculated based on a fixed rate per square meter for buildings (which differs for different municipalities) while for other real estate a tax rate of 2%

Latest developments in Albania, and areas to focus on in the future:

- In recent years, Albania has witnessed significant growth in the development of large, multi-purpose buildings, particularly in its capital, Tirana. The rise of modern business towers and residential complexes has transformed the city's skyline, with projects like the recently completed "Downtown One Tirana," the iconic "Eyes of Tirana," and another major structure currently under construction, standing as indicative symbols of this construction boom.
- The number of construction permits issued in Tirana has reached its highest level in over a decade, reflecting the increasing pace of urban development. Beyond the capital, Albania's southern coast is experiencing a surge in investments, with luxury resort projects reshaping the seaside landscape. Additionally, large-scale residential developments are underway in key cities like Durrës and Shkodër, further expanding the country's urban footprint.

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Real Estate Law in Argentina

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Overview of the Argentinian Legal System

General introduction to main laws that govern the acquisition of assets in Argentina – real estate rights

The main provisions governing the acquisition of assets in Argentina are set forth in the Argentine Civil and Commercial Code (CCCN), which applies to all real estate located in Argentina. The CCCN came into effect on 1 August 2015, and introduced new categories in the real estate legal regime such as surface rights, indigenous community property, and real estate developments (e.g., country clubs).

Real estate rights are regulated by the CCCN under the numerus clausus principle, which limits the number and content of property rights to the forms expressly set forth in the legal system.

The main rights in real estate ownership are: (i) sole ownership right (dominio), which confers all the powers to legally and materially dispose of real property; (ii) joint ownership right (condominio), which is the right over a real estate property that belongs to more than one owner, where each title owner owns an undivided portion of said property; and (iii) real estate developments, which encompass all types of residential developments (e.g., country clubs, gated communities, commercial or nautical parks) in this type of development, common and individual areas coexist.

In addition to ownership rights, there are other alternatives to participate in the real estate market in Argentina, such as: (i) real estate trusts, mainly regulated by the CCCN; and (ii) participation as shareholder or quota holder in companies that own real estate, particularly for long-term commercial purposes.
Argentina is organized politically as a federal country and its provinces have jurisdiction over all matters that have not been delegated to the federal government through the Federal Constitution. Therefore, real estate property is also subject to local regulations related to the organization and use of properties (including zoning and edification regulations and the grant of permits when required), the protection of historic places and environmental regulations, which may vary depending on the relevant jurisdiction.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Acquisition structure usually applied in real estate transactions

Under the Argentine legal framework, the creation, transfer, and modification of rights over real estate property must be executed through a public deed before a notary public and must be registered with the real estate registry of the relevant province.

Despite not being mandatory, it is common practice in transactions to acquire ownership over real estate by executing a preliminary purchase agreement (boleto de compraventa), which establishes valid and binding obligations between the parties to grant the public deed and complete the transfer of ownership over the property. Among the legal implications of this type of agreement, pursuant to Section 1170 of the CCCN, a good faith purchaser who has entered into a boleto de compraventa has priority over seizure orders (embargos) or other precautionary measures on real property provided that: (i) the purchaser contracted with the legal title holder, or may be subrogated to the legal position of such purchaser by means of a perfect chain of title that links successive owners of the relevant property; (ii) the purchaser paid

25% or more of the purchase price before such precautionary measure; (iii) the date of the preliminary agreement can be accredited through sufficient evidence under the provisions of the CCCN; and (iv) the acquisition has sufficient publicity through possession or registration with the relevant real estate registry.

Furthermore, Section 146 of the Bankruptcy Law No. 24,522, as amended (Bankruptcy Law) and Section 1171 of the CCCN also provide protection to good faith purchasers who have paid 25% or more of the purchase price under a boleto de compraventa, which are considered to be enforceable against other creditors in case of a reorganization or bankruptcy proceeding of the seller.

Before the execution of the public deed, the notary public conducts due diligence that includes obtaining the certificate of title issued by the real estate registry, to prove ownership and the existence of taxes levied on the property or the existence of precautionary measures. More information on the role of the notary public is in section "Notary role in the real estate transactions".

Restrictions applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

In Argentina, there are certain restrictions on foreign citizens and companies regarding the acquisition of real estate in certain areas considered as "security zones", which are mainly located in border zones. In this regard, Decree Law No. 15,385/44 establishes limitations on the acquisition, lease, or other types of possession of real estate by foreign individuals or foreign companies in the areas defined as "security zones" by the applicable regulation. Such limitations entail the prior consent of the relevant federal agency.

Another restriction on foreign citizens and companies is related to certain acquisitions of rural land depending on the extension of the rural land and its location. Indeed, Law No. 26,737 (the Rural Lands Law or RLL) and its Regulatory Decree No. 274/2012, as amended and restated, sets forth limits to foreigners in the ownership and possessions of "rural lands" as such term is defined by the RLL and its Regulatory Decree. It is important to point out that as of 20 December 2023, presidential Decree No. 70/2023 (the Decree 70) abrogated the RLL in its entirety (Section 154 of the Decree 70). However, it is worth noting that until the publication date of the present chapter, several lawsuits against the abrogation has been filed bringing uncertainty to the actual validity of such abrogation that is pending final ruling from superior tribunals[1]. Nevertheless, the Decree 70 sets a precedent indicating a trend towards market deregulation.

Pursuant to the RLL provisions, foreign ownership or possession of rural lands is construed as any operation involving acquisition, transfer, assignment of possessory rights and/or the temporary extension thereof in favor of, among other cases: individuals of foreign nationality (with certain exceptions also provided by the RLL, such as individuals who have held residence in the country for over 10 years); legal entities incorporated under the laws of Argentina or abroad, when more than 51% of the capital stock or a portion thereof enough to prevail in corporate decisions is held by foreign individuals or legal entities; foreign public entities; etc.

As an example of the restrictions set forth by the RLL, foreign ownership of rural lands must not exceed 15% of the total amount of "rural lands" in the whole Argentine territory or in the territory of the relevant province or municipality where the relevant lands are located. Additionally, individuals or legal entities of the same nationality will not be able to own or possess rural lands that represent more than 30% of the 15% previously mentioned. Another relevant restriction set forth by the RLL relates to rural lands adjacent to certain bodies of water, in which case the RLL prohibits foreign ownership.

1 Chamber III of the Federal Court of the City of La Plata has declared Section 154 of Decree 70 -that abrogated the RLL- to be unconstitutional; as a result of such ruling, from a conservative standpoint -and for the purpose of the present chapter- we are considering that the RLL is still in force.

Real estate registry system

Confirmed title to real estate requires the execution of a public deed, the transfer of the property, and the registration with the relevant real estate registry.

Due to the federal organization of Argentina's political system, the provinces have exclusive jurisdiction over the organization of the real estate registries. There are 24 real estate registries in Argentina, one for each province and another one for the Autonomous City of Buenos Aires. Each real estate registry has its own particular rules and regulations; however, they must conform to the provisions established in the federal Law No. 17,801 on Real Estate Registers.

The main documents that must be generally filed and registered with the local real estate registries are: (i) public deeds that create, transfer, declare, modify, or extinguish property rights; and (ii) judicial rulings that order cessations (embargos) or any other type of preliminary injunction (medidas cautelares) on real property.

The information held in real estate registries is publicly accessible and available to any person with a legitimate interest in discovering the status of a real estate property. However, requests for information can only be signed by certain professionals (e.g., lawyers, notary publics).

Notary role in the real estate transactions

The Argentine legal framework follows the civil law system, where the notary public is appointed to exercise a public function delegated by the state, which consists of conferring authenticity to all acts that passed before the notary public.

Moreover, in real estate transactions, the deed of conveyance must be executed before a notary public to complete the purchase and effect the transfer of ownership. The notary public is also responsible for (i) conducting title searches of the property before the relevant real estate registry; (ii) verifying that the seller has good title on the property; (iii) verifying that the property is free and clear of liens and encumbrances; (iv) checking the identity of the parties; (v) verifying the source of funds; (vi) withholding the percentage of the sale price subject to stamp tax, income tax and/or property sales tax, as applicable, property taxes and other taxes that remunerate the rendering of public services (e.g., lighting, cleaning services); and (vii) filing the deed of conveyance with the relevant real estate registry for its registration.

Pursuant to Section 20, paragraph 17 of Law No. 25,246 (as amended and restated, the Anti-money Laundering and Counter Terrorism Financing Law), public notaries are informing agents (sujetos obligados) that must collect general information of their clients and report to the Financial Information Unit (UIF as per its acronym in Spanish) the activities of individuals or legal entities that may imply an act or transaction that is suspicious of money laundering or terrorism financing, according to the regulation set forth by the UIF.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

Real estate transactions are customarily negotiated on an "as is" basis. However, the CCCN provides for certain implied warranties on a sale granted by the seller to the buyer. These warranties imply: (i) that the seller has good and valid title, and that the property is free and clear of encumbrances (garantía de evicción); and (ii) that the property has no hidden defects (garantía por vicios redhibitorios).

Eviction warranty

It guarantees the existence and legitimacy of the conveyed right. In real estate transactions, the liability extends to any total or partial encumbrance of rights, whether prior to or simultaneous with the acquisition, and to all disturbances caused by the transferor.

Hidden defects warranty

The liability extends to all those defects that the purchaser did not know or could not have known about at the time of the transaction, and defects of the good existing prior to the transaction. Likewise, it extends to those defects that make the thing unfit for its purpose, whether by structural or functional reasons, or that reduce its usefulness to such

an extent that, if the purchaser knew them, would not have acquired the asset, or its consideration would have been lower (vicios redhibitorios).

The CCCN establishes that liability for hidden defects in real estate expires after three years from receipt of the property.

Among the contractual representations and warranties commonly granted to the buyer by the seller, the more relevant include: (i) the title to the real property is good, valid, and marketable, free, and clear of all encumbrances, other than those permitted; and (ii) the absence of proceedings, claims, disputes, or conditions affecting any real property that might interfere with the use of the property.

Mortgages and other usual guarantees adopted in financing assets

Mortgages over real estate may secure the principal amount, accrued interest, and other related expenses owed by the debtor to the creditor.

Sections 2188 and 2189 of the CCCN set forth the "specialty" principle, which requires (i) proper identification of the underlying property; and (ii) proper identification of the maximum obligation secured through the mortgage in monetary terms. The principle will be regarded as fulfilled in case of conditional or undetermined obligations if a maximum amount of the guaranty is expressly established in the creation of the mortgage and the term of the guaranty does not exceed 10 years.

Pursuant to Section 2208 of the CCCN, mortgages over real estate must be created through a notarial deed.

In order to be effective vis-à-vis third parties, mortgages must be registered with the public real estate registry of the jurisdiction where the property is located, and such registration expires after 35 years if renewed before

Priority in case of more than one mortgage over a real estate asset will depend on the chronological order in which each mortgage is registered with the public real estate registry of the jurisdiction where the property is located. The general rule is that the first creditor to record it prevails over subsequent creditors. Foreclosure is conducted through a special summary proceeding allowing the property to be sold at a public auction.

Lease of assets and lease of business

Leases – intended for residential and commercial use – are mainly governed by the CCCN, as amended by Decree 70 which main purpose was to deregulate several economical activities including this type of contracts. Rural leases are subject to a specific legal regime established by Law No. 13,246 (Rural Leases Law).

Certain provisions of the CCCN and the Rural Leases Law (which mainly intend to protect the lessee) are considered mandatory (public order "orden público"). However, many provisions traditionally considered as of public order were modified by Decree 70. Indeed, Section 1198 that regulates the term of the contract was replaced eliminating the obligation of a minimum term of two years establishing that the lease term will be the one agreed upon by the parties. If no minimum term is expressly stipulated, the law presumes a term of two years for leases intended for permanent housing and three years for other purposes. Furthermore, regarding lease contracts, it is important to point out other modification brought by Decree 70, since it has established that the payment currency of the lease agreements can be set either in local or in foreign currency (Section 1199 of the CCN as amended by the Decree 70). In addition, it allows the parties to freely set the index by which the price of the lease agreement will be adjusted.

The maximum term for commercial leases is 50 years.

Rural Leases Law stipulates a three-year period as the legal minimum term for rural leases.

Administrative permits applicable to construction or restructuring of assets

Urban development in Argentina is mainly governed by provincial and municipal zoning regulations and building codes; therefore, they differ in each jurisdiction.

In the Autonomous City of Buenos Aires, the Urban Code (Código Urbanístico) approved by Law No. 6,099/2018 (as

amended by Law No. 6564/22) and its Regulatory Decree No. 99/2019 provide regulations for the use of land and subsoil, the transfer of public space, the subdivision and the opening of public roads and the application of building standards. Furthermore, the Building Code (Código de Edificación) approved by Law No. 6,100, provides a set of rules that specify the standards for construction in the city. The Building Code requires obtaining several permits and authorizations prior to the commencement of the construction. Additionally, sufficient notice of commencement of construction (Aviso de Obra), with detail of its scope, must be filed with the relevant authority prior to the initiation of the works.

There are also national and local regulations that foresee the protection of historic monuments when a particular property has been declared of "public use".

Environmental and energy – ESG rules and status of implementation

Pursuant to Section 1757 of the CCCCN, damage caused as a consequence of the development of dangerous activities, including environmental damages, is subject to objective liability. Any injured person may seek compensation from the owner or custodian of an asset that produces environmental damage. Similarly, the transferor of an asset that has a defect and later causes environmental damage may be liable even after the transfer.

The federal government sets the minimum environmental standards for the protection of the environment, and the provinces and municipalities establish specific standards and implementing regulations. The provinces have also enacted environmental laws requiring companies to prepare and file environmental impact statements in order to obtain the relevant permits.

The National Environmental Policy Law No. 25,675 (EPL) establishes that for collective environmental damage caused by legal entities, liability can be extended to their managers, directors, statutory auditors, or other officers who participate in the company's decision. Furthermore, any activity that could affect the environment or any of its components, or affect the quality of life of the population, is subject to an environmental impact evaluation procedure before the relevant authorities prior to its initiation. The environmental impact evaluation must contain, at least, a detailed description of the project of the work or activity to be carried out, the identification of the consequences on the environment, and the actions intended to mitigate the negative effects.

Within the framework of the EPL, the National Secretariat of Environment and Sustainable Development and the Housing Secretariat issued the Joint Resolution No. 2/2019 dated 2 October 2019 (Resolution 2/19) which implements the Sustainable Housing Federal Strategy (Sustainable Housing Strategy). The Sustainable Housing Strategy aims to promote bioclimatic housing design; expand the scope of existing programs in order to achieve more efficiency, housing comfort and sustainable development; and facilitate access to financing.

Certain local jurisdictions have enacted laws and regulations with the purpose of improving the sustainability of newly constructed and existing buildings, such as: Law No. 13,059 of the Province of Buenos Aires, which establishes thermal isolation conditions in the construction of buildings for a better quality of life and reduction of environmental impact; Law No. 4,428 of the City of Buenos Aires which establishes a reduction of municipal taxes for buildings that implement green terraces; and Ordinance No 8,757 of the City of Rosario regarding efficient use of energy in the construction of new buildings.

Direct taxes applicable to sales

For the sale of property, and for properties acquired as of 1 January 2018 income tax will be levied at a rate of 15% of the sale price minus cost. If the property has a housing purpose, an exemption applies and the sale in principle will not be subject to tax.

Emerging opportunities in Argentina:

- Although the general economic activity decreased in the first half of 2023, the construction and real estate sectors experienced a rebound. The Argentine real estate market shows clear signs of recovery in 2024 after an unprecedented, prolonged crisis. This revitalization is mainly driven by the return of mortgage loans and the capital amnesty program, which allows declaring up to US$100,000 for the acquisition of real estate, including used, new, and under-construction properties. This phenomenon has generated a significant increase in sales transactions, with more than 10,000 operations closed in major cities such as Buenos Aires, Córdoba, Rosario, Mar del Plata, and Mendoza in the last 60 days.
- The Argentine real estate market has undergone a significant change in recent months. The notable depreciation of the peso against other currencies, along with the acceleration of local inflation, has stimulated a growing demand for housing. This scenario, characterized by more affordable prices in foreign currency, has attracted a larger number of buyers. At the same time, there has been an increase in the demand for luxury properties in Buenos Aires, mainly driven by an influx of foreign investors who see the Argentine capital as an attractive investment opportunity.
- Despite the recovery, the Argentine real estate market faces challenges such as dollar volatility and construction costs, which affect price stability. However, the availability of mortgage loans and the adoption of favorable fiscal policies could lay the foundations for sustained growth. Expectations are positive, with projections of increased investment and a more transparent and banked market in the near future.

What is the future of Argentina and its construction sector?

Javier Milei has indicated a shift towards a more privately driven model. The country has ambitious plans to invest approximately US$452 billion by 2040 in infrastructure projects, supported by funds from international institutions such as the Inter-American Development Bank and the World Bank. Additionally, negotiations are underway with China Machinery Engineering Corporation (CMEC) for an investment of US$816 million to modernize the railway system. It is worth noting the recent approval and regulation of the Incentive Regime for Large Investments (RIGI), which expressly includes the infrastructure sector. This regulatory framework seeks to encourage private investment in this area by offering attractive tax benefits.

Corporate *real estate*

- The hybrid work model is driving a transformation of office spaces, prioritizing quality and flexibility while reducing square meters.
- As a result, companies are moving to smaller and higher-quality spaces, leading to a faster decrease in vacancy rates for class A offices.
- Despite economic uncertainty, new developments are emerging to meet the changing demand for more adaptable and high-quality office spaces.
- The real estate market is cautiously optimistic, anticipating a shift towards greater stability. Although prices remain low, they are showing signs of recovery.
- Construction activity is expected to remain moderate in the short term due to uncertainty and a decline in permit issuance.
- The concept of "flexible spaces" is gaining traction, with new developments seeking to create multifunctional spaces that integrate work, life, and community.

- The supply of properties for sale and rent is expected to stabilize once economic conditions improve and regulatory uncertainties are resolved.
- The hybrid work model is reshaping the office market, where companies seek more adaptable and higher-quality spaces.

Public housing

Driven by people's desire to own a home, the state has allocated a significant budget to develop housing. The Housing Ownership Program - Building the Future, managed by the Secretariat of Territorial Development, Habitat and Housing, aims to reduce the housing deficit, guarantee the right to housing, and promote equal access.

Residential real estate

- Construction has slowed from its mid-2020 pace but still holds some appeal in a deteriorating macroeconomic context.
- The housing market is waiting for a cycle change that allows for greater stability and predictability. Property prices have stopped falling and are beginning to rebound. Access to housing remains a concerning issue. Despite the drop in property prices, socioeconomic deterioration still makes acquiring a property difficult and incentives for construction prevail. However, regarding rentals, after the repeal of the law that regulated them, in January 2024, the supply in the City of Buenos Aires increased by 62% compared to December 2023.
- The office market continues to transform. Although vacancy has decreased, it remains high. The hybrid work model entails a reconfiguration of spaces, prioritizing their quality and adaptability. Due to the current context of political uncertainty, new office developments have been put on hold or have changed their purpose.
- In the short term, construction is not expected to be very dynamic, as construction permits show a relative stagnation with a downward bias, waiting for a reduction in uncertainty. In the long term, we believe that the problem of housing access will persist unless sustained and focused policies on the housing deficit are implemented.
- Private construction had a significant boost that it managed to maintain for a long time, while public construction was significantly relegated, with a slightly greater push during electoral processes.
- In recent months, the construction of small and medium-sized projects has shown greater progress than renovation works, mainly due to high inflation that causes cost increases and input shortages.
- Although property prices have experienced a significant drop, housing affordability conditions remain challenging.
- In the last four years, macroeconomic imbalances have worn down the real estate market. In fact, during that period, formal workers' wages grew by 666%, while inflation rose by 752%, construction costs increased by 767%, and the parallel dollar exchange rate (the currency in which the property value is expressed) skyrocketed by 1,020%.

Sustainable housing and construction

- Within the framework of the National Climate Change Cabinet, the Sustainable Construction Table was created, where the guidelines of the National Sustainable Housing Strategy were designed.
- Since 2016, Argentina has been part of the Global Alliance for Buildings and Construction, joining its global strategy with the aim of bringing together the construction industry, countries, and stakeholders to raise awareness and facilitate the global transition towards low-energy and low-emission buildings. The GlobalABC operates voluntarily through five work areas: education and awareness; public policies; market transformation; financing and data analysis; and MRV.

Industrial parks

- Industrial parks have become an undeniable engine of Argentine economic development in recent decades. These business conglomerates, strategically located and equipped with state-of-the-art infrastructure, provide a conducive environment for investment, innovation, and job creation. By bringing together companies from various sectors, industrial parks foster synergy, collaboration, and competitiveness, thus driving the country's economic growth. Additionally, they generate a positive impact on local communities by creating jobs, developing local suppliers, and improving the quality of life of residents. Important industrial parks are located in cities such as Buenos Aires, Córdoba, and Rosario. Some of the most important industrial parks in Argentina are:
- Pilar Industrial Park (Buenos Aires)
- Córdoba Industrial Park
- Rosario Technological Industrial Park
- Villa Mercedes Industrial Park (San Luis)
- Plottier Industrial Park (Neuquén)

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Real Estate Law in Austria

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Gabriele and her team advise clients in large scale and complex national and cross-border real estate transactions, in particular real estate acquisitions, financing and restructuring projects, real estate project developments, public and private building law, as well as residential and commercial lease law.

Gabriele is a lecturer in real estate law at the law school of the University of Vienna, and the author of several real estate publications. She is listed in various directories as one of the leading real estate lawyers in Austria.

Overview of the Austrian Legal System

General introduction to main laws that govern the acquisition of assets in Austria – real estate rights

The general provisions governing real estate ownership and acquisition in Austria can be found in the Austrian General Civil Code (Allgemeines Bürgerliches Gesetzbuch - ABGB). The General Civil Code determines the legal classification of real estate, such as land or buildings.

It also regulates:

- The requirements for the acquisition of ownership in a real estate as an in rem right;
- The mandatory provisions of an acquisition deed, such as a purchase agreement, or a donation agreement; and
- The contractual rights and obligations of the parties to such acquisition deed.

For purchase agreements regarding residential properties that are still under construction, the Developer Contract Act (Bauträgervertragsgesetz – BTVG) mandatorily regulates the specific rights and obligations of the contractual parties, in order to protect the purchaser against risks in case of insolvency of a developer.

The Law about Building Rights (Baurechtsgesetz – BauRG) regulates the prerequisites for the right to construct a building on third party's land and the mandatory provisions of a building right agreement.

Special provisions for real estate also exist in specific legal regulations, such as, inter alia, the Land Register Act (Grundbuchsgesetz – GBG) and the Condominium Ownership Act (Wohnungseigentumsgesetz – WEG).

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Generally, there are two main structures for the acquisition of real estate: acquisition via (i) asset deal, or (ii) share deal.

Asset deal

To acquire ownership of a property in Austria, two steps are required. First, a contractual obligation (title), e.g., a purchase or donation contract is required, and second, a disposal of the real estate (modus). The modus of a real estate acquisition is the registration of the purchaser in the land registry.

Consequently, the legally valid transfer of ownership of a property is only completed upon registration in the land registry. Furthermore, the valid acquisition requires that the previous owner (e.g. the seller of the property) was the lawful owner of the property. Generally, everyone may rely on the correctness and completeness of entries in the land register, so that bona fide acquisition of ownerships is possible, even in case the registered owner is not the legal owner of the property.

Share deal

In case of a share deal, the purchase object is not the real property itself, but the legal entity owning the property. For the acquisition of such legal entity, a title deed, such as a share purchase agreement, is required. The transfer of ownership of the shares in a legal entity generally takes place upon fulfillment of the conditions precedent under the share purchase agreement. The registration of the share purchase agreement in the company register is not a

prerequisite for the transfer of ownership in the shares. In respect of limited liability companies (Gesellschaft mit beschränkter Haftung – GmbH) the conclusion of a purchase agreement requires the form of a notarial deed, otherwise the agreement is void.

Land transfer restrictions

The individual federal state laws in Austria stipulate that the acquisition of real estate by foreigners (non-EU or non-EEA citizens) must be approved by the respective land transfer authorities.

Foreigners (e.g. foreign nationals and legal persons, as well as Austrian companies held by a non-national majority) from member states of the European Union and the EEA are treated equal as nationals. The prerequisites for the approval of a real estate acquisition by the land transfer authorities are regulated in detail in the respective federal state laws of the nine provinces in Austria. In certain cases, this approval is also required for the registration in the land registry of Austrian purchasers regarding acquisition of land used for construction, agriculture and forestry, and secondary homes. Acquisitions by foreigners who are not subject to equal treatment (non-EU or non-EEA citizens) must generally present a specific interest to receive approval for the acquisition, unless otherwise governed by individual state treaties. Under some federal state laws, the acquisition of shares of a company that owns real estate by foreigners also requires the approval of the land transfer authority. The duration of the approval process varies and can take up to several weeks.

Real estate registry system

For the acquisition of a real property in Austria, not only a title deed, but also the disposal (modus) is required. The modus is the registration of the acquirer in the land registry. The acquisition of ownership therefore becomes effective only upon the successful registration of the ownership right of the acquirer in the land registry.

The land registry is a public and generally accessible court register where real estate properties and rights in rem are registered. It is maintained at the district court in whose judicial district the real property is located. The land registry is open to public inspection and register excerpts may be obtained by anyone. An inquiry is subject to fees and may be executed via internet, or obtained from notaries attorneys, or the land registry courts.

Only entries mentioned in the General Civil Code can be entered into the land registry. Registrable rights and encumbrances are rights in rem (such as ownership, co-ownership, condominium, mortgages, easements, land burdens, etc.), as well as repurchase rights, pre-emption rights and lease rights.

In general, everybody is entitled to rely on the completeness and the accuracy of the entries in the land register. This means that a bona fide purchaser may acquire the title in a property even if the seller is wrongly registered as the owner in the land registry.

The land registry consists of the main register (Hauptbuch) and of the collection of documents (Urkundensammlung). The main register contains all land registry entries of a cadastral municipality.

The collection of documents contains all documents which are mandatory for a registration into the land registry, such as purchase contracts, donation contracts, mortgage agreements, etc.

Notary role in real estate transactions

For the registration of a right in the land registry a respective document creating the contractual obligation (purchase contract) must be signed by the parties and the signatures must be notarized by a notary public or by a court. The dates of birth of natural persons as well as the commercial register number of legal entities must be included in the title deed.

The form of a notarial deed is generally not necessary, except for purchase or donation agreements between spouses, donation agreements without handover, and the sale of shares in a limited liability company (Gesellschaft mit beschränkter Haftung - GmbH).

The attorney drafting the purchase agreement, or a notary public usually acts as an escrow agent for the processing of payments and the registration of the new owner in the land registry in order to safeguard the contractually

stipulated payments. The escrow agent also undertakes the self-calculation of the real estate transfer tax and the fee for the registration into the land registry.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

General

The provisions of the General Civil Code stipulate that the seller warrants for the contractually agreed, or commonly assumed quality of a real property, and that the seller is liable for defects that exist at the time of handover irrespective of fault. This means that the seller is responsible for a defect regardless of whether it knew about or caused it.

As warranty remedies of the buyer, the General Civil Code primarily provides for the repair of a defect or the replacement of the defective asset. Only in a next step the buyer - under certain conditions - is entitled to a price reduction or redhibition.

The warranty period for immovable property (real estate) is three years. The contracting parties may shorten this period by contractual agreement (except an entrepreneur vis-à-vis a consumer) or extend it.

The seller's warranty obligation only applies to defects that already existed at the time of handover of the property. The seller is not liable under the warranty provisions for defects that only arise after handover (and were not yet existing at the time of handover) or for visible defects.

Owed qualities - definition of "defect"

The seller is responsible for characteristics of the property that are:

- Commonly assumed; or
- Contractually agreed.

A defect within the meaning of warranty law exists if the property does not have the quality and condition which the seller has contractually promised to the buyer; in this respect, it makes no difference whether the seller has expressly promised to the buyer a certain condition or quality or whether such condition or quality is deemed to be usually assumed and has therefore become an implicit part of the contract.

While the expressly agreed qualities or conditions are relatively easy to determine by looking at the purchase contract, the usually assumed qualities or condition of a property are more difficult to determine. They depend on the type of property being sold. Ultimately, it depends on which quality and condition a bona fide buyer may expect.

The decision as to whether the buyer could expect a certain characteristic or quality is dependent on the individual case and is therefore difficult to predict. It is advisable for a buyer to have all the characteristics or quality relevant to the purchase decision promised in writing in the contract as warranted features. Therewith, subsequent disputes whether liability for a defect in the property is to be assumed can be avoided.

Usually, the parties to a real estate purchase agreement agree on warranties or a warranty regime that deviates from mandatory law provisions of the General Civil Code. Save for purchase agreements with consumers, the parties may waive the warranty for commonly assumed qualities or characteristics of a real estate property.

Quality defects and legal defects

Austrian warranty law distinguishes between quality defects and legal defects. A quality defect exists if the defect is physically inherent in the property. The typical cases of a quality defect in a property are the existence of contamination, a crack in the brickwork, or deficient insulation. A quality defect also exists if the property does not have the contractually agreed size or deficiency of quality of the works performed.

A legal defect exists if the seller does not provide the buyer with the legal position owed under the contract. A legal defect exists when the seller is not the owner of the property, if the building permit does not exist, or if there is a mortgage or an easement.

The seller is equally responsible for quality defects and legal defects, but there is an important difference which makes the distinction relevant: The three-year warranty

period for a quality defect starts upon handover of the property, whereas for a legal defect it starts at the time the defect becomes apparent. In case of a hidden defect of an explicitly contractually assumed quality, the defect starts at the time it becomes apparent.

Judicial enforcement

The legal consequences of the warranty do not occur automatically if the acquired property has a defect. The buyer of a property must assert the warranty rights in court within the warranty period by filing a lawsuit or raising a defense. If the buyer fails to assert the warranty rights in court within the warranty period, the claim is time-barred.

The extrajudicial notification to the seller that a defect exists or an extrajudicial request to remedy the defect is generally not sufficient to preserve warranty rights.
Save for purchase agreements with consumers, the parties can agree on shorter warranty periods, and a specific warranty regime in the purchase agreement.

Mortgages and other usual guarantees adopted in financing assets

Mortgages are the most important collateral used in connection with real estate transactions in Austria.
The establishment of a contractual mortgage right on a property requires not only an incorporable document (e.g. the mortgage agreement) but also the actual registration of the mortgage in the land registry. Mortgages, like ownership rights, are only established upon their registration. The basis for the mortgage is the mortgage agreement, which must provide a precise identification of the real property, the legal grounds of the mortgage, the secured and numerically stated amount, and an unconditional statement (clausula intabulandi) by the party whose rights are thereby restricted.

With respect to a fixed amount mortgage (Festbetragshypothek), a specifically granted loan or credit amount, plus defined interest, late interest, and a determined amount of ancillary costs are registered in the land registry. The fixed amount mortgage may only be used once.

The maximum amount mortgage (Höchstbetragshypothek) does not secure a specific loan or credit amount, but a specific relationship between creditor and debtor up to a specific amount. The maximum amount mortgage may recurrently be exercised up to the agreed amount.

The mortgage is accessory, which means that it is generally dependent on the existence of the underlying secured debt. Obligatory proceeds from the real estate, such as rental income or insurance proceeds are not pledged with the property. Thus, such proceeds must be pledged or assigned separately as a security, which is usually the case in real estate finance transactions.

Lease of real property and usufructuary lease

General

The most important categories of lease agreements under Austrian law are the lease of real property (Mietvertrag) und usufructuary leases (Pachtvertrag). The law provides that, in the case of a lease agreement of real property, the leased object is merely the space (e.g. a retail area, an apartment or an office), whereas for a usufructuary lease, the leased object is both the space and the undertaking performed therein (such as, for example, a farm or a business). The decisive factor is the purpose of the lease agreed upon by the contracting parties. The distinction is important because the very tenant-friendly Austrian Tenancy Act (and above all the mandatory tenant-friendly restrictions on termination) does not apply to usufructuary lease agreements.

Usufructuary lease

The provisions of the General Civil Code apply to legal relationships between landlords and tenants in usufructuary lease agreements that are, to a certain extent, not mandatory.

Among all usufructuary lease agreements, agricultural leases and commercial business leases are the most noteworthy (i.e., lease of the business of a restaurant or hotel). According to prevailing opinion, a lease agreement is considered to be an usufructuary lease if the object of the lease is an entire operating company and not merely

business premises. In addition to the rented premises, all that is essential for the company's operation (e.g., good will, stock, customer base and business license, interior furnishing, etc.) must be provided to the tenant by the landlord. Court decisions also determined that agreements on turnover-rents and/or obligations to operate the business would indicate that the lease was granted as a business lease agreement. Consequently, leases of the operation of a hotel, or restaurant, or businesses established in train station halls, are often considered to be usufructuary leases.

Lease agreements

In Austria, residential and commercial leases are primarily subject to the tenant-friendly provisions of the Austrian Tenancy Act. The regulations of the Austrian Civil Code apply subsidiarily and, unlike the Austrian Tenancy Act, are to a certain extent not mandatory.

The Austrian Tenancy Act regulates the lease of apartments, parts of apartments, business premises of all types, and of land leased together with apartments or business premises. The Tenancy Act is not applicable to certain leases, for example flats provided by an employer, leases with a term not exceeding six months, secondary residences, and premises in buildings with not more than two separately lettable units. The Tenancy Act is only partially applicable to, for example, new buildings erected without public funds after 30 June 1953, newly constructed properties in an attic after 31 December 2001, and condominium units constructed after 8 May 1945. In this case, generally, only the termination restrictions apply, so that the landlord may only terminate a lease agreement for explicitly listed severe grounds (such as non-payment of rent, or detrimental use), or upon expiry of the lease term.

The full scope of the Austrian Tenancy Act applies to leases of apartments and business premises situated in old buildings (constructed before 1945), or for subsidized buildings.

In case the full scope applies, the Tenancy Act protects tenants primarily with far-reaching limitations to the landlord's right to terminate the contract and by stipulating maximum amounts for rent with mandatory provisions concerning utility and service charges, as well as maintenance, and sub-letting.

Since 2024, some Austrian federal states, such as Vienna and Salzburg, have passed stricter regulations for short-term rentals, such as Airbnb. The Austrian Supreme Civil Court ruled that two to 30 days of repeated rentals are to be considered as 'short-term' duration. Thus, from 1 July 2024 onwards, owners of apartments in Vienna will be required to obtain a special permit to offer short-term rentals for a period exceeding 90 days within a calendar year.

Administrative permits applicable to construction or restructuring of assets

Generally, a building permit is required for the construction of a building. In Austria, each of the nine provinces has a separate building code with different regulations for the requirements of the building permit.

Minor renovations or additions require either a simple notification to the building authority (e.g. the construction/modification of bathrooms) or a building project may not require any notification or permits at all (e.g. for erecting antennas or garden sheds).

A building permit must be applied for in writing or digitally with the relevant building authority (in larger cities: the magistrate; otherwise: usually the mayor). Certain documents must be submitted with the application, such as a land registry except, specifications of the building, plans, and an energy certificate.

Construction works that require a building permit may only begin once a final and binding building permit has been issued. If construction works begin without a building permit, fines and, in a worst-case scenario, the demolition of the unlawful construction can be imposed.

Some provinces have simplified procedures for granting building permits. In such case, it is sufficient that an independent civil engineer submits a confirmation that the architectural plans and other necessary documents comply with the written construction specifications. Shortly after submission of the necessary documents to the building authority, the applicant may commence with the construction works.

Upon completion of the building, either a notice of completion or an application for the issuance of a use permit must be submitted to the building authority, depending on the regulations of the respective applicable Building Code of the province concerned. In case a notice of completion is sufficient, the notice must contain the confirmation by an independent civil engineer that the building was constructed in compliance with the permit and the regulations of the Building Code.

If a permit for use is required, the building authority examines whether the building was constructed according to the building permit and the conditions imposed therein. The building may not be used before a notice of completion has been submitted to the building authority or before a permit for use has been issued.

Environmental and energy

In Austria, the seller of a real property is obliged to hand over an energy certificate (Energieausweis) to the purchaser. This certificate may not be older than 10 years. If the seller does not fulfill this obligation, they are liable for an energy performance that usually corresponds to the age and type of the building. A lawsuit can be filed due to the omission to hand over the energy certificate in the course of conclusion of the purchase agreement. Furthermore, the issuer of the energy certificate can be held liable for the correctness of such certificate. Administrative fines may be imposed in case the seller does not fulfill their obligations.

Also, for tenancy agreements, a landlord is obliged to hand over an energy certificate to the tenant. Otherwise, the landlord is liable towards the tenant for an average energy performance of the premises, considering the age and type of the building.

Several Building Codes provide for a prohibition of fossil energy resources and obligatory photovoltaic facilities for newly constructed buildings.

Austria has a register of suspicious areas that is maintained with the Federal Environment Agency. The register contains sites that are supposed to contain significant environmental hazards due to previous forms of use. The register is, however, neither complete nor does it document whether the property actually contains an environmental hazard.

Furthermore, ESG and the EU Taxonomy Regulation are playing an increasingly important role in the domestic real estate market. Although the Taxonomy Regulation is primarily aimed at the construction industry, investors and financial companies are also indirectly affected and must therefore ensure that real estate investments are also taxonomy-compliant when they offer sustainable products. In the real estate sector, construction of new properties and the renovation of existing properties are particularly affected. For example, newly constructed buildings must exceed the minimum threshold set for low energy building requirements by 10%. Thus, investors, developers, but also financial companies already have to deal with the requirements for sustainable real estate projects and, when purchasing or financing real estate investments, now also have to assess compliance with the requirements of the Taxonomy Regulation as part of their due diligence checks if they advertise ecologically sustainable investments.

Direct taxes applicable to sales

Real estate transfer tax and registration fee

The disposal of a property triggers a real estate transfer tax of 3.5% of the purchase price. In the case of a gratuitous transfer and the gratuitous part of a "partly gratuitous" transfer, a staged rate is applied (0.5% for the first €250,000/US$263,990*, 2% for the next €150,000/US$158,394*, and 3.5% above that); transfers within the family circle are always considered gratuitous and are taxed according to the staged rate. In the case of certain changes under company law (share deal), the tax rate is 0.5%. The tax is calculated on the higher of the consideration, or the value of the property.

The real estate transfer tax is due upon the conclusion of the transfer agreement, or occurrence of the conditions precedent. In case of a rescission or the occurrence of a condition subsequent within three years, an application for a refund or non-assessment of the tax can be filed.

The registration of the ownership right in the land register triggers a registration fee of 1.1% of the purchase price.

Since the beginning of 2024, the Austrian legislator has passed a temporary exemption from registration fees for the registration of ownership and mortgage rights in the land registry when purchasing residential property under certain conditions. To qualify for the exemption, the land registry application must be submitted after 30 June 2024 and no later than 30 June 2026. The exemption applies to residential properties with a purchase price of up to €500,000. The exemption also applies to the registration of a corresponding mortgage up to an amount of €500,000. Any amount in excess of €500,000 is subject to a registration fee. However, if the purchase price exceeds €2 million ('luxury property'), there is no exemption from fees. Another requirement is that purchasers establish their main residence in the purchased property and retain it for at least three years.

Real estate income tax

Profits from the sale of real estate are subject to income tax. Capital gains of corporations (and private foundations) are subject to income taxation of 23% in accordance with the general income tax regime.

The real estate income tax (Immobilienertragsteuer - ImmoESt) introduced for private individuals generally only applies to legal transactions for consideration. In the case of gratuitous legal transactions (inheritance, bequest, gift, etc.), no real estate income tax is due. Capital gains, i.e., the difference between the proceeds of the sale and the acquisition costs, are taxed at 30%. If the previous sale of the property took place prior to 1 March 2002, the real estate income tax is a flat rate of 4.2% of the purchase price. An exemption from the real estate income tax duty applies, inter alia, to the sale of the real estate on which the taxpayer had their principal residence, if this principal residence is relinquished at the same time.

Other costs

Additional costs are incurred for the certification of signatures by a notary public. These are regulated in the Notaries Act, which provides for a sliding scale of costs depending on the value of the property or the purchase price. It is also possible to agree on an individual fee agreement with the notary.

Furthermore, one of the contracting parties often commissions a lawyer or notary public to draft the purchase agreement and to confirm the acquisition in the land registry for which the costs are to be considered accordingly.

If a real estate agent has mediated the acquisition of the property, the contracting parties must expect that the agent's fee will be incurred. The statutory maximum fee is up to 3% of the purchase price per party. For lease agreements, the order principle applies which means that only the landlord must pay the agent's fee for the agent appointed by the landlord, not however the tenant.

*According to the 10 December 2024 exchange rate

Attractive real estate market in Austria:

- Large amount of new construction of high scale residential properties especially in Vienna in previous years.
- Stricter mortgage financing requirements for private mortgage loans with a minimum of 20% equity, and a repayment rate of no more than 40% of the disposable household income.
- Stable purchase prices, especially in the residential market, office market, and logistics in prime areas.
- Strong demand for ESG compliant properties and modern spaces in central locations.
- Energy-efficient real estate and mixed-use objects are becoming increasingly important.
- Relatively affordable purchase prices in Austrian cities compared to other cities in Europe.
- Austrian real estate market has proved to be stable and crisis-resistant in previous years.

By **Gabriele Etzl,** Partner and Head of Real Estate at Deloitte Legal Austria

Real Estate Law in Belgium

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Maximilien is head partner of the real estate practice within Deloitte Legal. His practice covers cross-border and Belgian and/or Luxembourg real estate acquisitions, disposals, sale and leasebacks, development and construction projects, joint ventures, reorganizations, and litigations.

His experience covers all real estate asset classes (industrial, logistics, nursing homes, offices, residential, retail, oil tanks, power stations, solar panels, warehouses, windfarms, etc.) and includes legal advice in connection with high-profile Belgian and pan-European real estate transactions in the past 15 years.

Maximilien advises Belgian and foreign clients including REITs, real estate investment funds, insurance companies, investment banks and private equity houses, institutional investors, developers, public institutions, and corporates.

Maximilien was referenced by Chambers Europe and The Legal 500, as a recommended lawyer for real estate in Belgium.

Overview of the Belgian Legal System

General introduction to main laws that govern acquisition of assets in Belgium – real estate rights

The main provisions that govern the acquisition of assets in Belgium can be found in the Belgian Civil Code (more in particular in Book 3 entitled "Assets," that entered into force on 1 September 2021), which contains provisions regarding property ownership and other rights in rem, including usufruct (usufruit/vruchtgebruik), long leases (emphythéose/erfpacht), and building rights (superficie/opstalrecht), which are often seen as alternatives for property ownership or classic leases.

As for leases in Belgium, the applicable legislation is laid down in the (old) Belgian Civil Code as well as in separate laws, as adopted by the federal and/or competent regional legislators, regulating one or more specific types of leases.

For instance, retail leases are governed by (i) common law principles laid down in the (old) Belgian Civil Code, which apply to all types of leases to the extent specific laws do not provide for deviating provisions and (ii) by the (Federal) Retail Lease Act dated 30 April 1951, which is incorporated into the (old) Belgian Civil Code, as the case may be amended by regional legislation on retail leases. For more information on leases in Belgium, please see "Lease of assets and lease of business" section.

Lastly, the acquisition of an asset in Belgium cannot be done without respecting the general rules of contract law, which are incorporated in the new Book 5, entitled "Obligations" of the Belgian Civil Code (entered into force on 1 January 2023). In addition, separate laws on various subject matters (e.g., asbestos, soil, town-planning, etc.) may provide for specific rules to be respected in the case of transfer of assets and/or when establishing rights in rem thereon.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

There are generally no restrictions on ownership or occupation by foreign entities, from a civil law perspective.

One restriction applies to both foreigners and nationals. Some areas of the country in Flanders, Wallonia, and in Brussels are subject to regulatory pre-emption rights in favor of public entities, entitling its beneficiary/beneficiaries to match the terms offered by a candidate buyer and to pre-empt the property or right in rem put for sale.

Belgian Property Law experienced a thorough reform with Book 3 "Assets" of the Belgian Civil Code that came into force on 1 September 2021. The most commonly used real property rights in the framework of real estate development and/or investment, besides the full ownership of a property, are the rights in rem. In addition to ownership, Belgian law distinguishes between what are called rights in rem (droits réels/zakelijke rechten) which are attached to the land, transferred with it and enforceable against everyone, as opposed to personal rights (droits personnels/persoonlijke rechten) which are attached to a legal person. In respect of rights in rem it is not possible to create more rights than those provided by the law. The "numerus clausus" principle was reaffirmed in Book 3 of the Belgian Civil Code. In addition, for the first time, a clear enumeration of rights in rem was provided. Following Book 3 of the Belgian Civil Code, rights in rem can be divided into four categories: ownership, co-ownership, in rem rights of use (droits réels d'usage/zakelijke gebruiksrechten) and security rights. The rights in rem recognized by Book 3 of the Belgian Civil

Code are the easements (servitudes/erfdienstbaarheden), the usufruct, (usufruit/vruchtgebruik), long leases, and building rights (superficie/opstalrecht).

Despite the closed system of Belgian Property Law, in principle, all provisions of "Book 3" of the Belgian Civil Code are suppletive. There are two exceptions to this autonomy of will, namely (i) the definitions and (ii) where the law provides otherwise.

Usufruct (usufruit/vruchtgebruik)

The right of usufruct is the right to have use and enjoyment of property which belongs to someone else. A right of usufruct is a temporary right granted for a limited period of time to a beneficiary (being either a legal or a natural person – for legal persons, for a period up to 99 years) who benefits from the right to use the property and obtain income from the property, such as, for example, rents resulting from a lease agreement. However, with the obligation to maintain the property in a good state of repairs (other than structural repairs which typically remain a responsibility of the bare owner). Under Book 3 of the Belgian Civil Code, the bare owner has been granted the right to claim from the usufructuary a proportional contribution to its costs regarding the execution of the major works, proportionately with the remaining value of the usufruct.

Building right or right to build (superficie/opstalrecht)

There is a presumption that any construction or object rooted in the ground belongs to the owner of the land. The building right derogates from this presumption. A right to build is an exception to the right of accession. A right to build involves a, in principle temporary, division of the right of ownership to immovable property and a building right grants a right of ownership to a volume within which the building right holder may acquire or install buildings or plants. Under Book 3 of the Belgian Civil Code, a building right can have a term of 99 years (instead of a maximum of 50 years), there is no minimum duration. In some exceptional cases a building right can be "eternal". A building right can be eternal (i) for the purposes of public domain, or (ii) the creation of different volumes that each have a different destination and independent use and do not share any common parts. Building rights are often used by developers, as they enable to construct buildings on land owned by a third party without the need to purchase the land on beforehand, it being further noted that a building right can be granted for free. The buyer of a part of a development will typically purchase the constructions from the developer and the shares in the land attached to the constructions (as described in the base deed) from the owner of the land.

Long lease right (emphytéose/erfpacht)

This is a form of long lease which confers, for a maximum period of 99 years and with a minimum of 15 years (instead of a minimum of 27 years – Book 3 of the Belgian Civil Code reduced the minimum term to 15 years), the use of a building/land belonging to another. The condition that an annual payment called the canon had to be paid to the landowner no longer applies. This also puts an end to the symbolic euro that was used as an alternative to the canon. The beneficiary of a long lease right (i.e., the long leaseholder) has the same rights and privileges as the landowner, which is the object of its right, unless the destination of the property is contractually restricted. Furthermore, the long leaseholder may not reduce the value of the object of its right. They are consequently obliged to pay all charges and taxes related to the use of the building/the land for the duration of the right, but benefit from the income from the property, such as, for example, rents resulting from a lease agreement. Finally, Book 3 of the Belgian Civil Code provides for an obligation of the landowner to compensate the long leaseholder for the buildings/plantings made by the latter at the end of the long lease.

The holders of rights in rem of usufruct, building right and long lease are the full owners of the constructions they erect during the term of the right, it being noted that the bare owner of the property encumbered with the aforementioned rights in rem will recover the full ownership of the underlying property upon expiry of the relevant right in rem. This "accessory" building right is enshrined in Book 3 of the Belgian Civil Code to increase legal certainty. Depending on the contractual arrangements and the nature of the right in rem a compensation for the (residual) value of the constructions might be due to the holder of the right in rem upon expiry of its right.

Real estate registry system

Structure of the property registries

Belgian law provides for a system of title recording.

Within four months from the date of signing the private sales contract, or of it becoming unconditional, or any shorter period which is agreed between the parties, the sale must be completed by signing the authentic deed in a register held with the mortgage register to show ownership of real estate property. In the case of a transfer of real estate property, the mortgage register will in principle only accept authentic deeds drawn up by Belgian civil law notaries for transcription. Other types of documents which are accepted for transcription into the mortgage register are court judgements of equivalent status and private deeds recognized in court or by a Belgian civil law notary. It is only following transcription in the mortgage register that the transfer will be effective against third parties acting in good faith. The mortgage register is open to the public and is a mean of checking the entitlement by a particular entity (either an individual or a company) with respect to all immovable properties located in the mortgage register's jurisdiction.

The responsible authorities

The mortgage office (Bureau Sécurité Juridique/Kantoor Rechtszekerheid), which is part of the General Administration of Patrimonial Documentation (Administration générale de la Documentation Patrimoniale/Algemene Administratie van de Patrimoniumdocumentatie) is the public institution in charge of the mortgage register.

Connection with the cadastral-tax registries

Any transfer of property rights is also recorded in the land registry (Cadastre/Kadaster). The land registry, which is also open to the public, organizes a division of the Belgian territory in different plots of land (including by way of maps of the Belgian territory clearly showing the boundaries of the different properties), and is regularly updated following the recording of transactions in the mortgage register. Its data are for information purposes only and are very useful to check the surface of a plot of land and/or of surrounding buildings and the level of the yearly property tax imposed on a property.

Compulsory registration

All deeds related to the transfer of real property, all lease agreements with a term exceeding nine years or including a discharge of rent payment of more than three years of rent and all deeds relating to the establishment or transfer of rights in rem, preference rights, pre-emption rights and option rights pertaining to immovable property rights, must be registered in the mortgage office (Bureau Sécurité Juridique/Kantoor Rechtszekerheid) where the assets concerned are situated. If one of the deeds is not registered, the immovable property rights contained therein will not be enforceable vis-à- vis third parties acting in good faith.

The transcription of immovable property rights into the mortgage register is not free. Registration duties are typically paid by the buyer, beneficiary, or assignee of a right in rem, or tenant, even if parties may freely otherwise allocate the costs of the registration duties between themselves.

How registration guarantees the rights of the holder of immovable property rights

If one of the deeds mentioned above is not registered the immovable property rights contained therein will not be enforceable vis-à- vis third parties acting in good faith.

How registration works in a typical transaction

The acquisition of real estate property in Belgium is usually completed in two stages: (i) the signing of a private sales agreement, followed in a second stage by (ii) the signing of an authentic purchase deed before a Belgian civil law notary.

The signing of the private sales agreement entails binding commitments for the parties, amongst others, for the buyer to pay the purchase price and for the vendor to deliver the property by transferring legal title on the date of signature of the subsequent notarial deed. The buyer will not be protected against bona fide parties until signing of

the notarial deed and the registration thereof at the mortgage register.

Although a private sales contract may contain valid binding obligations between the parties under Belgian law, only documents which have been elevated to the status of an authentic deed may be registered in the mortgage register and notaries have a monopoly over their preparation.

Within four months from the date of signing the private sales contract (maximum term for the payment of registration duties), or of it becoming unconditional, or any shorter period which is agreed between the parties, the sale must be completed by signing the authentic deed.

The civil law notary in charge of the authentication of the sale will carry out various searches and will obtain a certificate from the mortgage register showing whether the property is encumbered by an existing mortgage, or any other immovable property rights granted to third parties. The civil law notary reviews the vendor's title to the property and recites or at least refers to all specific conditions and/or easements (servitudes/erfdienstbaarheden) to the extent these are still relevant and applicable to the property sold, in the notarial deed. In the capacity as a public official the notary is required to conduct a fiscal search to ascertain whether the vendor has any outstanding tax liabilities to the Ministry of Finance. In this way the Ministry of Finance ensures, via the notarial system, that any arrears of taxes are collected on the occasion of a transfer of property held by the taxpayer.

Notary role in the real estate transactions

The only documents the mortgage register will accept for registration are authentic deeds passed before a civil law notary (or court judgements of equivalent status or private agreements recognized in court or by a civil law notary).

A civil law notary offers a public service, they are not one of the parties to the contract, nor do they negotiate any terms of the contract.

A civil law notary is responsible for the validity of the transfer deed, for checking the identity and capacity of the parties, for ensuring that the property is free of mortgages if the property is sold on that basis, and for reciting any easements or special conditions contained in the title deeds which may affect the property. The civil law notary's responsibility also extends to other matters which might affect the land, e.g., they have to formally check, amongst others, the applicable town planning requirements, the potential existence of public pre-emption rights and/or the potential pollution situation of the soil. Finally, the civil law notary will also collect the registration duties applicable to a specific transaction.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

The Belgian Civil Code provides that a seller must hold a buyer harmless against hidden defects of a property which appear shortly (à bref délai/binnen een korte termijn) after the purchase, but parties may derogate and/or organize this provision (e.g., by agreeing on a maximum term for filing claims relating to hidden defects with a seller), and quite often do so (it being noted that professionals may not fully contract out their liability for hidden defects).

A buyer also has a recourse against the architect and/or the building contractor for any major defects affecting the structure property (such as stability issues) for a term of 10 years generally starting at provisional acceptance (reception provisoire/ voorlopige oplevering). From 1 July 2018, architects, building contractors and other service providers in the construction sector are required to take out insurance that covers their 10-year liability.

It is also market practice for the buyer of larger properties to negotiate representations and warranties covering compliance of the properties with the applicable regulations (including building and environmental permits), and this both for asset deal transactions as for share deal transactions.

Mortgages and other usual guarantees adopted in financing assets

The only form of security taken with regard to immoveable property in Belgium is a mortgage

(hypothèque/hypotheek). A standard security package required by third party lenders generally consists of a hypothèque/hypotheek, possibly in combination with an irrevocable mortgage mandate (mandat hypothécaire irrévocable/onherroepelijk hypothecair mandaat). Book 3 of the Civil Code also refers the following security rights: (i) special privileges, (ii) pledge and (iii) a retention right.

A mortgage deed must be signed before a notary public; substantial costs are involved in the vesting of a mortgage, the main cost being the registration and inscription duties at the Mortgage Registry (amounting to approximately 1.4% of the mortgaged borrowed amount).

As a result of this, it is common for real estate investors to negotiate with lenders to only have a first ranked mortgage on a lower part of the borrowed amount, coupled with a mortgage mandate for a more substantial amount; the duties only being due on the part of the mortgaged borrowed amount. Mandates to mortgage consist in the borrower irrevocably authorizing the lender to establish a mortgage on the real property. Such mandates diminish the costs but increase the risks for the lender, due to the fact that no priority rights are granted to the lender as such; it is only after use of the mandate (and subsequent registration) that the mortgage will become effective and opposable vis-à-vis third parties.

For a mortgage to be enforceable and opposable towards third parties, the mortgage deed will have to be transcribed at the Office of Legal Security (Bureau Sécurité Juridique/Kantoor Rechtszekerheid) after being passed before the notary public. The enforcement procedure of securities, and mortgages in particular, is governed by mandatory provisions of law. In principle, the enforcement of a mortgage takes place by way of a sale on a public auction.

Lease of assets and lease of business

Belgium has four different types of leases, being (i) common leases (lex generalis), and three specific types of leases: (ii) retail leases (bail commercial/handelshuur), (iii) residential leases (baux de residence principale/woninghuurovereenkomsten) including student leases (baux pour le logement d'étudiants/huurovereenkomsten voor de huisvesting van studenten), and (iv) agricultural leases (bail à ferme/pachtovereenkomsten). In principle, each of these specific types are subject to a different legal framework, but the common lease regime forms the general regime (lex generalis), which is applicable in case the specific regimes do not contain provisions regarding a certain subject.

A retail lease is defined by the Retail Lease Act of 30 April 1951 (as amended by regional legislation on retail leases) as a lease of premises primarily used by the tenant for a retail or craftsman's activity in direct contact with the public. It is not possible to escape application of the legislation on retail leases by simply declaring it not applicable to a particular lease. The provisions are mandatory and cannot be excluded from the contract. In case of doubt or conflict, courts will look at the intention of the parties and will ignore any declaration on qualification of the lease in the lease agreement.

The Retail Lease Act (as amended by regional legislation on retail leases) applies to buildings or parts of a building which are used for commercial purposes only. It includes the retail of goods and services directed at consumers. This definition means that commercial leases will apply in the case of hotels, cinemas, garages, jewelers, cafes, restaurants, theatres, bank branches, etc. One of the main elements is the direct contact with consumers.

The Retail Lease Act (as amended by regional legislation on retail leases) provides that a retail lease must have a minimum duration of nine years, with the possibility of termination by the tenant at the end of the third, sixth, or ninth year subject to a six-month prior notice. The parties may not derogate from this but may conclude a retail lease for a longer term if it is subsequently confirmed in a notarial deed. In addition, the tenant benefits from the right to request up to three renewals of the lease term for successive nine-year periods, which can only be refused by a landlord for specific reasons, after having followed a specific procedure and paid, as the case may be, an indemnity to the outgoing tenant.

All regional legislators (in the Brussels capital, the Walloon, and the Flemish regions) have adopted specific legislation on retail leases which are concluded for a period of one year or shorter, this in order to facilitate the lease of premises e.g., for use as so called 'pop-up store'. This type

of lease may be terminated by the tenant at any moment subject to a one-month prior notice.

Other leases, such as offices, parking spaces, warehouses, industrial buildings, etc., do (in principle) not entail premises primarily used by the tenant for a retail or craftsman's activity in direct contact with customers and are therefore not subject to the strict mandatory legislation on retail leases. The general provisions of common leases apply which are in general non-mandatory provisions.

Administrative permits applicable to construction or restructuring of assets

The construction or restructuring of assets is regulated in Belgium at the regional level (Flemish region, Walloon region and Brussels region). In principle, mainly two permits are relevant: a building permit and an environmental permit. In the Flemish region and the Walloon region these two permits can be applied for in one procedure and together form the 'integrated environmental permit'. Carrying out activities for which a permit is required without the necessary permit is subject to criminal sanctions in each region.

A building permit is in principle required for all types of larger works to and around a construction, such as building, rebuilding, digging, and tree felling, for modifications to the designated use of a building or part of it. The permit is valid for an indefinite period, but it may expire if the works have not been started within a certain period after its issue or if the works have been interrupted for too long.
In addition, an environmental permit is required for certain types of installations or activities with a 'significant environmental effect' (e.g., operation of a petrol station). Environmental permits have a validity period of 15 years (Brussels region) or 20 years (Flemish and Walloon regions), but the permit can expire earlier if the exploitation of the licensed installation or activity has not commenced within a certain period of time since the granting of the environmental permit.

Other permits, such as the socio-economic permits for retail activities from a certain number of sqm, are required in specific circumstances.

Environmental and energy – ESG rules and status of implementation

In Belgium, a growing trend towards ESG compliance is becoming increasingly relevant in real estate. For example, in commercial transactions this is expressed in the appetite of real estate investors to prioritize green investments (buildings rated with high scoring sustainability certificates). On the basis of various parameters, buildings are evaluated, and this assessment is translated into a certificate. Examples of such certificates are the BREEAM and LEED certificate that give an indication of the sustainability of the building and the WELL certificate that focuses additionally on the wellbeing of the people in the building.

Furthermore, the number of ESG regulations with respect to real estate has increased significantly in recent years, both due to the influence of European Union (EU) and international initiatives such as the "Renovation Wave" and the "Fit for 55" package as well as the Belgian national objective of making all buildings energy and carbon neutral by 2050.

ESG compliance is a matter that is regulated in Belgium at the regional level. The implementation of ESG regulations therefore occurs at a different pace in the three regions. For example, all three regions have legislation on Energy Performance and Indoor Climate (Energieprestatie en Binnenklimaat (EPB)) requirements that determine the minimum energy requirements for buildings and legislation on charging points for electric vehicles.

Furthermore, in the Flemish region, there is already an obligation for new buildings to obtain a minimum amount of energy from renewable energy sources and soon there will be an obligation to use electric heat pumps and a ban on natural gas connections. For existing buildings in the Flemish region, there is an obligation to renovate within a certain period of time after the acquisition of a building, depending on the type of use of the building. This renovation obligation involves roof insulation, insulation of windows, heating, and cooling. In Brussels, energy-inefficient residential buildings must undergo energy improvements to reach a certain level of energy consumption by 2033. The Walloon region is also

developing a renovation strategy, but there are currently no standards with binding effect.

In addition to ESG implementation in the strict sense, Belgium has historically had rules on energy and energy saving which relate to soil pollution, EPC, and asbestos.

The transfer of real estate properties and rights in rem triggers certain soil obligations for the transferor to be performed prior to the transfer. A transferor of land (or rights in rem) must obtain a soil certificate from either the Flemish regional waste body (OVAM) — if the land is located in the Flemish region — or the Brussels regional waste body (IBGE/BIM) — if the land is located in the Brussels region – or the soil condition database (BDES) – if the land is located in the Walloon region, authorizing the proposed transfer transaction. These certificates give an overview of soil pollution and soil investigations known by these authorities and that new soil investigations, as the case may be followed by remediation measures, may be imposed if risk activities are performed or were performed in the past on the relevant property.

In addition, an energy performance certificate (certificat PEB/Energieprestatiecertificaat (EPC)) must be obtained by a seller, transferor, or landlord, prior to the completion of most property transactions. The certificate informs potential buyers or tenants in advance about the energy efficiency of the building.

This certificate must be:

- Published in any advertisement relating to the sale or letting of a property;
- Communicated by the seller, transferor, or landlord before the completion of the proposed property transaction; and
- Drawn up when completing construction works for which a building or environmental permit is required.

Finally, specific regulations apply to asbestos, which must be inventoried on a yearly basis and monitored closely, and to other toxic materials. Federal labor law requires every employer to prepare an asbestos inventory for all buildings where they employ staff, regardless of the year of construction. In the Flemish region, from 23 November 2022, the transferor of a building constructed before 2001 must hand over an asbestos inventory certificate to the buyer. In the Walloon and Brussels regions, there is no such obligation. Of course, the seller must still report the presence of dangerous asbestos at the time of the sale.

Direct taxes applicable to sales

Investors wishing to invest in Belgian real estate will have various options for structuring their acquisition. An investor can choose between a direct acquisition of the targeted real estate and an indirect acquisition; i.e., the purchase of shares in the company that owns the targeted real estate.

In case of a direct acquisition of property, Belgian registration duty (droits d'enregistrement/registratierechten) is due on all transfers of ownership of immovable property located in Belgium; i.e., by means of sale, exchange or otherwise. This registration duty is calculated on the higher of the contractual price and the market value of the property. The applicable standard rate for real estate located in Wallonia and the Brussels region is 12.5% and 12% in Flanders. However, there are lower rates that may apply in certain circumstances (e.g., a reduced rate in case of the acquisition of a first residential property, a reduced rate in case of a commitment to perform a substantial investment in energy efficiency, the acquisition of social housing, etc.)

Professional real estate traders (corporate entities or individuals, whose business activities mainly consist of buying and selling real estate) who meet certain conditions may benefit from a reduced rate of 4% in the Flemish region and 5% in the Walloon region. In the Brussels region, the reduced rate is set at 8%. A business declaration must be filed, and the real estate trader will have to provide evidence that they qualify for the régime des marchands de biens/vastgoedhandelaars regime by carrying out successive sales within the next five years. Additionally, the reduced rate can only be maintained if the property is resold ultimately by 31 December of the eighth (Flanders) or 10th year (Walloon region and Brussels region) following the date of the purchase agreement with application of the standard registration duty (12.5% or 12% in Flanders).

For long leases (emphytéose/erfpacht) and building rights (superficie/opstal) a transfer tax is also due. However, this will only amount to 5% of the total fees and charges payable by the holder of the long-term lease rights/building right holder.

*According to the 10 December 2024 exchange rate

At present, we see three significant real estate trends in Belgium:

Focus on sustainability (ESG)

Today's climate crisis urges policy makers to rethink and reinvent our economy. Given the share of buildings in total carbon emissions, sustainable real estate constitutes an integral part of this. The National Relance Plan for Belgium foresees €2 billion (almost US$2 billion*) of investments in climate and energy between 2021 and 2026, of which 50% is foreseen for building renovation. Given the increasing focus of real estate players on sustainability – in particular, forced by the financial institutions (i.e., in turn obliged by the European Legislator) and in order to obtain cheaper financing (a hot topic as we speak) – sustainable real estate services (next to the traditional real estate services) are becoming increasingly important in order not to be disrupted. For example, we see a trend in real estate players establishing their own energy service companies to address this problem.

Search for affordable housing

As a consequence of changing financing parameters, rising property prices, the prolongation of the average period to obtain a building permit (from two years a few years ago to almost four to six years (depending on the location/region), the aging of the population, demographic growth, a lack of qualitative housing stock and a trend towards smaller households, the real estate market is looking for solutions to (try to) make housing more affordable. Initiatives in that regard include limiting the number of square meters per unit, a cooperative model, co-living, co-housing, mixed residential projects, split ownership, and delayed ownership.

Dealing with cost increases

The global economic downturn (recession) as well as geopolitical problems have resulted in a cocktail of increased building and energy costs, supply constraints and substantially more expensive financing both for investors, developers, and buyers. As a result, all parties involved have become more prudent and selective.

Among others, for new and ongoing development projects, we see increased discussions and questions concerning the rights and restrictions regarding the indexation or modification of agreed prices. Also, various developers canceled their building plans or postponed tenders with general contractors. In turn some general contractors face liquidity problems and decreasing order books.

Moreover, we see a direct correlation between the abovementioned toxic cocktail and a series of broken deals with international and national real estate parties during the summer.

In comparison with the previous crises in 2001 and 2008, we spot a trend in certain sectors of sale-and-lease-back structures initiated by the owner-end user and a lack of liquidity with some high leverage real estate players. Cash is (again) king.

By **Jan Lambertyn**, managing partner of Triginta Real Estate Fund, a Belgian real estate fund specialized in socially relevant real estate projects

Real Estate Law in Bosnia and Herzegovina

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Aida holds a master's degree from the Law Faculty of the University of Sarajevo and is currently pursuing her Ph.D. degree in management at the International University of Sarajevo. She is fluent in English.

Overview of the Bosnian Legal System

General introduction to main laws that govern the acquisition of assets in Bosnia and Herzegovina – real estate rights

About Bosnia and Herzegovina

Bosnia and Herzegovina (hereinafter BiH) is composed of two entities: (i) Federation of Bosnia and Herzegovina (FBiH), and (ii) Republika Srpska (RS); and one district: Brčko District (BD). Furthermore, the FBiH consist of 10 cantons.

The main regulations governing real estate are the laws on property rights of FBiH/RS/BD. Laws on property rights regulate, in general, the acquisition, use, disposal, protection and termination of property rights, possession, etc. Other applicable laws, inter alia, include the Law on Obligations, Law on Land Registry, Law on Survey and Real Estate Cadaster, and Law on Expropriation.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

The same rules apply for both natural and legal persons. However, foreign (legal and natural) persons acquire the right of ownership of real estate on the condition of reciprocity, except when the right is acquired by inheritance or, if otherwise is provided by law or an international agreement. Therefore, reciprocity is a precondition for acquiring real estate ownership rights by a foreigner.
The existence of reciprocity is presumed and the Federal Ministry of Justice, with the previously obtained opinion of the Ministry of Foreign Affairs of BiH, publishes a list of countries with which there is no reciprocity. In addition, foreign persons may be restricted from owning real property in certain areas due to the reasons of protecting public interests and security.

These areas must be specifically designated as such by the competent authorities.

However, foreign persons (natural and legal) can generally freely establish local legal entities (companies) in BiH which can, in practice, then be used for the purchase of real property. However, the structure and implementation of such transactions would depend on specific circumstances.

How does a person acquire the right of ownership in BiH?

The right of ownership is acquired based on a legal transaction, law, decision of a court or other competent authority, and by inheritance, with the fulfillment of conditions as prescribed by the applicable legislation.

When it comes to real estate, registration in the Land Registry is the final entry of real estate rights and has a constitutional effect (like all entries in the Land Registry). This means that ownership rights and other real estate rights are legally considered as established at the time of registration in the Land Registry, regardless of when the purchase agreement was executed, with certain exemptions (e.g., inheritance).

Real estate registry system

There are two public real estate registries in BiH: (i) the Land Registry, and (ii) the Cadaster. In FBiH, the Land Registry is responsible for registering ownership rights and other real rights on real estate. Its importance is reflected

in the fact that the buyer legally becomes the owner of the real estate only by entering it into the Land Registry. The Cadaster contains descriptive records that contain data on cadastral plots, buildings, and other objects that are permanently present on the land or under its surface, as well as the special legal status of the land surface. However, registration in the Cadaster is not a prerequisite for the acquisition of ownership.

In Republika Srpska, the Land Registry and the Cadaster have been unified into a single cadaster registry, which includes both the ownership rights and records on cadastral plots. Harmonization and unification of these registries are still ongoing in some places.
This means that in RS, ownership of real estate is generally acquired by registration in this unified registry.

Land Registry

- Real estate must be entered in the Land Registry.
- The Land Registry provides overall data on the real estate, specifically the description, area, real estate rights, registered burdens (if any), and all entries made in the Land Registry (pre-registration, note, registration).
- Each person has a right to request a Land Registry excerpt that serves as proof of ownership of real estate, as well as proof of existence of other real estate rights.
- One of the main principles of the Land Registry is the principle of public confidence-it is presumed that an entered right on real estate is correct; this principle protects conscious third parties in legal transactions.
- There are also other principles on which the Land Registry is based, such as constitutional effect (please see section "Acquisition structure usually applied in real estate transactions; restrictions–if any–applicable to foreigners or to specific areas of the country or others, in real estate acquisitions").
- Online land registries are accessible, but data retrieved online can be used only for information purposes.

Cadaster

- Real estate must be entered in the Cadaster.
- A real estate cadaster is collective documentation of data on the cadaster of land, buildings, and other facilities, with recorded rights to real estate.
- The Cadaster contains the following: data on cadastral plots and buildings on them in terms of their location, shape, use, cadastral class, cadastral income for land under cultivation, etc.; data on buildings (year of construction, number of floors, purpose of use, number, and type of rooms); data on real estate rights and real estate owners or possessors, etc.
- A Cadaster for buildings in condominiums and for all buildings on city construction land also contains data on the area of residential, business, and auxiliary premises as well as special parts of the building.
- The principle of public confidence applies to data entered in the Cadaster and protects third conscious parties in legal transactions.
- Cadaster registries are accessible online.

Please note that the harmonization of data entered in the Land Registry and in the Cadaster is currently in process in Bosnia and Herzegovina.

By collecting the data kept in both registries above, a potential buyer of a real estate can find the:

- Real estate description and area;
- Real estate rights entered in the Land Registry, e.g., ownership rights, pledge (i.e., mortgage), etc.; and
- Cadastral data of a real estate, etc.

By the end of August 2024, Draft Law on Real Estate Measurement and Cadaster of FBiH has been accepted by the government and submitted to the parliament. The authorities have recognized the urgent need to adopt a new law that compiles the data kept by the Cadastral and data kept by the Land Registry into one information system. It is expected that this new law, along with the Law on Property Rights and the Law on Land Registries, will create a modern framework for the development of land administration in FBiH, that is harmonized with EU standards.

Notary role in the real estate transactions

All legal transactions involving the transfer or acquisition of ownership and other property rights over real estate must be concluded in the form of notarial deed, or certified

pursuant to the Standpoint of the Supreme Court of FBiH, no. 70 0 Dn 009610 22 Spp dated 8 December 2022. Hence, legal transactions that are not made in the required form are considered null and void, and registration with the relevant authorities cannot be performed.

Notaries in BiH charge their fees pursuant to the applicable notary tariff. With respect to real estate, the notary fee is determined on the purchase price.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

The role of notary public

Representations and warranties are a common part of real estate sales contracts, and the notary (if document is executed in the form of notary deed) makes sure that they are properly addressed.

Pursuant to law, the ownership right is transferred based on a validly expressed will of the owner (registered as such in the Land Registry (FBiH) or unified Cadaster Registry (RS)) to transfer their ownership right to the buyer (clausula intabulandi). This statement can be granted either in the sales contract or a separate document, but in each case, it must be in the required form (notary deed or certified pursuant to the Standpoint of the Supreme Court of FBiH, no. 70 0 Dn 009610 22 Spp dated 8 December 2022).

Besides processing the legal transaction, notaries may implement the contract as well as submit and withdraw the Land Registry application.

The principle of public confidence

It is considered that the Land Registry is true and fully maintains the facts and legal status of the property. Therefore, the buyer or even the seller, who in bona fide acted with confidence in the land books, not knowing that the off-book situation is different, still enjoys protection. Therefore, persons are not obliged to investigate the off-book situation. In the event that several persons have concluded legal transactions with the seller to acquire ownership of the same real estate, the property will be acquired by the person who, acting as a conscientious person, first submitted the application for registration in the Land Registry. Conscientiousness must exist at the time of application.

Liability of the seller and protection from eviction

Pursuant to the FBiH/RS/BD Obligation Law, the seller is liable for defects in the real estate it had at the time of the transfer of risk to the buyer, regardless of whether the seller was aware of them. Additionally, the seller is responsible for those defects that appear even after the transfer of the risk to the buyer–if the defect is a consequence of a cause that existed before that.
The seller is also responsible for hidden defects if certain conditions are met.

The law also regulates protection from eviction, meaning that, as a rule, the seller is responsible if there is a right of a third party on the sold real estate that excludes/reduces/limits the buyer's right, on whose existence the buyer was not informed, or did not agree to take the real estate burdened with that right.

Mortgages and other usual guarantees adopted in financing assets

Mortgage, i.e., pledge over real estate, is regulated by the Law on Property Rights. It is the most common instrument in BiH for securing financing (e.g., for a bank loan).

Pursuant to law, mortgage is established on the basis of a legal transaction, a court decision, or in other cases, regulated by applicable laws. To establish a mortgage, it is necessary to conclude an agreement (unless it is established by a court or in other cases) in the required form (notary deed or certified pursuant to the Standpoint of the Supreme Court of FBiH, no. 70 0 Dn 009610 22 Spp dated 8 December 2022), and to register it in the Land Registry, and this is the most common way of establishing mortgages.

The mortgage is terminated by deletion from the Land Registry.

Lease of business premises

The main piece of regulation governing the lease of business premises in BiH is the Obligations Act, while the Law on the Lease of Business Buildings and Premises also generally applies as lex specialis. Specifically, the referred law regulates the conditions and methods under which commercial buildings and premises can be leased.

However, the Law on the Lease of Business Buildings and Premises originates from the period of the Socialist Federal Republic of Yugoslavia, which had a different economic and social system, and therefore, is quite outdated. In practice, parties often do not follow the provisions of these laws, especially e.g., in respect of mandatory court termination of contracts and only apply the provisions of the Obligations Act, although the provisions of the Law on the Lease of Business Buildings and Premises formally apply.

Pursuant to the Law on the Lease of Business Buildings and Premises, a commercial building is considered a building intended for the performance of business activities, if it is mainly used for that purpose. Business premises, regardless of whether located in a commercial or residential building, are considered as one or more premises intended for carrying out business activities that, as a rule, form a building unit and have a separate main entrance.

Lease agreements for business premises are concluded in writing; otherwise, it has no legal effect. The lessor is obliged to hand over the business premises to the lessee in a condition in which it can be used for the purpose determined in the lease agreement and to maintain it in that condition (unless otherwise agreed). On the other hand, the tenant has the right to use business premises only for the purpose and in the manner as regulated in the lease agreement.

Termination of the lease agreement

Pursuant to the Law on the Lease of Business Buildings and Premises in Bosnia and Herzegovina (concerning the lease of business premises), a lease agreement is unilaterally terminated via court. The date of moving out and handing over the premises should be stated in the termination letter. If the conditions for termination are met, the court will instruct the tenant to move out (on the date stated in the termination letter) and hand over the premises to the landlord. Should the court decide that the conditions for termination are not met, it instructs the landlord to file a complaint, and if the complaint is filed (pursuant to instruction), the landlord is considered the plaintiff.

Disputes concerning the termination of lease agreement are considered urgent.

On the other hand, if the lease is terminated due to the expiration of lease agreement and if the tenant will not hand over the premises, the landlord can file a lawsuit and request the handover of premises from the court. Such a procedure is considered urgent. A similar procedure also applies when the lease agreement is terminated based on the withdrawal from the contract.

Apart from these provisions, there are also laws concerning the lease of business premises rendered on other levels (e.g., cantonal) which should be considered.

For example, in the Sarajevo Canton:

- The landlord has the right to evict the tenant with the assistance of the Ministry of Internal Affairs if the tenant has not paid four or more periods of rent and there is a respective judicial proceeding in process (eviction can take place before the courts judgement).
- The landlord has the right to evict the tenant if they have not commenced with their business activity within three months from the handover of premises; etc.

As stated above, these laws originate from the period of the Socialist Federal Republic of Yugoslavia, which had a different economic and social system, and are therefore quite outdated. In practice, parties often do not follow the provisions of these laws, especially e.g., in respect of mandatory court termination of contracts.

Administrative permits applicable to construction or restructuring of assets

Since real estate is regulated at lower levels in BiH (i.e., at entity/district level), different laws and regulations apply

depending on the place where the real estate will be constructed.

In general, there are three main permits required for building real estate: an urban permit, a construction permit, and a use permit. Other permits that may be required during the construction (e.g., to obtain a construction permit) include the environmental permit, water permit, electricity permit, certificate of occupancy, etc.

Urban permit

An urban permit is issued by the municipality/office responsible for urbanism. The purpose of the permit is to check whether a construction can take place in a certain location and if it is in accordance with the spatial planning of the area. Along with the request for the issuance of an urban consent, the applicant must submit information on the respective land plot. The urban consent is usually obtained within 15 to 30 days. Depending on the complexity of the facility an entity plans to build, the municipality may request additional documents.

Construction permit

A construction permit is issued based on the urban permit and a detailed construction project submitted along with the accompanying documentation. In FBiH, each municipality publishes the list of required documents to be submitted. To obtain a construction permit, a buyer must first submit a proof of construction right or property rights (such as an excerpt from the Land Registry, or concession agreement, etc.). Upon obtaining a construction permit, prior to commencing with any construction works, it would be necessary to inform the municipal construction inspection. The inspection visits the construction site and checks if all conditions for the construction are met.

Use permit

A use permit is issued by the same institution that previously issued the construction permit, e.g., competent municipal service for geodetic affairs. After the construction work is done, the abovementioned authority will perform a technical inspection of the building and determine whether the building was constructed in accordance with the construction permit that was submitted earlier. If all conditions are met, the person acquires the right to a use permit for the building.

Environmental protection

In BiH, environmental protection is regulated at entity level. For building certain facilities, environmental permit is required in both entities (FBiH and RS).

The main piece of regulation that governs environmental protection, the issues of resource efficiency, and pollution prevention and control in FBiH is the Law on Environmental Protection (passed in 2021), although other sectoral laws in the field of water and environment may also contain relevant provisions. There are several bylaws that regulate if it is necessary to carry out an environmental impact assessment, to obtain an environmental permit, etc.

An environmental permit is issued for the purpose of full environmental protection by providing measures to prevent and reduce industrial emissions into air, water, soil, reduce the impact on population, flora, and fauna, and prevent the generation of waste and noise to achieve a high level of environmental protection.

BiH, with the assistance of stakeholders, is making significant efforts to harmonize the legal framework on environmental protection with the respective EU regulations.

In July 2024, the Draft Law on Air Protection of FBiH has been accepted by the government and submitted to the parliament. Respective law regulates the protection and management of air quality, sets goals and responsibilities, parameters, and air quality planning, as well as measures to improve the air quality, protect the ozone layer, and mitigate and adapt to climate changes. Once adopted, it will replace the currently applicable Law on Air Protection of FBiH which has been in force since 2003 and has been amended only once in 2010.

Direct taxes applicable to sales

The different tax jurisdictions of BiH are considered as independent units with clearly divided competencies. Although the different tax jurisdictions are considered as

independent units, there is a certain level of interaction given that the jurisdictions are within the same state.

Property tax in the Federation of Bosnia-Herzegovina

Property tax in the Federation of Bosnia-Herzegovina (FBiH) is levied at the level of cantons. Property for rest and recreation, business and residential buildings that are leased (cottages, buildings, apartments, business premises, garages, etc.) are subject to property tax. Property tax is paid in a fixed amount per square meter for which the cantonal laws stipulate a range, and each municipality determines the fixed amount payable per square meter.

Revenue realized from the lease or sale of property is subject to personal income tax or corporate income tax depending on the ownership of property. In both cases, the applicable tax rate is 10%. This is governed at the level of the FBiH.

Real estate transfer tax

Real estate transfer tax exists only in the FBiH and is regulated at the level of 10 cantons within the FBiH. The general tax rate is 5% of the value of the property but may differ from canton to canton. The taxpayer is either the seller or the buyer as stipulated within the cantonal laws. No real estate transfer tax is charged on the first sale of newly constructed and unused real estate, provided that VAT is paid on the purchase of such real estate.

Property tax in Republika Srpska

Property tax in Republika Srpska (RS) is paid annually by the owner of the real estate. This means that every real estate owner is considered a taxpayer unless exempted by the law. Property tax is paid annually, in two installments. The Property Tax Law (Law on Real Estate) determines the range for taxation at 0.10-0.20% of the value of the property and each municipality within the RS determines every year the fixed tax rate within this range that applies to taxpayers who own real estate located within the municipality.

Revenues realized from the lease or sale of property is subject to personal income tax or corporate income tax depending on the ownership of property. In both cases, the applicable tax rate is 10%.

Value added tax

Value added tax (VAT) applies only in the case of the first transfer or ownership of a newly built and unused (up to two years) real estate. This means that newly built real estate that has not been used yet (up to two years) is subject to VAT in case of a first transfer of ownership. Any subsequent transfer of real estate or of a newly built real estate that was already used would not be subject to VAT. If a transfer is not subject to VAT, the transaction should be reviewed carefully because there might be an obligation to correct input VAT deducted when constructing the real estate.

As of 27 July 2022, sale of incomplete real estate is subject to VAT (standard rate is 17%).

Tax on inherited or gifted property

In the Federation of BiH, the tax on inherited and donated real estate is regulated at the level of the cantons. The taxpayer is the person who inherits or receives property as a gift.

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Real Estate Law in Bulgaria

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Overview of the Bulgarian Legal System

General introduction to the main laws that govern the acquisition of assets in Bulgaria – real estate rights

Main real estate laws

The Bulgarian Ownership Act is the main act governing the rights that individuals and legal entities can have over real estate. The Obligations and Contracts Act regulates the preliminary and final contracts for the purchase and sale of real estate and sets out the general legal framework in Bulgaria with respect to leases.

Other laws that regulate real estate in Bulgaria include the State Property Act, Municipal Property Act, Agricultural Land Ownership and Use Act, Condominium Ownership Management Act (governing the management of residential buildings with more than three units, property of at least two different persons), Forestry Act, Spatial Development Act (regulates spatial development, project designing, construction, and entering into operation), Cadaster and Property Register Act, Code of Civil Procedure (with respect to notary procedures), among others.

Real estate rights

Property rights under Bulgarian law include: (i) the right of ownership; and (ii) limited property rights, such as (a) the right to build; (b) right of use; and (c) property easements.

The right of ownership

The right of ownership is an absolute title to the property, containing (i) the right of possession; (ii) the right of use; and (iii) the right of disposal.
The ownership rights may be acquired through a legal transaction (purchase-sale, barter, etc.), after the expiry of a prescription period (the prescription period is five years if the possession over the property is exercised in good faith or 10 years if it is not exercised in good faith) or through other methods determined by law (restitution, enforcement, in-kind contribution of real estate in the capital of a company, insolvency proceedings, etc.) as well as through inheritance.

Co-ownership and condominium ownership also exist under Bulgarian law.

Limited property rights

Such rights are derived from the rights of ownership and are constituted by the owner over the property for the benefit of another person. The limited property rights are as follows:

- The right to build/construct a building is granted to the owner of the respective plot as well as to the holder of the real estate interest to construct.
- A transfer of the right to construct given to a third party by the landowner makes the third party an owner of the building constructed based on this right. The landowner may also transfer the ownership of an existing building separately from the land. Ownership of a building independently from the underlying land may also be created through voluntary partitioning. When the right to construct is created with a fixed period, after the expiration of this fixed period, ownership of the building will automatically pass to the owner of the land. If the building is destroyed, the person holding the right to construct may construct it again, unless the notary deed granting the right states differently. The landowner has pre-emptive rights in a transfer of the right to construct.

- The right of use is a limited property right to use another's property in accordance with its intended purpose and to receive yields thereof, without substantial alteration. The right of use is a self-limited property right over another's property. In order to use the property, the user is required to also exercise de facto power over it, i.e., they should be entitled to possession. Therefore, the right of use includes two powers: (i) the right to possess the property and (ii) the right to use, including to obtain the yields thereof. Ownership rights do not cease to exist with the establishment of the right of use by another person over the same property. The owner can request their property from any person who possesses or holds it without grounds to do so and may still dispose of their property, as well as restore their possession. On the other hand, the right to use is a temporary right established for the specific user and therefore, it is not transferable by the holder to another person.

- An easement right is the right to use the real estate, owned by a different person, for a specific aim, which is a kind of an encumbrance over the third party's property, tied to real estate rather than a specific person. Easements can be legal and voluntary (contractual). Legal easements are established by a legislative provision. They entitle the owner of the beneficiary estate to request unilaterally the establishment of a specific easement from the competent public authority. The owner of the servient estate is obliged to bear the burden of the so-incurred easement relationship. Voluntary easements are established by the will of the property owners. They freely specify the content of the easement, provided it does not contradict the imperative norms or morals.

Easements can be positive or negative depending on the actions to be carried out on the servient property. Positive easements give the right to carry out certain actions, while in the case of negative easements, the holder does not impact the other person's property–they are only entitled to ask the owner not to carry out certain actions on their property. There are various types of easements under Bulgarian law, such as the right to build temporary roads, rite of passage, and easements under the Water Act, the Energy Act, and the Forest Act.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Real estate transaction structure

There are different options to structure a transaction for the sale of real estate. If a purchaser acquires the real estate (asset deal) directly, the transaction is performed by a notary deed.

The parties to a real estate asset deal can enter into a preliminary agreement. However, the title is transferred only with the signing of the final contract in the form of a notary deed and its registration with the property register in order to be opposed to third parties. A preliminary agreement for the acquisition of real estate properties must be concluded in writing to be valid. The preliminary agreement must contain the essential terms and conditions of the final contract (the notary deed). Each of the parties to the preliminary agreement (the seller and the buyer) has the right to claim, before the court, the announcement of the preliminary agreement as a final contract, as if the notary deed was signed. The contract is considered concluded when the court decision enters into force (the court decision replaces the notary deed).

If the contract is for voluntary partitioning of jointly owned real estate, it must be in writing with notary certified signatures of the parties (not a notary deed). The notary deed is also not required for transactions involving private state or municipal property, where the written form of the document is sufficient.

Share deals are also used in real estate transactions in Bulgaria. By acquiring a company's shares but also the liabilities, the new shareholder will acquire all the company's assets, including any real estate owned by the company. Depending on the type of company (limited liability company (OOD) or joint stock company (AD)), different formalities with respect to the share transfer should be met (including notary certification and registration with the commercial register for OOD).

If the property is owned by a company, another option is the acquisition of the entire or part of its going concern (as a pool of rights, obligations, and factual relations), which includes the property. A going transfer agreement is concluded with notarized signatures and content, and the transfer is registered with the Commercial Register.

Real estate can also be contributed in-kind to the capital of a company, through a specific procedure, which includes the notarized consent of the owner, valuation by three independent experts appointed by the Registry Agency, registration with the Commercial Register, and registration of the company's articles with the Property Register. In this case, the capital of the company will be increased by the value of the property (as per the above valuation). After registration of the capital increase with the Commercial Register, the ownership of the property is considered transferred to the company. Subsequently, the going concern transfer agreement must be registered with the Property Register for the transfer to be valid vis-à-vis third parties.

Other options for real estate transfers are also possible, such as a corporate reorganization through demerger or spin-off.

Restrictions to foreigners with respect to nationality of the potential real estate owner and the type of real estate asset acquired

In general, legal entities and individuals can have title over any real estate, except for those which, under the Constitution of the Republic of Bulgaria, are exclusive state property or, under the law, are public, state, or municipal property.

However, there are some limitations to the acquisition of land by foreigners:

- Individuals and legal entities from the European Union (EU) and the European Economic Area (EEA) can acquire ownership over land in accordance with the requirements by law and the treaty concerning the accession of the Republic of Bulgaria to the EU. This limitation is no longer applicable, as the transition period following Bulgaria's accession to the EU, which provided a five-year restriction on ownership over land for EU citizens not residing permanently in Bulgaria and a seven-year restriction on ownership over agricultural land and forest land, expired at the end of 2011 and 2013, respectively.
- Any other foreign (non-EU/EEA) individual and legal person can only acquire ownership of buildings and limited property rights on real estate in Bulgaria, but cannot acquire land, unless otherwise stipulated by law.

Real estate registry system

There are currently two property related registers in Bulgaria: (i) the Cadastre Register and (ii) the Property Register.

- The Cadaster Register aggregates the basic data regarding the location, boundaries, and total area of real estate land plots within the territory of Bulgaria. Real estate which must be entered into the Cadaster Register include any plot of land; all buildings, including those completed to a core-and-shell (rough construction) stage, as well as any technical infrastructure installation comprising a self-contained property; and separate units in a building or in a technical infrastructure installation.
- Transactions concerning ownership and encumbrances with respect to real estate in Bulgaria are registered with the Property Register. The Property Register provides data regarding the right of ownership and other legal interests (limited property rights) in real estate. The Property Register comprises the accounts of all immovable properties. The information is based on the personal files of the transacting parties – the individuals and entities – and/or files of the respective land and/or buildings constructed. The register provides information on the condition of the circumstances specified after the latest entry and enables chronological monitoring of the changes to registered circumstances as well as registered acts. The Property Register holds a record of who owns the land and any rights or encumbrances established over the property, including the specific restriction of the owner's ability to deal with its title.

All notary deeds for the transfer of ownership or the creation, amendment, transfer, or termination of another limited property rights over immovable property, as well as

all deeds recognizing such rights, must be registered with the Property Register.

Registration consists of giving publicity to the above-mentioned deeds in order to make them opposable to any third party, thus providing the owner with a specific protection (priority/ranking is established from the date of registration of the respective deed).

The registration itself does not necessarily represent a guarantee of title. However, the right of the registered owner is assumed until the contrary is proven. The registration of securities is relevant in that the registration date ensures the effectiveness of mortgages and distrains, as well as their priority ranking against other subsequent creditors.

Notary role in the real estate transactions

Every notary deed for the transfer of ownership or the establishment of a limited property right over real estate is issued by a notary in the region where the real estate is located. The notary must register the notary deed with the respective local office of the property register on the same day the notary deed is signed.

Upon issuing the notary deed, the notary has the obligation to identify: (i) the parties and their capacity; (ii) whether the grantor owns the respective real estate (their title over the property and/or other property rights); and (iii) whether the special requirements for the transaction are fulfilled. However, the notary is not obliged to review the title history.

As a general rule, the title of the current owner depends on the rights of the predecessor, while the right of the predecessor, in turn, depends on the title of their predecessor. If one of the previous owners did not have undisputable title, this may allow an entitled third party to make a claim against the current owner. The possibility of a third party to challenge the current owner's title successfully is precluded by a prescribed period of possession (five years of continuous possession of the property if it is exercised in good faith or 10 years of continuous possession without any good faith requirement). It is therefore highly recommended that the buyer undertakes a full review of the current and historic titles before purchasing real estate, and it is advisable to seek legal support to ensure the process is conducted thoroughly and correctly.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

In an asset deal, the seller is liable for:

- Eviction (i.e., total, or partial loss of title) – if the sold property belongs entirely to a third party, the buyer may declare the sale invalid. In such a case, the seller must return the price paid to the buyer and cover the costs incurred by the latter for the transaction execution, as well as the necessary and useful costs for the real estate. Should only part of the sold property belong to a third party, or should the real estate be encumbered with rights of a third party, the buyer may bring an action for invalidation of the sale and claim compensation for damages. If invalidation fails, the buyer may ask for a reduction of the price and incurred damages.
- Defects of the real estate – the seller is liable if the sold property possesses defects which significantly reduce its price or its expected use or as envisaged in the sale-purchase contract. The seller is not liable for defects which were known to the buyer at the time of the sale. The seller is also liable if they were unaware of the defect as an agreement discharging the seller from liability is considered invalid.

Generally, the seller gives the following representations and warranties: (i) validity of title; (ii) lack of litigation; (iii) conditions of the asset; (iv) local taxes, fees, utilities, etc. paid; (v) disclosure of due diligence information; (vi) technical situation of the asset (including equipment); (vii) environmental obligations; (viii) fiscal registration; (ix) validity of its corporate approvals; and (x) lack of insolvency/over-indebtedness, bankruptcy, and liquidation procedures initiated against.

Before the transfer of ownership, establishment of encumbrances, or other limited property rights, a declaration regarding the lack of due and payable taxes

must be provided by the transferor, the person who establishes the right, or the mortgagor.

Mortgages

The mortgage's constitution is effective upon the conclusion of a mortgage notary deed (or the application for registration of a legal mortgage) and registration of the mortgage with the property register.

The notary deed for establishment of a mortgage must contain a description of the real estate, the mortgagor and mortgagee, the owner of the real estate if it is established for a third party's debt, the secured receivables, its maturity date, the amount of the interest and the amount of the secured debt, among other requirements.

The mortgage contract is necessary because it presupposes a secured debt. The mortgage follows the secured receivables when they are transferred and is terminated if the receivables are terminated. To have effect, the assignment of receivables secured by a mortgage, pledging of such receivables, novation, and substitution of obligations secured by a mortgage must be in writing, with the signatures certified by a notary public and registered with the Property Register.

The registration of a mortgage is valid for 10 years but may be extended if the registration is renewed before the expiration of the term. If the renewal is registered after the expiry of the 10 years, the legal effect of the mortgage will be restored, but it will have a new priority/ranking from the date of its renewal.

Lease of assets and lease of business

The general framework applicable to lease agreements is given in the Obligations and Contracts Act (OCA).

Lease term

Commercial leases (for example retail leases) can have terms exceeding 10 years. Non-commercial leases cannot have terms longer than 10 years. Whether a lease is commercial is determined by the classification of the parties to the lease agreement–if the parties are traders/commercial entities and if they act in this capacity, then the lease is deemed to be commercial.

Under the law, if after the expiry of the lease term the tenant continues to occupy the leased premises with the knowledge and without the objection of the lessor, the lease agreement is deemed to have extended for an undefined term but may be terminated by either party by giving a one-month written notice. If the lessee continues to use the leased premises despite the lessor's objection to the use, the lessee must compensate the lessor and perform all their obligations as per the terminated lease agreement.

Form of the lease and protection of the lessee in case of transfer of ownership of the leased real estate

Bulgarian law does not require a specific form for a lease agreement. The lease agreements are often simply signed. They could be also notarized with certifications of the signature of the lessor and the lessee, in which case the parties can register the lease agreement with the Property Register.

In the event of a transfer of the ownership of the leased real estate and if the lease agreement is notarized, the lease agreement will be binding for the transferee of the leased real estate until the end of the lease term, but not for more than one year after the change of ownership. If the lease agreement is registered with the Property Register, the lease agreement will be binding for the transferee of the leased property for the full period agreed under the lease as per its terms and conditions. However, if the lease agreement is simply signed, in the event of a transfer of the ownership of the leased property, the lease agreement will be considered as active for an indefinite term and the transferee of the real estate will be entitled to terminate it with a one-month notice.

Sublease

If not agreed otherwise, the lessee may sublease parts of the leased property without the consent of the lessor. Nevertheless, even in this case, the initial lessee is not discharged from its obligations under the lease agreement.

Typical conditions that may be included in a lease agreement

The parties to a lease agreement are free to determine their rights and to undertake other obligations beyond the main ones under the OCA. Typical provisions of the lease agreement may include: (i) an arrangement on the frequency of the lease payments (usually monthly, but any other arrangements are possible); (ii) a guarantee for the obligations of the lessee (the most common are bank guarantees and cash deposits); (iii) indexation of rent; (iv) maintenance and repair (unless agreed otherwise, non-material internal and external repairs due to normal wear and tear are at lessee's expense, and all other repairs (if they are not the lessee's fault) are at the lessor's expense); and (v) insurance.

Administrative permits applicable to construction or restructuring of assets

All constructions and restructuring of real estate assets are done in accordance with the Spatial Development Act (SDA). The initial stage of the project development process is an effective Detailed Development Plan (DDP). The existence of a proper DDP is a prerequisite for drawing up the project design, changing the purpose of the land (where necessary), signing preliminary agreements with utility companies, executing the investment design, obtaining a construction permit, and starting construction works. A DDP transforms the unregulated land into regulated land by fixing its borders and providing access (in the form of a road, street, or other access). The DDP also determines the requirements for construction, such as the general and specific designation of the land, and the building indices (e.g., density, intensity, green yard area, and height of the buildings).

The beginning and the realization of the construction is to be carried out in accordance with the approved investment projects, DDPs, and under the conditions specified in the SDA. On the basis of the approved designs, the investor may apply for a building permit. To obtain a building permit, the investor must apply to the relevant authority, along with the following documents: (i) ownership title/construction right documents; (ii) design visa (if applicable); (iii) preliminary agreements with utility companies; (iv) copies of the valuated project design; (v) environmental assessment (if necessary); and (vi) approvals from the controlling authorities (if applicable), etc.

The permit should be issued within seven days from the application submission. The permit expires if construction has not started within three years of the issue date or if the core-and-shell construction has not been completed within five years. However, it can be re-validated within three months prior to its expiry for a fee of 50% of the initially paid building permit fee. This re-validation may only be performed once.

After the building is constructed, it must be put into operation. Buildings can only be used if the conditions envisaged in the construction permit have been met. Permits for the use and occupation are related to the real estate and are not personal. Acceptance trials may also have to be successfully completed for the construction of manufacturing facilities or other buildings with specific uses to be deemed completed. The official document that proves that the construction has entered into operation is the use permit or certificate for entering into exploitation, depending on the category of the construction.

Environmental and energy

Environmental requirements

Among the primary legislation governing environmental protection, the following legal acts regulate environmental issues: Environment Protection Act; Protection of Agricultural Land Act; Water Act; Forestry Act; Biological Diversity Act; Protected Areas Act, etc. There is also a significant number of secondary legislation in operation. The authority responsible for environmental protection and pollution prevention at national level is the Regional Inspectorate for Environment and Water with the Ministry of Environment and Water of Bulgaria.

The liability for pollution of real estate and respective waste removal is regulated according to the principle of causal responsibility (or "polluter pays" principle). Environmental legislation generally provides for administrative liability for violation of environmental protection legislation and ecological requirements. The individual/entity that has committed the violation (i.e., breached the legislation/requirements) is liable for these fines. The

legislation also provides for general civil law liability for damages by referring to the rules of tort.

Energy requirements

The assignors of the new building must obtain an energy performance certificate for the new building prior to entering into operation in accordance with the Energy Efficiency Act.

The energy performance certificate of a building already in operation must be updated if the building has gone through major reconstruction or renovation which has resulted in a change to the energy performance of the building.

The construction and real estate sectors are significant contributors to the Bulgarian economy, representing a combined gross value added (GVA) of nearly €10 billion in 2023, which corresponds to 11.9% of the country's GVA. While the share of real estate has slightly decreased, construction has stabilized, indicating resilience and continued importance in the economic landscape.

Bulgarian companies are at the forefront of inventing innovative building materials that could revolutionize the construction sector and dramatically reduce its carbon footprint.

Nevertheless, the country lags behind regional peers and bigger economies in Central Europe in its efforts to implement green building certifications and modernize the existing building stock.

On 5 March 2024 a public consultation was opened on a draft amendment to the Accountancy Act. The draft law aims to implement two European Directives into national law: (i) Directive (EU) 2022/2464 of the European Parliament (the so-called CSRD Directive or ESG-reporting); and (ii) Commission Delegated Directive (EU) 2023/2775 of 17 October 2023.The changes are focused on strengthening the transparency of business entities and their commitment to environmental protection and human rights. The new obligations will arise for the 2024 accounting year only in respect of large public interest enterprises and parent enterprises that have more than 500 employees as of 31 December. For all other categories of enterprises, this obligation will arise in stages in the following accounting years until 2028.

Taxes and expenses applicable to sales of real estate

The following fees and taxes must be paid if a purchaser acquires the real estate (an asset deal) directly: (i) a notary fee at a special tariff, capped to approximately €3,000* (US$3,167.88*), net of VAT; (ii) a state fee for registration with the Property Register of 0.1% of the purchase price or the tax value as determined by the municipality if it is higher; and (iii) local transfer tax ranging from 0.1% to 3% (the exact rate depends on the municipality where the respective real estate is located) on the agreed price or on the tax value as determined by the municipality if higher. In principle, the sale of buildings less than five years old, the land adjacent to them, and a regulated plot of land are subject to 20% VAT. The sale of buildings older than five years, the land adjacent to them, and of land other than regulated plots of land are exempt from VAT. The seller is given the option to charge VAT.

In the event of a share deal, a notary fee at a special tariff, capped to approximately €3,000* (US$3,167.88*), net of VAT for certifying the share transfer agreement with respect to a limited liability company (OOD) and a relatively small fee for registering the share transfer with the Commercial Register must be paid, but payment of state fees for the registration of the real estate transfer with the Property Register and local transfer tax will not be due. The sale of shares in OOD and AD will be a VAT exempt supply.

*According to the 10 December 2024 exchange rate

Emerging markets and new asset classes in Bulgaria:

- People and businesses look for ways to protect their money and one way to achieve this is through investment in real estate. Conversely, the war in Ukraine could force some sellers and purchasers to move away. There may also be instability in the construction market due to the rise in the price of materials.
- As also noted in the Deloitte Property Index 2024, purchase prices continue to increase but the rental market remains stable, which could make buying and renting apartments less attractive.
- Commercial real estate is improving after the COVID-19 pandemic.
- Shopping malls are in stable positions, with limited vacant rental spaces. Improvements to the legal framework concerning court procedures for the vacation of premises by tenants with terminated leases and their different treatment in comparison to individuals who have rented premises for residential purposes would be welcomed by the shopping mall owners. However, such legislative changes are not expected soon. Moreover, new early parliamentary elections will be held in Bulgaria in October 2024.
- Retail parks in Sofia have full occupancy and specialists envisage further expansion.

In 2024 the market is expected to slow down with inflation rate decreasing to 3.1% year-over-year for FY24/FY23 (as per the Economist Intelligence Unit) and following similar trend across all European countries (decreasing to 5.6% year-over-year for FY24/FY23), thus leading to a decrease in the growth of real estate prices, however, rental prices are still expected to grow but at a slower rate. This year in Bulgaria we will probably witness two processes - a slight increase in interest rates and a corresponding slight slowdown in the housing market. There is a trend that apartment prices in big Bulgarian cities will not stop rising. The market is close to a post-COVID equilibrium. There is now a stable number of property transactions - about 30% more than before the pandemic - and a slight increase in prices. The ratio between the volume of mortgage loans granted and the country's gross domestic product is still very low - 10% for 2023, compared to an EU average of 40%. In 2024, there will remain a demand for properties in new buildings from developers, especially if the studio apartments and flats in them are inexpensive and such buildings under construction have convenient locations. Bulgaria's real estate market is experiencing a surge in demand from foreign investors seeking affordable properties and attractive rental yields.

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Real Estate Law in Chile

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Overview of the Chile Legal System

General introduction to main laws that govern the acquisition of assets in Chile – real estate rights

In Chile, ownership over a real estate property can be obtained through one of four methods provided by law, which are regulated in the Civil Code (CC) in its Article 588 and follow: (i) transfer; (ii) inheritance; (iii) accession; and (iv) adverse possession. Each is briefly explained below.

Transfer

The main method of acquiring ownership of real estate property is by transfer (Article 670 CC), which is performed or completed with the registration of the relevant deed in the Property Registry in the area where the real estate is located. The transfer of real estate property requires a previous contract capable of justifying it, which is usually a purchase agreement (although it could be a donation, capitalization into a company or other), which must be executed by public deed. The public deed is a requirement that generates the contract or solemnity itself, and therefore, if missing, the contract will be absolutely null and void (Articles 1682 and 1701 CC), or even non-existent, since for the legislator, the public deed is the only way to express consent for these types of agreement. All agreements regarding real estate must be executed by public deed.

In summary, ownership is not created by the mere fact of having signed the deed of sale (which must be granted by public deed), but upon registration in the corresponding Property Registry (transfer). Once registered, i.e., once the transfer (the way of acquiring the domain) has been completed, ownership is established.

Inheritance

Real estate property can be acquired through inheritance, whether by cause of a testament or a mandatory legal provision. In this case, the successors must register their acquisition in the Real Estate Registry before disposing of it. This ensures that the registry is kept up to date.

Accession

Accession is a method of acquiring ownership of goods that have been incorporated into others. The basic principle in accessions is that the minor or accidental good is incorporated by the main or principal, and thus the owner of the latter acquires ownership of the former through accession, after paying the relevant compensation according to the circumstances. Building on someone else's property is a typical scenario in which accession applies. Accession rules can be amended by a contract.

Adverse possession

Real estate can also be acquired through adverse possession, by continuously occupying the property for a period of 10 years. This period can be shortened to five years if the occupation has been initiated in good faith.

It is important to note that in the case of real property, occupation to these effects requires having registered the property under the occupant's name, notwithstanding if an actual occupation has occurred.

Adverse possession is a key feature in analyzing real estate titles, as an ownership certificate from the registrar that shows registration for a period of 10 years is enough to certify ownership. Therefore, any title analysis will require registration and title for transfer for the last 10 years.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

The "structure" in transactions involving the acquisition of real estate refers mainly to the title and the mode of acquisition. One of the most common modes regarding the title of ownership is the contract of sale, which is granted through a public deed (this means that it is executed before a notary public). The purchase and sale are defined in Article 1793 of the CC as "a contract in which one of the parties undertakes to give an item and the other to pay for it in money. The former is said to sell and the latter to buy. The money that the buyer gives for the item sold is called price". However, it is not simply the contract of sale that creates ownership, but the registry of an abstract in the respective Real Estate Registry.

On the other hand, there are two very important moments in this type of transaction (referring to the mode), which are: the real agreement and the transfer itself, which is completed in Chile with the registration of the purchase/sale in the Property Registry. In summary:

As for restrictions, Chile is not known for restricting the acquisition of real estate. This document is a tax identification number that, together with the passport, will allow the person to act before the various institutions involved in the process of buying and selling the property: notary's office, Property Registry, brokers, among others.

There are other stipulations that, although not legal, may be required by the financial entity that grants a mortgage, such as the accreditation of income in the country or the certificate of definitive residence. Notwithstanding, there is a prohibition in Chile on the acquisition of real property rights by foreigners in frontier areas, pursuant to Article 7 of Decree Law No. 1,939 of 1977, nationals of countries bordering Chile (Peru, Bolivia, and Argentina) are prevented from acquiring ownership and other real property rights, or exercising possession, or holding of real property located totally or partially in the areas of the national territory declared frontier areas. This prohibition extends to companies or legal entities whose principal place of business is in the bordering country, or whose 40% or more of capital is owned by nationals of the same country or whose effective control is in the hands of nationals of those countries.

Real estate registry system

Real Estate Registries are institutions that keep the registry system of properties in Chile. These institutions oversee lawyers who serve as ministers of faith (Article 446 Código Orgánico de Tribunales or COT), safeguarding and updating the real estate conservatory records in order to maintain the history of the real estate property and provide complete publicity to the encumbrances that may affect the real estate.

This system has produced a complete registry of land ownership in the country, which enables analysis of the history and titles of any real estate and guarantees the rightfulness of its ownership. The registration alone, however, is not complete proof of ownership, as there could be shortcomings on the titles which may lead to eviction.

In them, a team of officials study the legality and grant validity to the property titles, considering the registration as a requirement, proof, and guarantee of possession.

Notary role in the real estate transactions

Notaries are described in Article 399 of the COT as "ministers of public faith in charge of authorizing and keeping in their files the instruments that are granted before them, of giving the interested parties the testimonies they request, and of practicing the other diligences that the law entrusts to them". One of the functions of the notaries, according to Article 401 N°1 of the COT, is to issue public instruments and as mentioned above, one of the solemnities of the purchase and sale contract in Chile is that it is granted through a public deed.

The public deed is the public or authentic instrument granted by the competent notary in a legal manner and incorporated into its protocol or public registry. This is where the main role of the notary lies in the purchase and sale of real estate in Chile; it is the notary who extends and before whom the public deeds containing the purchase and sale contract are executed. In addition, they are the ones who keep and preserve "in strict chronological order the instruments that are granted before them, in order to prevent any loss and make their examination easy and expeditious" (Article 401 N°7 COT) and facilitate any person who requests it, "the examination of the public instruments that are granted before them and documents that they notarize" (Article 401 N°9 COT).

Usually, notaries do not draft the public deeds, although they can, but they are instead drafted by the lawyer responsible for the transaction.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

The seller's essential obligations are:

- The delivery or transfer; and
- To cure concealed defects or eviction of the item sold (Article 1824 CC).

Obligation to deliver the item sold

The delivery of the item sold is made by transfer, the purpose of which is to confer to the buyer the legal and material possession of the item referred to in the contract. In the case of real estate, as stated above, the transfer is completed with the registration in the respective Property Registry. This registration gives the dominion and legal possession of the item, which only ceases with the cancellation of the registration. For the Chilean legal system, this is the only accepted form to acquire or transfer the ownership of real estate, and if this registration is not made, the legal delivery of the item is not carried out.

On the other hand, it is necessary to distinguish when the material delivery of the item is understood to be completed, since it may not be at the same time as the legal delivery.

For the obligation to deliver that the contract of sale imposes on the seller to be deemed fulfilled, it is required that: (i) there is a real intention to deliver the item to the buyer and an intention on the part of the latter to acquire it; (ii) the registration of the contract is verified, that is, that the seller divests themselves of all the rights they have over the item; (iii) the seller abandons it completely so that the buyer can use it; and (iv) the buyer is in a position to exercise over it all the functions of an owner, that is, they receive the real, de facto, effective possession of the item.

The legal transfer of the real estate, therefore, is not enough; the seller must also put the item at the disposal of the buyer, which means that the seller abandons the property and stops performing acts of lord and owner over it.

Cure of concealed defects or eviction of the item sold

This obligation is based on the fact that if someone buys an item, it should be useful to them, i.e., they should be able to use it according to its nature and possess it with the peace of mind, without being disturbed from its possession. Basically, this obligation consists of guaranteeing the buyer a peaceful and quiet possession of the item being sold and a useful possession. That is to say, the buyer must not see their possession disturbed by legal actions brought by third parties with respect to the item sold and that the item does not have hidden defects that make its use by the buyer impossible. It is precisely these two aspects to which Article 1837 CC refers when it establishes that the obligation of cure includes: cure of eviction and cure of concealed defects.

Mortgages and other usual guarantees adopted in financing assets

The most common method used in Chile for the acquisition of real estate is financing through mortgage loans granted by financial institutions, such as banks or authorized financial institutions.

Naturally, these institutions need to guarantee the payment of such credits and for that purpose the most used figures are the mortgage, and the prohibition to encumber and alienate.

The mortgage (Article 2407 CC) is especially important because it is the most frequently used security, and it is considered the one that provides the creditor with the most guarantees, since real estate is difficult to destroy and generally does not lose value.

On the other hand, all real estate mortgaged in favor of financial institutions must be backed by an appraisal or certification of its value, carried out and signed by persons who are qualified in the matter, preferably outside the bank and, in any case, independent of the debtor. In this way, the banks ensure that the price of the mortgaged property is sufficient to guarantee the value of the loan in case of a foreclosure due to non-payment.

In addition to the mortgage, the banks and financial institutions that grant these loans register a prohibition to encumber and alienate the real estate. In practice, these are impediments to transfer or sell a real estate property without the prior consent of the bank or financial institution in whose favor the prohibition is granted.

Both the mortgage and the prohibition must be registered in the corresponding Real Estate Register, in the Registry of Mortgages and Encumbrances, and in the Registry of Interdictions and Prohibitions, respectively.

Lease of assets ("Contratto di Locazione") and lease of business ("Contratto di affitto d'azienda")

Lease agreements are regulated by Article 1915 and following the CC, by Act 18,101 about the lease of urban property and by specific laws regulating leases in rural areas.

The lease agreement is defined as an agreement through which two parties undertake reciprocal obligations, one to concede the use of an item, and the other to pay a price for it.

The obligations of the lessor are:

- To deliver the leased property; and
- To maintain the property in a state for its proper use.

The obligations of the lessee are:

- To pay the rent; and
- To return the property at the end of the lease agreement.

The lease agreement may terminate:

- By the destruction of the property;
- By the expiration of the stipulated time of lease;
- By the extinction of the right of the lessor; and
- By court decision.

Formalities and enforceability toward third parties

Ground lease contracts for urban areas do not require a special formality for their enforcement. However, executing a ground lease through a public deed has an important effect, as any third party that acquires the ownership of the property will be bound by the lease. Furthermore, if the lease contract is registered in the Real Estate Register, then even creditors guaranteed by mortgages created after the lease are obliged to recognize the agreement.

On the contrary, if the lease has not been executed through a public deed, then a third party acquiror is not bound by the contract and is entitled to eject the tenant. The tenant will have no more recourse than to claim damages from the original landlord. In rural areas, the law requires ground leases to be executed through a public deed or before two witnesses. In both cases, a possible acquiror is bound by the contract.

Administrative permits applicable to construction or restructuring of assets

Chile's smallest administrative divisions are communes, which are locally governed by a municipality. The head of a municipality is the major or alcalde, which is an elected position.

Municipalities, and specifically their construction departments (DOM), are responsible for managing construction permits within their limits. The rules for construction permits are set, in general, in the General Law of Urbanism and Construction, but each municipality is entitled to specify detailed requirements within its urban area through a specific body (Ordenanza Municipal).

Pursuant to the General Ordinance of Urbanism and Construction Act, the construction, reconstruction, repair, alteration, extension and demolition of buildings, and urbanization works of any nature, whether urban or rural, will require a permit from the relevant DOM, at the request of the owner, with the exceptions indicated in the General Ordinance. The Director of Municipal Works will grant the permit or the required authorization if, according to the accompanied antecedents, the projects comply with the urban development regulations, upon payment of the corresponding fees (Article 116 OGUC).

After finishing the works, the municipality certifies that the actual building matches the construction permit, and in such case, issues a final approval certificate (recepción definitiva).

Environmental and energy

Currently, for the construction of houses and apartments, real estate and construction companies must submit to the Environmental Impact Assessment System (SEIA), which is an environmental management instrument for the evaluation and prediction of the environmental impacts that may be generated by projects and activities carried out in the country and that is legally required to be evaluated. In other words, any project or activity likely to cause an environmental impact, including its modifications, can only be executed, or modified after an evaluation of its environmental impact through the presentation, as appropriate, of an Environmental Impact Statement (EIS) or an Environmental Impact Assessment (EIA).

The EIS is the descriptive document of an activity or project to be carried out, or of the modifications that will be introduced, given under oath by the respective owner, the content of which allows the competent agency to assess whether its environmental impact complies with the environmental regulations in force.

The EIS is part of the Environmental Impact Assessment System (SEIA), which is a management instrument designed to prevent environmental deterioration due to the execution of investment projects in the country. The EIS is addressed to the owners of those investment projects that are likely to cause environmental impact. These projects are specified in Article 10 of the Environmental Bases Law, without prejudice that the owners of those projects that are not included in the lists may voluntarily submit for environmental assessment.

In the case of EIAs, we are also allowed to determine whether the project or activity is responsible for the environmental effects it generates, through the application of appropriate mitigation, repair and/or compensation measures.

After the evaluation process, the Evaluation Commission of the respective region, or the executive director of the Environmental Evaluation Service (SEA), depending on whether it corresponds to a regional or interregional project, issues a resolution that environmentally qualifies the project.

Direct taxes applicable to sales

Value added tax (VAT - "IVA" in Spanish)

With the Tax Reform of 2014, the tax treatment between furniture and real estate was equated, which resulted in a redefinition of concepts such as "sale" or "seller", in the sense that now a seller would be someone habitually engaged in the sale of tangible property, whether movable or immovable.

Habituality is presumed to exist when a period of less than or equal to one-year elapses between the acquisition or construction and the disposal. However, the application of the VAT on older properties must be studied for each transaction.

Income tax

The tax reform partially limits the exemption to the profits obtained in the sale of real estate, which will be available only to individuals with domicile or residence in the country. In these cases, the tax would be applied on the

difference between the sale price and the cost, considering the improvements, with a total and cumulative limit of 8,000 UF/US$314,852.11 (the value of 1 UF, amounts to 38,364.73 Chilean pesos/US$39,35*), regardless of the number of disposals made and the number of real estate properties of the taxpayer, with the excess being taxed according to the general rules, or with a single and substitute tax of 10% on the basis of the income received, as per the selection of the taxpayer/seller. Simply put, any sale of real estate that generates profits in excess of UF 8,000 (US$314,852.11*) must pay tax. If the gain is less than this amount, it will be registered and added to the gains obtained in a new operation. The UF 8,000 (US$314,852.11*) cap is not limited to the sale of a single house but is accumulated during all the sales made by the person. Upon reaching UF 8,000 (US$314,852.11*) or more, the income tax must be paid.

Stamp tax

Considering that most of the real estate sales and purchases in Chile are financed through mortgage loans, it is important to point out that with the tax reform, the rates of this tax were increased, with its maximum rate being 0.8% of the value of the loan.

That is to say, the operations that were financed through mortgage loans will have to pay "mutual tax", which can be reduced depending on whether the property is economic or social housing.

*According to the 10 December 2024 exchange rate

Real Estate Law in Costa Rica

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He has over 20 years of experience in all Costa Rican commercial and corporate law areas. He has extensive experience advising clients investing in Costa Rica and assisting companies in structuring their businesses. His experience covers diverse sectors, such as automotive, technology and real estate.

Ricardo advises on corporate and commercial structures in connection with local operations and has been involved in advising on numerous group reorganizations, wealth management, and financing transactions.

Overview of the Costa Rican Legal System

General introduction to the main laws that govern the acquisition of assets in Costa Rica – real estate rights

In Costa Rica, the acquisition and ownership of real estate assets is mainly governed by the Civil Code (CC), which outlines general property rights, its ownership, transfer, acquisition, and registration.

In general, the CC provides that ownership over a real estate property can be obtained through:

- Agreement (e.g., sale and purchase agreements, donation, and any other form of transfer);
- Accession (which refers to the areas under and above the surface of the property);
- Inheritance; and
- Adverse possession (which applies to cases of a continuous, public and in good faith occupation of a third party property, for a period of 10 years).

In addition to the CC, there are other laws and regulations that cover certain specific scenarios and conditions of real estate ownership, such as beach concessions, farmlands, forest-covered properties, leases, condominiums, among others.

Finally, it is important to mention that ownership rights are recognized and protected by the Costa Rican Constitution.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Acquisition structure

In general terms, real estate transactions in Costa Rica usually take place under one of the following categories:

- Direct transfers: Those by which the title to the property is directly transferred from one party (seller) to the other party (buyer). This transfer must be formalized before a notary public via a sale and purchase public deed and registered with the Real Estate Registry of the National Registry.
- Indirect transfers: In this type of transfer, the legitimate and registered property owner/title holder is an entity (company, LLC, corporation, etc.). The share capital ownership of the title holder is transferred to the buyer. At the Real Estate Registry level, the title holder remains the same, but the transaction has taken place privately via the transfer of the entity.

For the purposes of their particular transaction, whether a direct or indirect transfer, parties are free to structure the acquisition, with the support of specialized legal counsel, via different valid and legal agreements, such as sales and purchase agreements, share purchase agreements, promissory notes, escrows, trusts, among others. It is important to mention that, regarding direct transfers, pursuant to the CC the agreement between the parties is valid from the moment of its execution, but it must be registered via public deed with the Real Estate Registry in order for it to display full effects in relation to third parties.

Restrictions

Except for certain specific cases, there are no relevant restrictions concerning the acquisition of real estate in Costa Rica, and foreign citizens and entities can acquire most properties without any sort of restrictions. However, there are areas under special protection regimes, such as native/indigenous reserves and environmentally protected

areas that, in principle, cannot be subject to any form of transaction. Also, according to Act No. 6043, private ownership over the maritime-terrestrial zone (which is a 200-meter-wide strip of land along the Atlantic and Pacific coasts), is prohibited and beach concessions are required for any intended use. In this regard, beach concessions cannot be granted to: (i) foreign citizens who have lived in Costa Rica for less than five years; (ii) foreign entities; or (iii) national entities in which foreign citizens own more than 50% of its shares/participations.

it is important to highlight that there are also particular regulations, conditions and restrictions based on the intended use of the property. For example, farmlands, forest-covered properties, and properties adjacent to national parks and wildlife reserves, have strict limitations and conditions regarding the use and exploitation of the land. Also, the Golfo de Papagayo Tourist Project, a major tourism development project in the Costa Rican Pacific coast, has its own specific regulations, and is exclusively governed by the Golfo de Papagayo Tourist Project Execution and Development Act.

Real estate registry system

The Real Estate Registry plays a central role in Costa Rican real estate law and transactions, ensuring that ownership rights and interests in properties are duly documented and enforceable.

The Real Estate Registry supervises and regulates all deeds, documents, records, maps, and general information relating to real estate and properties. According to the CC, any deed, document, or title that constitutes, modifies, or extinguishes any ownership rights, easements, liens, mortgage, or any other right over real estate is (and must be) registered with the Real Estate Registry for legal recognition, and transactions affecting ownership, such as transfers or mortgages, require formal registration to be valid. Consequently, any right or title that is not registered therein is binding only on the executing parties and will not affect third parties. In other words, any and all ownership rights, transfers, modifications, etc., must be recorded in the Real Estate Registry in order to display full legal effects. Finally, the Real Estate Registry is open to public consultation, whether on their web page or by visiting any of their offices located countrywide. As a result, any person can look into the history of a certain property, its location, transfers, mortgages, liens, conditions, restrictions, etc., and make an informed decision to enter into a transaction.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

Under Costa Rican law, sellers of real estate are bound by contractual representations and warranties. They must ensure clear, lawful, and legitimate title to the property, free of encumbrances, and compliance with any applicable regulations. Failure to disclose any relevant or legal issues affecting the property may result in liability.

Usual contractual representations and warranties of the seller are:

- That the seller is the legitimate owner of the property and holds a valid and marketable ownership title;
- That there are no visible or hidden defects, issues, contingencies with the property; and
- That, other than those disclosed during negotiations or registered in the Real Estate Registry, the property is free of any disputes (judicial, administrative or any other kind), debts, liens, encumbrances, restrictions, conditions, etc.

Costa Rican law, mainly the CC, also provides for certain warranties in favour of the buyer, should any issue arise in connection with a real estate transaction.
In sum, these are:

- Eviction warranty: Basically, this means that the seller warrants that no third party will deprive or disturb the buyer of the full enjoyment of its newly acquired ownership rights.
- Hidden defects warranty: Seller's liability extends to all those defects not disclosed or that the buyer was not aware of, did not know or could not have known about at the time of the transaction, or existing prior to the transaction. It also extends to defects that make the property unfit for the original intended use by the buyer.

Mortgages and other usual guarantees adopted in financing assets

Mortgages are the most common financing instrument in connection with real estate assets in Costa Rica. They are regulated by the CC (Articles 409-417). Only property owners can create mortgages, and these must be formalized through a public deed with a notary public and registered with the Real Estate Registry.

Other forms of financing involving real estate assets are trusts and escrows, by which a property is temporarily registered under a trustee or escrow agent, as a guarantee for a debt incurred by owner.

Finally, it is also somewhat common for development projects or other larger commercial or office parks to be developed under the administration of a real estate investment fund, but these transactions are more complicated since these funds are regulated.

Lease of assets and lease of business

Leases in Costa Rica are mainly governed by the Urban and Suburban Leases General Act (LA), which is a public order law and generally applies to both residential and commercial leases.

The LA expressly provides for mandatory minimum legal requirements that lease agreements must comply with such as minimum term and price updates in residential leases, as well as rules of interpretation in case of lack of clarity in the document.

Leases may be registered with the Real Estate Registry, but this is not a common practice, and landlords usually prefer to have private lease contracts.

Administrative permits applicable to construction or restructuring of assets

Before any construction and/or commercial exploitation of a real estate asset, certain administrative permits are required, depending on applicable municipal zoning regulations, and building codes.

Costa Rica is politically and geographically divided into provinces, and each province is divided into counties. Each county is managed and administered by a local government (municipality). Municipalities are responsible for issuing construction permits, use of land permits and operation permits. The Ministry of Health is in charge of issuing the health permit, which is required for any commercial activity. Finally, depending on the size of construction/project and its potential environmental impacts, special permits, including, but not limited to environmental impact studies and feasibility analysis, may be required from other government agencies.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

Costa Rica is recognized worldwide for its focus on environmental protection and conservation, and is considered a leader in the protection of forests and the promotion of renewable energy. The ESG approach is also aligned with Costa Rican values and culture, as the country has a strong tradition of democracy, equality, and respect for human rights.

Tourism is one of the main industries in Costa Rica and is highly dependent on the country's image and reputation as an environmentally friendly destination and sustainability.

The right to a healthy environment is recognized as a human right, protected as such by the Constitution and a number of international treaties and conventions fully adopted by Costa Rica. As such, internal laws and regulations aim to protect the environment and to condition real estate projects to minimum requirements that must be met in order to obtain applicable permits.

Some of these laws and regulations are:

- Constitution: Recognizes the government's liability to ensure the greatest well-being for all its inhabitants, including the right to a healthy and ecologically balanced environment. It also encourages reporting acts that may violate this right, demanding the repair of any damage caused.
- Wildlife Conservation Act: Considers wildlife (biodiversity) and other natural resources to be part of

the public domain and the country's national heritage. It demands the government to make substantive efforts for its protection and the regulation of its exploitation.

- Environment Act: Provides for the necessary legal instruments and tools to achieve a healthy and ecologically balanced environment, in accordance with the Constitution.
- Forest Act: Establishes the government's liability in the conservation, protection and administration of forests and their resources.
- Biodiversity Act: It underlines the importance of making efforts to conserve biodiversity and the sustainable use of resources, and the need of a fair distribution of the benefits and costs derived from these uses. Formalizes preventive, precautionary, and public interest environmental criteria, recognizing the importance of anticipating, preventing, and attacking the possible causes of biodiversity loss.
- Water Act: Establishes that all bodies of water (lakes, seas, rivers, underground deposits, etc.) are public domain and national property, not to be owned privately.

Direct taxes applicable to sales

Direct taxes applicable to the sale of real estate are:

- Real estate transfer tax: Which is 1.5% percent of the real value of the transfer (which in practice is the highest value between the price agreed by the parties and the property value registered in the respective municipality). This tax must be filed and paid within one month after the execution of the transaction and is usually paid by the buyer, even though the law provides that it must be paid proportionally by the seller and the buyer.
- Capital gains tax: Basically, taxes the profit earned by the seller as a result of the transfer of a real estate asset, it generally is 15% on the difference between the historical cost of the asset and the transfer/sales price, except for certain specific cases depending on the original acquisition date of the asset by the seller or the use given to the property. The tax must be filed and paid within the first 15 days of the month following the execution of the transaction. It is important to mention that, if the asset being transferred was used by the seller in its productive/commercial activity, this income will be treated under the rules applicable to income tax and not under capital gains rates.
- Withholding tax: This is only applicable if a non-resident sells property located in Costa Rica to a local buyer subject to income tax filings, the buyer is required to withhold 2.5% of the transaction price.
- Stamp taxes and registration expenses: As mentioned above, all public deeds by which real estate rights are created, transferred, modified, must be registered with the Real Estate Registry. In order to do so, certain stamp taxes (such as National Registry Tax, Bar Association tax, municipal tax, etc.), must be paid, and the amounts will depend on the transaction price and location of the asset.

Latest developments in Costa Rica, and areas to focus on in the future:

- Real estate projects in coastal areas have been an important driving force in terms of growth and investment. High-end and luxury residential and hotel complexes aimed at individuals with a high acquisition power have historically been located in the province of Guanacaste, in the northwestern Pacific coast of Costa Rica. However, in the last few years, there has also been a boom in the southern Caribbean coast.
- In the past decade, the arrival of well-known and popular apps for short- and long-term rentals has become a new source of income for individuals and companies in the rental business.
- Residential towers and condominiums, as well as residential complexes, have become the first choice for the younger generations in terms of housing.
- Multinational companies looking to set up manufacturing facilities in Costa Rica, in order to benefit from its special regimes such as the free zone regime, have also been an important driver in the development of real estate in different areas of the country, especially around the main airport.

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Real Estate Law in Croatia

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Zrinka is a lawyer with more than 17 years of legal experience. She initially joined the Deloitte Legal team in 2014 after more than seven years spent in two eminent law firms where she advised clients on employment, M&A, regulatory and life science issues. Between 2019 and 2023 she acted as general counsel for a large Croatian hospitality company. She rejoined Deloitte Legal in 2023.

Zrinka provides top-level day-to-day legal support and advises foreign and domestic companies on all aspects of their business, including compliance matters, distribution and agency contracts, anti-trust questions. Zrinka has worked on numerous M&A deals where she has worked on due diligence processes and advised client on all aspects of the completion of transaction. Furthermore, her extensive experience in business has provided her with comprehensive expertise in all aspects of employment law. Zrinka is fluent in English and German.

Overview of the Croatian Legal System

General introduction to the main laws that govern the acquisition of assets in Croatia – real estate rights

The main act governing property title in Croatia is the Act on Ownership and Other Real Rights (Ownership Act). It defines the right of ownership and other real estate related rights (such as servitudes, real burdens, the right to build liens), restrictions and termination of ownership, acquisition, protection, and termination of ownership, as well as of other rights in rem. This act introduced a novelty into the Croatian real estate system in 1997 - the principle superficies solo cedit, i.e., that the plot of land and everything permanently attached to it (either on the surface or beneath it) forms one real estate. There are some practical exceptions to this rule, specifically, a building built based on a right to build (in Croatian: pravo građenja) or a concession right is considered to be separate from the land on which it is built for as long as such right to build or concession exists.

Apart from the above, the (i) Land Registration Act primarily governs the title registration procedure and registration of other rights (mortgages, servitudes, right to build, etc.), (ii) the Civil Obligation Act regulates lease agreements in general, while (iii) the Lease and Sale of Business Premises Act is the primary source of legislation for commercial leases as well as for lease and sales of business premises owned by the Republic of Croatia.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Real estate transactions are commonly structured as share and asset purchase deals, mostly depending on the tax treatment and specific circumstances of each transaction. Real estate is also often converted into a company's share capital, i.e., the owners of the real estate may trade their ownership of the real estate for a portion of company's shareholding structure.

The general rule regarding ownership over real estate is that its owner is authorized to use the real estate (and all benefits arising thereof) as the owner deems fit and to exclude any other person from it unless it is contrary to the other person's rights or limitations imposed by law. However, all owners are bound by the duty of care while exercising their ownership rights and are not allowed to exercise their ownership rights with the sole purpose of damaging others.

Additionally, the owners of real estate are limited as follows:

- No owner may prevent a third party's acts on such a height or depth of its real estate, where the owner has no reasonable interest to exclude such undertakings;
- Certain types of real estate that are generally exempt from private ownership (the so-called common things, e.g., air, water in rivers, lakes, sea, and maritime domain as defined by the respective law) and cannot be an object of the ownership right;
- Owners of certain types of land (identified as goods of interest for the Republic of Croatia) can be limited in their ownership rights by corresponding regulations, e.g., owners of agricultural land, cultural goods, or forests;
- When it is necessary for the construction of buildings or works in the interest of the Republic of Croatia, a real estate may be entirely (taking away title over real estate from its owner) or partially (imposing servitudes or lease over real estate) expropriated; and
- Foreign natural persons and legal entities (not being citizens of the European Union (EU) or entities from the EU) may acquire ownership of real estate in Croatia under the condition of reciprocity, subject to obtaining prior approval of the Croatian Minister of Justice. In terms of the latter, citizens of the EU and EU legal entities are considered as equal to Croatian citizens.

Real estate registry system

Croatian properties are registered dually, both in (i) the cadastral registry, and (ii) the land registry.

The cadastral registry, under the jurisdiction of the State Geodetic Administration, is a land plot registry containing data about the surface area, buildings and other monuments that are built on or under the plot, information on the special legal status of the plot (if any), and the data about possessors of the registered plots.
The land registry, held by the local municipal courts, is the registry of the land plots and their legal status. As for the timing of the acquisition of real estate, (i) the title over real estate acquired in a transaction is confirmed (i.e., legally effective) only once it is registered in the competent land registry, whereas (ii) in case the real estate is acquired based on a decision of a court or some other authority, the transfer of title is effective from the day the decision became legally valid and binding (in Croatian: pravomoćna). Land registries are publicly available and the only relevant source of information on the legal status of a real estate, meaning that if the data from the land registry are not aligned with the data from the cadastral registry, data from the land registry will be considered relevant.

Notary role in the real estate transactions

According to the Land Registry Act, registration in the land registry may only be permitted based on a public deed or a private deed, including a notarized signature of the transferor. This is subject to certain exceptions when the law requires the registration to be made based on a notarial deed (e.g., disposal of real estate owned by a minor, in case the transaction is entered by a deaf person who cannot read, or mute person who cannot write, or if the real estate is given as a gift but the possession is not transferred simultaneously).

If a transaction is made via a proxy authorized by a power of attorney (either on the side of the transferor or the acquirer), the signature on such a power of attorney also needs to be notarized.

Notaries will also notarize the owner's signature on a mortgage agreement, or even certify the whole agreement if it contains an enforcement clause which enables the creditor to go directly into an enforcement procedure in case of breach by the debtor. The same goes for the power of attorney if the mortgage agreement is concluded though a proxy. If there is no such clause in the agreement and the debtor is disputing the payment due, the creditor will have to go through the civil proceedings prior to being able to enforce over the real estate to settle its receivable.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

Regarding the general legal responsibility of sellers towards buyers, the main principles are specified in the Obligations Act — the duty of cooperation, duty to act in good faith and prohibition to cause damages. The seller is also liable to the buyer for the material and legal defects of the real estate as in any other sale and purchase transaction.

Historically, it was not customary to have any specific representations and warranties in real estate purchase agreements, presumably as the seller is always liable for legal and material defects under the law, so that the parties relied on that liability. The practice is still followed for the sale and purchase of apartments where it is quite rare to see any provisions regarding the seller's liability other than general liability under the law.

Contrary to the above, commercial real estate transactions now usually include a set of more or less extensive representations and warranties (e.g., warranties on the sellers' authority to enter into the subject transactions, no pending litigation, no environmental contamination etc.). This is triggered by the need to regulate the contractual relationship in a clear and straightforward way considering that if the purchaser is aware of any defect, the seller should not be liable for it unless it specifically warrants for such a defect. In other words, unless the seller specifies it as a warrantee, and claims that the buyer knew about the defect through due diligence, the seller can be released from liability. Moreover, if there are representations and warranties, it is easier to prove which features of real estate are expressly agreed between the parties, thus triggering the seller's liability under the law which could, in the absence of such provisions, be left for interpretation by the court.

Mortgages and other usual guarantees adopted in financing assets

Under Croatian law, a mortgage is constituted by its registration in the competent land registry. The mortgage may be included in the loan agreement or executed as a separate agreement. In addition, the mortgage agreement usually contains an enforceability clause which enables the mortgage lender to initiate enforcement procedure before a competent court without having to obtain a judgement beforehand in separate judicial proceedings.
Another common form of a guarantee is a debenture bond, a private document of a debtor certified by a notary public by which the debtor gives permission to the creditor to collect the amount owed in case of non-fulfillment of obligations from the contractual relationship provided by the debenture bond. As such, the debenture bond is an enforceable document, meaning the creditor can directly submit the debenture bond to the Croatian Financial Agency for collection purposes.

Lease of assets and lease of business

The general act regulating lease agreements is the Civil Obligations Act, while there are several regulations governing lease agreements for special types of items (e.g., agricultural land, business premises, ships).

The primary act regulating business premises is the Lease and Sale of Business Premises Act. The definition of business premises includes business buildings, business rooms, garages, and garage (parking) spaces. To be valid, a lease agreement should be concluded in writing. If the business premises are under the ownership of the Republic of Croatia (or its local/municipal government), it is leased through a public tender.

Croatian lease-related law is neutral between landlords and tenants, and the majority of the provisions are of discretionary nature, meaning that the parties are free to regulate them in any other permitted manner. Therefore, the commercial leases are quite elaborated and deal in detail with handover of premises, obligations of the parties, maintenance, prolongation, termination, etc.

Administrative permits applicable to construction or restructuring of assets

The main laws governing zoning and construction are the Building Act, Zoning Act, and Illegal Buildings Act. The Building Act regulates the design, construction, use and maintenance of buildings, implementation of administrative and other procedures in connection with

environmental protection, and energy efficiency and zoning, and sets out the main conditions for buildings and the competences of the state and local authorities, administrative, and inspection supervision. The Zoning Act regulates zoning plans (adoption and implementations), formation of building plots, and supervision, while the Illegal Buildings Act regulates the legalization of illegally constructed buildings.

The following permits are required for the use of real estate: (i) location permit — required only for certain types of buildings and/or in certain situations (e.g., exploitation fields, mining objects and constructions, when the ownership status is not resolved); (ii) building permit; (iii) use permit; and (iv) minimal technical conditions (e.g., for hospitality, commerce, and tourism).

For a building in Croatia to be considered legally built, it should have a legally valid building permit and a use permit confirming that the construction was done in line with the corresponding building permit. Conversely, an illegally built building is one built fully or partially (e.g., by dimensions in excess of those stated in the building permit issued by the public authority) without an adequate building permit or without a use permit. Additionally, for simple buildings and works, such as fencing, swimming pools, tanks, tracks, solar collectors, small agricultural buildings etc., it is not necessary to obtain a building permit, but construction may begin on the basis of the main project, the standard design, or another act prescribed by the rulebook.

Environmental and energy – ESG rules and status of implementation

An investor is obligated to ensure that a new building obtains an energy certificate prior to putting it into use. The same obligation is imposed on the owners of used apartments or buildings, who are obligated to provide such a certificate when entering into a sale and purchase or lease agreement.

However, there are exceptions to this obligation, e.g., an energy certificate is not needed for a building used for the performance of religious ceremonies or religious activities, a temporary building with a usage period of two years or less, an industrial facility, a workshop, and a non-residential agricultural building with low energy needs, a residential building that is used for less than four months a year, and a freestanding building with a total usable area of less than 50 square meters.
Certification must be done by a person with adequate license and the real estate should be classified according to the energy classes set by the Regulation on Energy Inspection and Energy Certification. The owner should provide the certificate with all technical documentation, prior certificates, and evidence of maintenance of equipment and data on quantities of utilities used. In view of that, utility providers are obligated to give data to the owner within 30 days from the day the request is made. In practice, the data is usually supplied within a couple of days.

Direct taxes applicable to sales

Supply of real estate in Croatia is subject to either value added tax (VAT) or real estate transfer tax (RETT). The applicable tax depends on the terms of the transaction, the seller's and purchaser's VAT status, and the features of the real estate concerned. If the seller of the real estate is not a VAT payer, RETT at 3% rate is applicable on the transaction, irrespective of other criteria. RETT is payable by the buyer and calculated on the market price at the time of sale. As an exception, RETT is not due on certain transfers of ownership specified in RETT legislation (e.g., transfer of real estate as part of the statutory change recorded in the court register, such as mergers, acquisitions, demergers, etc.), also RETT is not payable when real estate is transferred to the share capital of a company.

Currently, RETT is undergoing legislative reform. However, we do not have specific information or details about the changes, as they have not yet been implemented in our legal framework.

If the seller is a VAT payer, VAT is paid on the supply of (i) building land, (ii) a building or its parts and land on which it stands, provided that the time from the first ever occupancy until the next supply is less than two years, and (iii) reconstructed buildings if the reconstruction costs in the two years prior to delivery exceed 50% of the sale price. VAT exemption applies to (i) supplies concerning any land, apart from the building land, and (ii) buildings (or their parts) and land they stand on, provided they have been

used for longer than two years. In that case, RETT is due by the purchaser, unless the option to tax (by VAT) the supply which is normally VAT exempt is exercised at the moment of sale. This option is available to the seller of the real estate, provided that the buyer is a taxpayer with the right to fully deduct input tax incurred in relation to the purchase of the real estate concerned.

In accordance with the provision of the RETT legislation, any transfer of property must be reported to the tax authorities. Should the transfer involve a public notary (by way of solemnization of the agreement of drafting a public notary act), the notary is required to report each document that relates to such a transfer to the competent authorities (based on the location of the property) within 30 days. Courts and other public bodies are required to deliver their decisions concerning the transfer of the property to the competent tax authorities within 15 days, following the end of the month in which the decision became final. Irrespective of this, the VAT payer still needs to duly report the transaction in their VAT return.

If the document concerning the transfer of a real estate has not been notarized or issued by a court or other public body, the taxpayer (buyer or seller, depending on the VAT/RETT treatment applied) is obliged to report the transfer to the competent branch office of the tax administration within 30 days.

If the seller is a private individual, personal income tax implications should also be considered. The disposal of real estate is subject to property income tax when the seller is a private individual who has disposed of (i) real estate within two years from the acquisition date and/or (ii) more than three pieces of real estate or property rights of the same type (e.g., more than three apartments, plots of land, rights to use, etc.) during a five-year period. The five-year period is calculated from the disposal date of the first real estate or property right. The personal income tax legislation, however, envisages some exceptions from the taxation of disposal of real estate (e.g., disposal of real estate that the individual used for living purposes). The taxpayer is a private individual who disposed of the real estate. The tax is charged at 24% on the tax base that is the difference between sales price (i.e., market value) and purchase (acquisition) price, increased for the growth of prices of industrial products.

Investment activity is stable in Croatia:

Investment market overview

- The total investment transaction volume of commercial real estate in 2023 was approximately €500 million (US$550 million), showing a year-on-year growth of around 25%. In the first half of 2024, the deal volume amounted to around €120 million (US$130 million). However, transaction volumes have not fully reflected the level of demand due to limited supply.
- The highest transaction activity was observed along the Croatian coast and in Zagreb. The hotel and office sectors were the primary focus for investors, with hotel transactions concentrated on the coast and office transactions mostly in Zagreb. In the retail sector, resilient assets like big-box stores and retail parks attracted the most attention. Across all sectors, properties with blue-chip tenants, indexation clauses, and long lease agreements (WAULTs) were the most sought-after.
- New regulations have enabled Croatian pension funds to increase their share of alternative investments and invest directly in real estate. This indicates that the market is entering a more mature phase, attracting more professional players, and offering greater liquidity.
- Among the most active local and regional investors in the last few years were ALFI fund, Trigal, and HOK Insurance. Large global players are also eyeing the region, but they are not as active due to a lack of large enough opportunities (€100+ million transactions or, in the hotel sector, a minimum of 100-200 keys per hotel).
- Sale and leaseback transactions are gaining momentum as an alternative financing method. These transactions provide liquidity to the sellers and, on the other hand, offer buyers stable, predictable, long-term cash flows and the potential for capital appreciation.
- The ongoing emphasis on ESG criteria and ratings continues, driven not only by regulatory compliance but also by increasing tenant demand. Furthermore, this focus offers the potential for reduced long-term operational expenses for assets.

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Real Estate Law in Cyprus

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Gaston regularly advises on immovable property and real estate matters, including negotiation, drafting, and finalizing sale and purchase agreements for residential and commercial properties, lease and sub-lease agreements, construction agreements and licensing agreements.

He holds an LLB from Kings College London. He was called to the Bar of England and Wales by the Honorary Society of the Middle Temple.

Gaston is a member of the Cyprus Bar Association, a member of the Cyprus Sport Supreme Judicial Committee, a member of the Advocates Ethics Committee of the Cyprus Bar Association, a certified trainer for seminars and has also been recently appointed by the President of Cyprus as the president of the Cyprus Symphony Orchestra Foundation.

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Andreas has substantial experience in advising on all aspects of real estate transactions. He regularly advises clients who invest in commercial development projects secured by mortgage and advises on the formulation of legal procedures in the context of sale transactions by developers and their clients.

Andreas holds a BSc in business management and an LLM from Kings College London. He also holds a conversion diploma in law for non-law graduates from City University London.

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Rania is a member of the Cyprus Bar Association, secretary of the Trusts Committee of the Cyprus Bar Association, a member of the Society of Trust and Estate Practitioners (Cyprus branch) and board member of STEP Cyprus branch, a certified person for provision of investment advice, a registered mediator and a certified trainer for seminars.

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Georgia is a member of the Cyprus Bar Association.

Overview of the Cypriot Legal System

General introduction to the main laws that govern the acquisition of assets in Cyprus – real estate rights

Legal title to immovable ownership in Cyprus requires the registration of the immovable title in the name of the owner with the Department of Lands and Surveys (DLS or Land Registry).

The Cypriot Land Registry was established in 1858 and is considered as the oldest department of the civil service and one of the most structured land registration systems in Europe.

Its operation is regulated by a number of statutes including the following:

- The Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 (Cap.224), which regulates, inter alia, ownership to immovable property and related rights, and matters pertaining to jointly owned buildings;
- The Immovable Property (Transfer and Mortgage) Law 9/1965 (Transfer and Mortgages Law) which regulates, inter alia, registration of mortgages and statutory requirements pertaining to transfer of mortgaged properties; and
- The Sale of Immovable Property (Specific Performance Law) No. 81(I)/2011 (Specific Performance Law) which was introduced with a view to protecting the rights of buyers over the immovable property by creating an encumbrance in favor of the buyer until the latter is officially registered in the records of the Land Registry as the owner of the property.

In addition to the requirements specified in the laws above, contracts whose subject matter is immovable property must comply with the respective provisions of contract law, under the Contracts Law, Cap. 149 (Contracts Law) and the legislation on stamp duty (Stamp Duty Law), including the following:

- They must be in writing and filed with the Land Registry within six months from their execution; and
- They must be stamped in accordance with the Stamp Duty Law. Stamp duty is calculated granularly by reference to the value of the subject matter with a cap at €20,000.

The validity of an agreement whose subject matter is immovable property or rights to immovable property is not affected by the failure to pay stamp duty. However, the agreement will not be considered as authentic and will not be accepted for filing with the Land Registry nor as evidence in court.

Stamp duty must be paid within 30 days from the day the agreement is executed or at any stage thereafter provided that penalty is also paid for the period of the delay.

Stamp duty is paid by the buyer unless the parties contractually agree otherwise.

The seller under a transaction whose subject matter is immovable property must also comply with applicable tax legislation which includes settling any capital gains and all immovable property taxes and utilities up to the date of the agreement. In the absence of such settlement the Land Registry will refuse to effect the change of legal ownership in its records.

Note: The above does not refer to any law applicable to the construction, erection, and development of buildings.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Acquisition structure usually applied in real estate transactions

The structure of acquisition of real estate will typically depend on the intended use of the real estate and its type (plot/house/building–and if it is new or used).

Residential properties acquired directly from developers tend to be registered in the name of the individual/individuals. This is due to a number of reasons dictated primarily by financial benefits including:

- VAT considerations – new properties are typically subject to VAT payable by the seller. When VAT is paid, the buyer is not required to pay transfer fees for registering the real estate in their name with the Land Registry; and
- Tax deductions from capital gains tax.

Properties that are acquired for investment or for passive income will typically be acquired through a special purpose vehicle (SPV). This is again due to financial reasons, including the fact that tax is paid at the level of the SPV currently at a percentage of 12.5%.

Other structures, where the primary purpose of which is succession planning and/or wealth management, are also popular. Under such structures the legal title of the real estate is held by the trustee of a trust*.

*A trust is a pool of assets. The most common type of trust is the express trust established with the transfer of assets from a person called the settlor to another called the trustee. The trustee administers and manages the assets for the benefit of specified persons, classes of persons, purposes, or objects. Trustee services are regulated in Cyprus with few exemptions applicable to family trusts.

Note: Acquisition structures should always be considered from a tax and vat perspective in all relevant jurisdictions.

Restrictions imposed on non-EU nationals in real estate acquisitions

Third country nationals can acquire immovable property in two ways: either personally or through another vehicle, typically a Cypriot company or a company registered and existing in a country of the European Economic Area (EEA) (noting that references to third country nationals do not include EU nationals or individuals who are eligible to acquire Cypriot citizenship by reason of their years of stay in Cyprus (or by any other means)).

A third country national wishing to personally own property in Cyprus must acquire a permit from the Council of Ministers (a power now vested in the District Administration Offices), under the Aliens Law, Cap.109 (Aliens Law).

The permit does not allow for the acquisition of an indefinite number of properties. It restricts the acquisition to up to two units (indicatively two housing units, a housing unit, and a shop up to 100 square meters, a residential unit and an office up to 250 square meters, a plot of land up to 4,000 square meters if it is intended for the construction of a private residence).

The procedure is straightforward and requires among others the filing of information on the applicant (and their spouse, if any), proof of financial standing and the details of the property and is typically completed within one month.

The absence of a permit does not prevent the purchaser to sign and enter into a sale and purchase agreement. The third party national may deposit the sale and purchase agreement with the Land Registry, thereby securing their rights over the property but will not be able to have the property registered in their name (and obtain title in their name) until the permit is secured and filed together with the transfer of title request.

The permit requirement does not apply where the buyer is a Cypriot company or a company incorporated in an EEA jurisdiction provided that its registered office, central management, or main establishment is in Cyprus or within the European Union or in a country member of the EEA respectively.

Notary role in the real estate transactions

Cypriot jurisdiction is unfamiliar with the concept of notaries.

Under Cypriot law, the Minister of Internal Affairs appoints certifying officers. Certifying officers are employees of the state who certify the identity or the authenticity of the signatures and/or stamps placed on documents.

Unlike notaries, certifying officers do not have power or authority to make statements or certifications concerning the content of a document and/or the capacity or rights of representation of the person signing a certain document. Their duties are strictly limited to the certification of the authenticity of the identity of the person signing and the signatures/stamps placed on the documents.

There is no statutory requirement that the signature on any document should be certified by a certifying officer. However, in practice, certifying officers are indispensable for real estate transactions due to the practices of the Land Registry.

Other than sale and purchase agreements, it is the practice of the Land Registry to only accept the filing of documents whereby the signatures on which have been certified. Such documents include:

- Assignment agreements;
- Certain Land Registry forms; and
- Powers of attorney.

If, however, the documents in question are executed before an officer of the Land Registry no such requirements exist.

Real estate registry system

The real estate system is regulated by the DLS/Land Registry, which operates under the Ministry of Interior of Cyprus, and it is divided in the following 11 sectors:

- The Administration Sector;
- The Registration Sector;
- The Tenure Sector;
- The Management of Government Lands Sector;
- The Valuation Sector;
- The Survey Sector;
- The Cartography Sector;
- The Geodesy/Hydrography/Photogrammetry Sector;
- The CILIS Administration and Support Sector;
- The Operational and Legal Transformation Sector; and
- The Land Consolidation Sector.

Each district in Cyprus, has a district lands office which is responsible for applying the different regulations, laws, and practice of the DLS across Cyprus.

Every parcel of land is registered with the DLS and is assigned a different registration number.

The DLS being the main body and main source of information for all Cypriot land, all transfers and sales of immovable properties and all rights and/or encumbrances such as mortgages, easements etc., must be registered with DLS in order for them to be valid.

The DLS issues title deeds for each immovable property owner setting out the details of the registered owner and the details of the property, such as registration number, location, existence of any rights or encumbrances etc.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

The conclusion of a sale and purchase agreement can be distinguished into three main stages:

- The pre-contractual stage;
- The execution stage; and
- The post-execution stage.

At pre-contractual stage the seller does not have any legal responsibilities. It is the buyer's responsibility to assess whether the potential subject matter of the contract is to their satisfaction by carrying out the relevant due diligence. At this stage, the seller's only obligation is to provide true and accurate information as and to the extent requested to do so by the buyer.

At execution stage, the seller and the buyer sign the sale and purchase agreement. The seller will typically accept to perform obligations which they are already bound to perform under statute and any other commercial obligations agreed with the buyer.

Statutory obligations include:

- The payment of any VAT;
- The settlement of all required taxes, duties and utilities concerning the property, including obtaining a tax clearance certificate confirming settlement of all taxes due.
- The tax clearance certificate is a certificate that requires to be filed with the Land Registry together with the necessary forms for the transfer of the property;
- If the property is mortgaged or is burdened by any other encumbrances, the Land Registry will require the filing of a buyer consent form confirming that the buyer accepts to purchase the property subject to the mortgage or necessary confirmations from existing mortgagee(s) accepting the subordination of their interest in favor of the buyer. Alternatively, if the buyer is not willing to accept the land with the encumbrances, it will need to arrange for the beneficiaries of such encumbrances to agree to discharge or lift those encumbrances; and
- The filing of necessary forms prescribed by the Specific Performance Law including a land registry search not older than five days from the date of the sale agreement - the latter must be annexed to the sale and purchase agreement.
- In addition to the above statutory obligations, the contract will typically include commercial terms reflecting the arrangement of the parties. These include:
  Terms concerning delivery of the property;
- Terms concerning transfer of the title to the property and issuance of the title deed in the name of the buyer;
- Representations concerning the state of the property;
- Representations concerning the good standing of the seller and its financial standing (which will typically be reciprocal with the buyers'); and
- Representations concerning the power and authority of the seller to enter into, be bound and perform the terms of the contract.

Mortgages and other usual guarantees adopted in financing assets

From a developer's perspective, a common way to secure finance is a loan secured by a mortgage from an authorized credit institution (bank).

From a buyer's point of view, securing financing for residential properties is typically done through a loan secured by mortgage. If there is no separate title for the property, certain commercial banks are willing to accept the assignment of the rights deriving from the sale and purchase agreement provided that both the sale and purchase agreement and the assignment agreement are deposited with the Land Registry under the Specific Performance Law.

To secure their mortgage's priority, a lender must register their mortgage with the Land Registry. Registration ensures that the mortgage takes priority over later encumbrances created over the property in the event of the mortgagor's bankruptcy/insolvency. In the absence of registration, a mortgagee will be considered, in the event of the mortgagor's bankruptcy or insolvency, an unsecured creditor.

It is noted that the absence of registration does not affect the validity of the security document from a contractual perspective.

In addition to the obligation to register the mortgage with the Land Registry, Cypriot companies must also notify the Registrar of Companies of any mortgages or encumbrances they create over immovable property (no matter its location, in Cyprus or abroad). Failure to register has the same consequences as the failure to register with the Land Registry, including a fine against the company and its directors.

A mortgage created by a Cypriot company may be registered by any interested party, should this be necessary or if the Cypriot company fails to do so for whatever reason.

Other than secured loans, companies may also secure financing by:

- Pledging shares;
- Providing security by means of assignment (indicatively if they receive passive income such as rent);
- Having funds in their accounts frozen by the bank providing the financing;
- Their parent entities providing guarantees to the financier;
- Assigning their rights over investment portfolio and other assets in favor of the financier; and
- Creating charges over movable property.

Lease of assets and lease of business

A lease agreement is understood in this context as a lease in relation to real estate.

Leases are categorized as short leases and long leases depending on their duration.

Long leases are defined as leases the duration of which exceeds 15 years. Long leases may be registered with the Land Registry in which case the interests of the lessee over the leased property are recognized as proprietary (not merely contractual) rights. As a result of this, the lessee may exploit their interest through transfer or mortgage.

Lease agreements whose duration exceeds one year must comply with certain formalities in order to be considered as valid. These formalities are set out in the Contracts Law as follows:

- They must be in writing;
- They must be signed at the end by every person who is bound by them (or their authorized representatives); and
- The parties to them must sign in the presence of at least two witnesses who also place their respective signatures.

As with all contracts, lease agreements and any agreements concerning renewal or revision of such agreements are subject to stamp duty. The obligation for arranging stamp duty is on the lessee unless the parties agree otherwise.

Failure to stamp the agreements does not affect their validity, although such agreement will not be considered as authentic (see question 1 on the consequences of the failure to stamp).

Administrative permits applicable to construction or restructuring of assets

A development project requires a number of permits, the most important of which are the town permit and the building permit. Such permits are issued by reference and in accordance with the Town and Country Planning Law and the Streets and Buildings Law. These two statutes regulate most matters relating to securing necessary permits for the development of immovable property, including creation of roads, certificates of final approval in relation to buildings etc.

In addition to the main provisions of the law, secondary legislation in the form of regulations and delegating acts have been issued in this respect.

Other than the above regulations, there are also a number of other statutes regulating constructions sides, health and safety at construction sites, liability issues etc. Indicatively we mention the Registration and Control of Building and Civil Engineering Law.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

Cyprus has transposed into national law Directive 2011/92/EU (as amended in 2014) on the assessment of the effects of certain public and private projects on the environment. The transposing law is the Environmental Impact Assessment of Certain Works Law of 2018 (Law 127(I)/2018). Under the said law an environmental impact assessment (screening procedure) is required to be filed for certain projects which are likely to have significant effects on the environment and scoping needs to take place in relation to others.

Other relevant European legislation that has been transposed into national law includes Directive 2010/31/EC on the energy performance of buildings, which was

transposed into national law under the Energy performance of buildings Law 2006 as amended by Amending Law 155(I)/2020.

Direct taxes applicable to sales

Stamp duty

All sale and purchase agreements must be stamped in accordance with Stamp Duty Law.

Although failure to stamp does not affect the validity of the sale and purchase agreement, the Land Registry does not accept the filing of sale and purchase agreements that are not stamped and neither do the courts in case of any dispute.

Stamp duty is calculated granularly by reference to the purchase price with a cap at €20,000:

- For purchase prices from €1 to €5,000, the stamp duty payable is €0;
- For purchase prices from €5,001 to €170,000, the stamp duty payable for every €1,000 or part of €1,000 is €1.50; and
- For purchase prices exceeding €170,000, the stamp duty payable for every €1,000 or part of the €1,000 is €2 with a cap at €20,000.

The obligation to pay stamp duty is on the purchaser unless agreed differently between the parties. Stamp duty must be paid within 30 days of the signing of the agreement otherwise penalty is applied.

Taxes and VAT

Before any transfer is effected at the Land Registry, the seller must pay and settle in full the capital gains tax (20% of the profit made by the sale), all taxes concerning immovable property and all utility dues such as water, electricity, sewage etc.

The seller is also under a duty to pay a contribution tax called "Central agency for equal distribution of burdens contribution". The contribution is calculated as 0.4% of the purchase price of the property.

There may also be VAT considerations in the event where the property is new.

Transfer fees

Transfer fees apply when VAT is not payable, typically when the property is not new.

The amount of transfer fees is calculated by reference to the purchase price as set out below unless where the transfer occurs between relatives up to third degree of kinship or between spouses.

- For every euro up to €85,000: 3%
- For every euro exceeding €85,000 but not exceeding €170,000: 5%
- For every euro exceeding €170,000: 8%
- At the moment, transfer fees are discounted by 50%.

Latest developments in Cyprus, and areas to focus on in the future:

Enclaved buyers' provisions found unconstitutional

In 2015, the House of Representatives enacted the Immovable Property (Transfer and Mortgage) (Amendment) Law 139(I)/2015 (Amending Law). The intention of the Amending Law was to assist enclaved buyers (as defined below) secure title deed for the immovable properties they purchased (and paid or have been paying in accordance with their sale contract) where the seller (typically a developer) was unable and/or neglected and/or failed to do so due to an inability to settle and release the immovable property from a prior encumbrance, mortgage or prohibition (either because the seller was in financial difficulty or went insolvent).

Under the Amending Law, the director of the Land Registry may, either at their own initiative or following an application by the enclaved buyer, the seller, the mortgagor, the mortgagee, or any later assignees of any of these persons transfer the immovable property to the enclaved buyer provided that the enclaved buyer paid the full purchase price and there is a tile deed for the immovable property.

The Amending Law provided for the procedure to be followed and defined enclaved buyers as buyers who fulfilled the following criteria:

- They deposited the contract of sale with the Land Registry by 31 December 2014 in accordance with the prescribed procedure or have secured a court order to this effect by 31 December 2022 or filed a court application requesting permission to deposit their contract of sale with the Land Registry between 21 July 2023 and 31 December 2024;
- They complied with their obligations under the contract of sale (including the obligation to pay the full purchase price to the seller); and
- The seller is unable and/or neglects and/or fails to transfer the property in the name of the buyer due to the property (or part of it) being subject to an encumbrance/mortgage/prohibition.

On 20 June 2024 the Supreme Court of Cyprus declared the enclaved buyers' provisions unconstitutional. The decision does not affect applications that were processed and concluded up to the issuance of the decision. However, applications that were filed, under examination or not finally determined will not be processed further.

The enclaved buyers' matter is considered as a major sociopolitical issue. It is expected that the government will issue a new bill in another attempt to address this matter.

Hotels in check: All hotels to secure a hotel license by 31 December 2025

The Deputy Ministry of Tourism is the responsible ministry for the processing of the hotel licenses in Cyprus pursuant to the Law for the Regulation, Establishment and Operation of Hotels and Touristic Premises

(Hotel Operations Law). Under the Hotel Operations Law the person who operates a hotel (or intends to operate a hotel) must secure a hotel license by 31 December 2024.
A grace period was granted until 1 January 2026 for all hotels to secure the appropriate license. To make use of this grace period, hotels that do not satisfy all requirements for the issuance of a hotel license must by 31 December 2024 file an application together with the necessary documentation. The Deputy Ministry of Tourism, will, upon submission of the necessary documentation issue a letter confirming that they may continue to operate until 31 July 2025, without having secured the hotel license.
The persons securing the aforementioned exemption must, by 31 July 2025, secure the necessary documentations and certificates, other than the building permits to be allowed to operate until 31 December 2025. The permission to continue operating until 31 December 2025 is granted on the understanding that the necessary building permits (being the final requirement for the issuance of the hotel license) will be issued in relation to the hotel (as built) not later than 31 December 2025.
Hotels that do not have a valid hotel license on 1 January 2026 will not be allowed to operate.

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Real Estate Law in Czech Republic

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Overview of the Czech Legal System

General introduction to main laws that govern acquisition of assets in the Czech Republic - real estate rights

There is a complex legal system of maintaining real estate property in the Czech Republic. The Czech legal system is divided into two main subsystems–public law and private law–which are independent of one another. The application of private law is independent of the application of public law and vice versa.

Public law determines public regulation regarding the preparation and realization of construction, respectively permitting procedures and stipulation of use for construction, while private law modifies relationships among private individuals concerning property rights and the preparation and realization of construction. Private law is the governing law for determining real estate transactions.

Private law aspects regarding the realization of construction

As a result of Czech private law recodification, the Czech Civil Code[2] (CC) has been in force for its first decade, replacing the communist-era civil law, which treated construction as independent objects, and paved the way for the return of the superficies solo cedit principle[3] to the Czech legal system. The real estate practice is still acclimating to using the CC.
It is necessary to consider each building as part of the plot of land where it is located so, legally, these structures are considered one object. Regulations address situations where, due to historical reasons, the construction and the plot of land have different owners. In such a scenario, the statutory pre-emption right of the owner applies. However, since the application of the recodification, it is possible to recognize the rights of a third party owner. Parties might arrange for the developer to exercise the right of construction and allow them to build on another owner's plot of land. Importantly, the right of construction is temporary and can only be established for up to 99 years.

Restrictions to ownership

An individual's right to ownership may be restricted by the rights of third parties related to the real estate property or in the public interest. Restrictions, such as easements, pledges, pre-emption rights, and other rights of third parties to the real estate property may be stipulated. For these rights to be effective, they must be registered in the Cadaster of Real Estate, held in the Cadastral Office. Regarding public restrictions, these could be set up based on public acts or special laws, including expropriation, if the legal conditions are met, or a legal pre-emptive right of the state for certain property due to the public interest.

Restitution of property

Due to over 40 years of communist rule, the settlement of the injustices committed during this time has been implemented into Czech law. The so-called restitution of real estate within the Czech Republic is bound to property that was unlawfully escheated by the communist regime between 1945 and 1989. Restitution is provided for and primarily governed by the Restitution Acts. The restitution

2 Act No. 89/2012 Coll., Civil Code, as amended.

3 Under this principle, constructions connected to the plot of land are considered as being part of the plot of land.

process is still ongoing, such as restitutions in favor of the church.

Due to the various restitutions, it is necessary for investors to thoroughly check the legal status of their intended property acquisition to assure that the property is not the object of restitution from the Czech State Land Office (Státní pozemkový fond) or the Office for Government Representation in Property Affairs (Úřad pro zastupování státu ve věcech majetkových).

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Real estate transactions may be performed as a (i) direct sale of real estate property (asset deal), (ii) sale of the share of the real estate SPV (share deal), or (iii) sale of business as a going concern. Presently, in the Czech Republic, share deals are more frequent. In case a transaction is realized via an asset deal, the parties must be careful to transfer the whole set of rights embodied to the property, including licenses, permits, etc. If they choose the share deal, the whole company is transferred, and there is a higher level of certainty that nothing was left behind. Another option is the sale of business as a going concern. In this case, only part of the company is transferred, usually the most profitable part isolated from other unwanted property or to avoid any possible inhered threats.

In the Czech Republic, no general restrictions are currently applicable to foreigners or to specific areas of the country regarding the ownership of the real estate property.

Real estate registry system

Rights to real estate must be registered in the Cadastre of Real Estate, a public register which has a publicly accessible database. The effectiveness of agreements concerning real estate property is bound to the registration of the agreement in the Cadastre of Real Estate. Transfer of an individual's ownership rights, or the establishment, change and termination of an individual's property rights are effective as of the delivery of the motion to the Cadastre of Real Estate based on the decision of the respective Cadastral Office. Further, registering an individual's rights with the Cadastre of Real Estate is important because of the principle of good faith or the material publicity principle to the Cadastre of Real Estate. If there is a discrepancy between reality and the entry in the Cadastre of Real Estate, then the protected entry is the one made by the individual who acted in good faith to demonstrate that the entry is right and true.

Notary role in the real estate transactions

The notary can be very important once - with the assistance of lawyers - the share deal or sale of business as a going concern takes place. According to Czech law, if the transaction is in the form of a share deal or sale of the business as a going concern, the transfer must be registered in the Commercial Register. Registration can be done through an application to the register court or directly through a public notary. Registration by the notary is preferable for all parties since this method allows all parties to avoid any possible issues that may occur during court registration and is the fastest since notaries proceed with registration within one business day.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

General liabilities of contractual parties

Unless otherwise stipulated in the contract, the seller and buyer of a property have rights that they are owed and duties that they owe each other. Also included are the warranties on the property, as stated in the CC. The CC provides the buyer with a five-year Statute of Limitations to bring in a latent property defect claim and, if proven, requires the seller to provide adequate compensation.

A special kind of liability is the pre-contract liability under the CC. Pre-contract liability applies whenever the party of a transaction is responsible for damages arising from the termination of ongoing negotiations without proper reason, abuse of confidential information, and breach the

duty to disclose the information. This situation may be prevented by stipulating on any preliminary agreements that will be legally enforceable in case of breach and assures parties that their claims will be fulfilled without any back out by the other party.

Lastly, proper due diligence should be considered as a necessary step during real estate transactions.

Examples of a standard representations and warrantees

There are various standard representations and warrantees (R&W) used during a transaction. The seller (and, to a very limited extent, the purchaser) should always stipulate regarding the R&W below. On some occasions, there may be some exceptions to the claim (other than as disclosed).

Asset Deal

- R&Ws concerning the legitimate ownership of the property for a period of at least 10 years;
- R&Ws concerning the absence of any challenges, litigations, arbitrations, and execution proceedings regarding the ownership of the property;
- R&Ws concerning the absence of encumbrances on the real estate property other than those disclosed; and
- R&Ws concerning the absence of contamination, pollution, or any environmental damage to the real estate property.

Share Deal

- R&Ws concerning the legal capacity to sell and transfer the shares to the purchaser;
- R&Ws concerning the accounting and tax obligations of the target company;
- R&Ws concerning the absence of any litigations, arbitrations, execution proceedings or administrative proceedings;
- R&Ws concerning the employees and obligations towards former employees; and
- R&Ws concerning the property of the company in the extension mentioned above.

Mortgages and other usual guarantees adopted in financing assets

Acquisitions of real estate property or shareholders' purchase agreements are very often financed by the banks; therefore, loans are mostly secured by the property through a mortgage, and by pledges over business shares and bank accounts.

When the mortgage affects the real estate property, it is necessary to have the written contract with officially verified signatures. Real estate mortgages are created by recording the mortgage in the Cadastre of Real Estate. Therefore, their priority is assessed according to the time of the submission of the proposal for registration of such mortgage to the Cadastre of Real Estate. Mortgages recorded sooner are prioritized over the later ones in case of realization, which occurs when the debtor is unable to service the debt. To establish a pledge over the business share, a written contract with the officially verified signatures of the parties to be bound is obligatory. The pledge is effective after it has been recorded in the Commercial Register.

Besides a mortgage and a pledge, the prohibition of a disposition or encumbrance on the real estate property can be established in favor of the creditor. Those rights must be also registered in the Cadastre of Real Estate.

Lease of assets and lease of business

Leases of business premises

Czech law guarantees substantial freedom at the conclusion of a lease agreement for business premises. Except for a few mandatory provisions pursuant to the CC that cannot be excluded, there is a wide berth for individuals to formulate their own provisions. No stipulation regarding mandatory lease agreement forms for business premises is required. On the contrary, the lease of a residential apartment or house needs to be concluded in writing.

A lease may be stipulated for a definite or indefinite period. If not stipulated, then the legal assumption is that the lease has been agreed for an indefinite period. The same legal assumption applies for a period exceeding 50 years.

Subleasing is possible only with the consent of the lessor. Unless renewed by implication or notice was sent by one of the parties, the lease in such scenarios would expire according to the original lease agreement. The notice period is three months in case of leases for definite period and six months in case of leases for indefinite period, unless stipulated otherwise.

Break options

There are no legal limits for arranging any form of termination clauses. However, the termination clause cannot be against good manners. Further, the CC determines an individual's legal options as to when the lease agreement can be terminated, including when there is a physical on-site defect, usage of the premises breaches the conditions of the lease agreement, or breach of obligations otherwise stipulated in the lease agreement.

Eviction of the tenant

The lessee could be evicted after a legally valid termination of the contract and based on prior notification (save for special exceptions or extenuating circumstances). It is common for eviction clauses within standard arrangements to allow the landlord to, for example, store the property of the tenant off-site. If the tenant refuses to cooperate or physically obstructs the landlord to exercise their right to evict, then the landlord may file a lawsuit to evict the individual from the property. The lease agreement is enforceable and governed by the action of the respective civil court, meaning, after a court decision, the lessee could be evicted by state authorities. Other damages or unpaid rent are also enforceable after a court decision.

Usufructuary lease

The Czech legal system has a long history of using usufructuary leases. These are a special form of lease that relinquishes an item to be used by an individual. Unlike a regular lease, the usufructuary lessee is also entitled to derive profits from the subject of lease. This kind of relinquishment has typically been used for farming and other agricultural land use; however, parties can also agree on using an usufructuary lease on a fully equipped hotel, restaurant, or operation of utility networks, all of which are more common.

Administrative permits applicable to construction or restructuring of assets

Public law and regulation

The most important public regulation for the preparation and realization of construction projects within the Czech Republic is the Building Act and its associated and implementing legislation. The Building Act regulates construction, land-use planning, and development strategy for the whole region.

From 1 July 2024, the new Building Act[4] is in force. The new Building Act was adopted in 2021, but its entry into force has been postponed several times. The aim of the new Building Act is to, among others, speed up the permitting processes, digitize the administrative proceedings, and unify the administration under one proceeding.

However, proceedings initiated before the new Building Act comes into force will be completed according to the Building Act[5] (i.e. the proceedings initiated by 30 June 2024), therefore in the following years, the Czech Republic can expect having a dual regulation of construction law.

Land use planning

The first step for every intended real estate project should be the proper examination of a land use plan. The land use plan determines areas that are available for building and specifies further requirements to develop those areas. The land use plan is issued by the municipal authorities and is legally binding for the builder and the building. Trying to change the land use plan is a quite time-consuming process with uncertain results; however, it is possible. The public has equally substantial rights in this process, and it

4 Act no. 283/2021 Coll., Building Act, as amended

5 Act No. 183/2006 Coll., on town and country planning and building code (Building Act), as amended

may cause project delays since they may initiate changes and hinder preparations for the new land use plan.

Permits

The next step is obtaining a permit from the Building Authority. Since the new Building Act is in force, there is only one permit under which the Building Authority set out the conditions for the location of the building and the conditions for the construction of the building. The developer must attach documents proving their rights to the land in order to be entitled to proceed with the construction, project documentation or control plan. Further, the binding assessments requested by a special regulation, like environmental and health protection, fire protection, and opinion of owners of the public transportation infrastructure and utilities (if the construction is connected to the infrastructure) are needed. The developer can either obtain these binding assessments themself or, since the entry into force of the new Building Act, they can leave this obligation to the Building Authority, which is obliged to obtain these binding assessments on his behalf. For larger projects, the environmental impact assessment (EIA) procedure is needed.

Construction

A construction may be realized only by a building entrepreneur, who is an individual authorized to lead construction projects or assemble work as a scope of business pursuant to special regulations. Contractors are building entrepreneurs, and they ensure expert management of the building process through a site manager. Simple construction projects may be realized by the self-help of a developer.

After the successful completion of a project, the developer must obtain an occupancy permit. The occupancy permit is issued by the Building Office after the fulfilment of the criteria set for the building by the legislation, Building Permit, and other stipulated criteria, such as environmental and health protection, and fire protection. Operation of the construction project is possible only after obtaining relevant environmental permits.

Cultural heritage

There are many buildings located within the city centers of the Czech Republic that are designated cultural heritage sites. These buildings have stronger protections, and their reconstruction (or even demolition) are a serious and time-consuming issue for developers due to their special status.

Environmental and energy – ESG rules and status of implementation

Real estate property in the Czech Republic is subject to various environmental legislation. As such, it is crucial during real estate transactions to devote the necessary care to environmental issues to avoid any possible future problems that may arise once the transaction is completed.

Energy Performance Certificate of buildings

Due to European Union (EU) law requirements (transposed into Czech law through the Energy Management Act[6]); there is a duty to have an Energy Performance Certificate assigned to all new buildings. The certificate is valid for 10 years and contains important information about the energy consumption of that particular building and provides a quick summary of energy operations costs. The duty of having one also affects major reconstructions (exceeding 25% of the building area), every sale or lease of a preexisting building (the seller/lessor should hand over the certificate to the other party) and all building property owned by public authorities. The Energy Performance Certificate is not mandatory for buildings with a surface area of less than 50 square meters, cultural heritage buildings, buildings used for religious purposes, and for some other minor constructions. It is highly recommended to examine the Energy Performance Certificate and its validity properly during the transaction.

6 Act No. 406/2000 Coll., Energy Management Act, as amended

Ecological burdens on the property

An integral part of doing one's due diligence when surveilling a property should be the proper examination of land and buildings for the possibility of an inherited legacy of former activities on the property. According to Czech law, the new owner could be held responsible for old ecological burdens on his property and the authorities may force him to remove the burdens. Typical examples include contaminated land, dangerous asbestos placed in old buildings, or installment of inappropriate air conditioners. There are substantial costs to the purchaser, especially concerning the maintenance of former industrial properties. A land and building examination is usually carried out.

Environmental, social, and governance criteria

Environmental, social, and governance (ESG) has become an increasingly important driver across industries, including real estate. The most notable of the ESG regulations is the EU Taxonomy and Sustainable Finance Disclosure Regulation (SFDR). EU Taxonomy is, primarily, a classification system that establishes a list of sustainable activities. Both the EU Taxonomy and SFDR introduce new sustainability-related obligations for financial institutions and other financial market participants, such as real estate asset managers, that encourage transparency.

Under Article 8 of the EU Taxonomy, large public interest entities are obliged to report selected non-financial information in their annual reports. According to the SFDR, financial market participants must disclose how sustainability risks are integrated into investment decisions. In the Czech Republic, a new act came into effect on 29 May 2022[7], which amends acts governing the financial market and establishes offences and penalties for breaching the transparency obligations set out by the EU Taxonomy and SFDR.

ESG obligations are coming into effect gradually and real estate market participants should take the new regulations into consideration when planning new projects. It is likely that due to the ESG regulations there will be better financing conditions for investments and projects fulfilling the EU Taxonomy criteria.

Affordable housing

With the effectiveness from 1 July 2024, the concept of "affordable housing" was established in Czech legislation[8] as the response to long-standing demand from both the public and private sectors for the creation of the unified framework for investment opportunities in rental housing sector in the Czech Republic.

Affordable housing is defined as housing, where the rent will correspond to a maximum of 90% of the common rent in given places (the source will be the price maps prepared for these purposes by the Ministry of Finance). The landlord has the opportunity to index the rent in accordance with the index of consumer prices published by Czech Statistical Office, however only up to 4% per year.

Affordable housing will be only provided to defined groups of people, which primarily include low-income households, young households looking for starter apartments, public sector workers in health care, education, social services, and emergency services, and victims of domestic violence. The connecting element is always the condition that these people are not allowed to own property through which they would be able to satisfy their housing needs.

By the anchoring of the term "affordable housing" to the Czech legislation system, the possibility of construction while drawing the public funds with the participation of private investors and municipalities became another alternative to the existing social housing.

7 Act No. 96/2022 Coll., amending certain acts in the area of financial market especially in connection with the implementation of European Union regulations regarding the capital markets union.

8 Act no, 126/2024 Coll., as amending the Act no. 211/2000 Coll., on the State Fund for Investment Support and Act no. 283/2021 Coll., the Building Act

Direct taxes applicable to sales

Real estate tax

A real estate tax is levied on a plot of land, building or unit, both residential and non-residential. The taxpayer must submit the real estate tax return based on the conditions existing on 1 January of the given year, no later than on 31 January. As long as the conditions for the assessment of the real estate tax do not change, the taxpayer does not need to submit the real estate tax return again throughout the following years.

Value added tax

Generally, the basic value added tax (VAT) rate of 21% applies to the sale of real estate by the VAT payer, unless the conditions for a tax exemption are met. Since 1 January 2024, the reduced VAT rates have been unified and is currently at one rate of 12%. The reduced VAT rate of 12% applies to the sale of a real estate property related to the social housing (plot of land part of which is the building for social housing, unit, etc.) as defined by the VAT Act. The 12% VAT rate also applies to the provision of building and assembling work connected with the construction of a structure for social housing as well as to the provision of building or assembling work made on a completed structure for housing or for social housing. When providing a VAT payer with specific building or assembling work specified by the VAT Act, the payer applies the reverse charge scheme. The transfer of securities, including booked securities and shares in business corporations is VAT-exempt without entitlement to tax deduction. There are many exceptions to VAT, such as the sale of selected immovable property after the expiration of five years and others.

Income tax

Generally, certain types of income acquired by a tax non-resident of the Czech Republic (natural person or legal entity) on the territory thereof are subject to taxation in the Czech Republic.

The taxation of this income is executed either by the tax remitter via the withholding tax (or the tax security), or by the tax non- resident themselves via the submission of a tax return. The withholding tax rate amounts to 15% to 35%, which applies to the EU and EEA non-residents and residents of any third jurisdiction that has not concluded any of the international treaties specified by the Income Tax Act with the Czech Republic. The withholding tax rate of 5% is set for the consideration of a finance lease.

Recovery of the Czech real estate market

The Czech real estate market is navigating a complex economic landscape shaped by the aftermath of the various crises of previous years. In 2023, the country's GDP contracted slightly by 0.1%, with household consumption subdued due to high inflationary pressures. However, inflation has been steadily decreasing and the year-on-year inflation stood at 2.2% in August 2024. A further positive development is that, although interest rates began 2024 at 6.75%, the Czech National Bank reduced them to 4.5% in August 2024. These factors have started to reignite activity in the investment market as confidence returns to the market as a whole. Looking ahead, the Czech National Bank projects GDP to grow by 1.1% in 2024, signalling cautious optimism for economic recovery.

In terms of real estate investment, the first half of 2024 saw strong investment activity of just under €1 billion, which represents 68% of the total investment volume seen throughout 2023. Interestingly, domestic investors overtaken foreign investors as the most active in the market, possibly due to their deeper market knowledge and confidence in the Czech market amidst geopolitical uncertainties. The logistics sector has emerged as a core focus area for investors, with construction of new spaces at record highs. Investment in the office segment has declined in recent years, as construction activity in prime locations declined amid worsened economic environment. Conversely, the hotel segment has seen a surge in activity, with prime transactions and openings taking place in Prague and popular Czech ski resorts.

The residential market has returned to a growth trajectory after a brief slowdown in prices and sales caused by high interest rates in the years following the crises. The demand for new housing remains strong, especially in major cities where there is a housing shortage, attracting developers and investors. The "build to rent" segment has continued to grow its presence in the market, as relatively high interest rates significantly hinder the affordability of owner-occupied housing. However, with interest rates gradually declining, purchasing activity is starting to pick up again and prices are rising.

In addition, a new digitized building code has been introduced to expedite the permit process and address the housing supply-demand gap. While the goal is to streamline approvals, the implementation of the new code has been challenging, with several technical issues emerging as it is rolled out. Nonetheless, the new code represents a step toward improving housing development processes in the long term.

Overall, the Czech real estate market is showing strong signs of recovery, with inflation easing, interest rates declining, and investor confidence gradually returning.

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Real Estate Law in Denmark

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Overview of the Danish Legal System

General introduction to main laws that govern acquisition of assets in Denmark – real estate rights

Acquisition of real estate in Denmark is primarily regulated by the uncodified principles of property law, i.e., the freedom of contracts in combination with the Danish Contracts Act (in Danish: aftaleloven).

For residential acquisitions, the Danish Consumer Protection Act on Acquisition of Real Estate (lov om forbrugerbeskyttelse ved erhvervelse af fast ejendom) provides consumers and non-commercial parties with certain rights regarding the purchase and right of withdrawal if the property has been used for residential purposes by the seller, or if the property will be used for residential purposes by the buyer.

Other rights in relation to the acquisition of real estate are regulated by the Land Registry Act (tinglysningsloven), among other things, regarding the protection from rights invoked by third parties.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Restrictions

The Danish Acquisition of Real Estate Act (lov om erhvervelse af fast ejendom) restricts individuals who are not residents of Denmark and who have not previously resided in Denmark for a period of at least five years from acquiring real estate unless the Department of Justice grant permission. The act applies to all types of real estate, although additional restrictions apply to holiday homes under the Holiday Home Act (sommerhusloven).

An exception to the restriction has been made for citizens of the European Union (EU) and for legal entities established within the EU.
For agricultural properties (landbrugsejendomme), there is a requirement of residence according to the Agricultural Properties Act (landbrugsloven). This means that the property in question must be inhabited by a physical person within a period of 10 years from the time of purchase. The person taking residence at the property does not have to be the same person as the acquirer of the property. Thus, the acquirer can be a legal entity if the legal entity ensures that a physical person takes residence at the property.

Real estate registry system

In Denmark, rights over real estate must be registered in order to be protected against agreements regarding the said property and against prosecution. Registration must be made in the Danish Land Register (tingbogen), which is available online for registration.

This applies not only to the right of ownership, but also for other rights and obligations, such as easements and encumbrances.For ownership of a property to be confirmed, a deed must be registered. Registration of a deed in the Danish Land Register will incur a registration fee. Currently, the registration fee is calculated as a fixed fee of DKK 1,850 (US$261.945*) plus a variable fee of 0.6% of the purchase price.

Registration of easements or the like will currently incur a fixed registration fee of DKK 1,850 (US$261.945*).

Notary role in the real estate transactions

In Denmark, notarization is not a requirement in any part of a process regarding the acquisition of real estate.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

The responsibilities of the seller are regulated partly by the uncodified rules of property law and partly by the Danish Consumer Protection Act on Acquisition of Real Estate.

In a real estate transaction, it is the primary responsibility of the seller to provide the property in question in a condition corresponding to what is agreed and what is to be rightly expected by the buyer. If the seller fails to do so, they will be in breach of contract and can thus incur liability.

In real estate transactions, the seller can often be liable for defects found in the property. A defect in real estate law is defined as when the property suffers from conditions that should not be found in similar properties of the same age and type.

If the sold property has a defect, the seller can be found liable, and the buyer may have a claim for a reduction in the purchase price. Any deviation from normal construction standards and errors in craftmanship will normally be considered defects. However, the applicable test for what is considered a defect will vary depending on the age, type, and overall character of the property being sold.

Claims for damages from the buyer against the seller can, in certain circumstances be directed towards the previous seller. This could, for example, be the case if the original builder of the property has acted in contravention to normal construction standards.

A property will quite often be subject to hidden defects, and the seller's liability for such defects depends on a case-by-case assessment. Generally, the seller has a duty to disclose all known material facts of interest to the buyer. By doing so, the seller cannot be liable for defects disclosed to the buyer. Likewise, claims by the buyer cannot rely on defects already known to him or that should have been known to him.

This is linked to the principle of caveat emptor. In the Danish context, the principle of caveat emptor, however, does not apply to hidden defects in a property, as the buyer does not necessarily have the opportunity to discover such defects. The seller of a property can therefore be met with claims for latent defects several years after the sale has been finalized. To minimize both the risk of being met with later claims, and the risk of discovering latent defects, the seller and the buyer can initiate a professional examination of the property with the purpose to disclose any latent or potential defects.

As non-commercial real estate transactions are common among residential owners, the Danish Consumer Protection Act on Acquisition of Real Estate was implemented in 1995 to further regulate and provide legal predictability, thereby protecting the interest of both the seller and the buyer. The act applies to non-commercial real estate transactions between consumers in cases where a property has been used for residential purposes by the seller, or if the property is to be used for residential purposes by the buyer and provides the parties with a solution consisting of a property condition report, an electrical installation report, and a change of ownership insurance. The act also provides the buyer with a right of withdrawal in exchange for a compensation of 1% of the purchase price. This buyer's right of withdrawal must be invoked no later than six business day after entering into the purchase agreement.

Mortgages and other usual guarantees adopted in financing assets

The most common means of financing an acquisition of a property in Denmark is a credit mortgage (realkreditlån). If a credit mortgage is obtained, the mortgage lender will demand that a credit mortgage deed (realkreditpantebrev) be registered on the property in the Danish Land Register.

As other examples of financing the following can be mentioned:

- Owner's mortgage deed (ejerpantebrev); and
- Mortgage deed (pantebrev).

As a general rule, registration of any mortgage deed will incur a registration fee calculated as a fixed fee of DKK 1,850 (US$261.945*) and a variable fee of 1.5% of the mortgage secured amount. However, registration of a mortgage deed is exempt from the variable fee of 1.5% of the purchase price of that part of the mortgage secured amount that does not exceed the registered principal of an existing registered mortgage deed on the same property (stempelrefusion).

Lease of assets and lease of business

Lease of residentials

Lease of residentials is governed by the Danish Lease Act (lejeloven). In general, the Danish Lease Act contains mandatory provisions in favor of the tenant.

Lease of commercial properties

Lease of commercial properties is governed by the Danish Commercial Lease Act (erhvervslejeloven). The Danish Commercial Lease Act contains mostly provisions that can be derogated by the parties. However, the act also contains mandatory provisions, for example, regarding the landlord's right to terminate a commercial lease agreement that is restricted.

Other commercial leases

Lease of areas that are not defined as rooms or properties, for example, lease of a parking lot, is not governed by the Danish Commercial Lease Act or any other acts except for uncodified principles of property law, i.e., the freedom of contracts in combination with the Danish Contracts Act.

Administrative permits applicable to construction or restructuring of assets

A building permit is required for the construction of a new building and is often also required for modifications to existing buildings. The building authorities issue such building permits. The basis for issuing building permits is regulated in local planning. For several buildings, a commissioning permit is needed before the building can be legally used.

Energy

As a general rule, a building must have an energy label (energimærkning) in connection with a transfer or lease of a property. The seller or the landlord must ensure that the energy label is prepared.

Several properties are exempt from the requirement of an energy label. This includes, among others, holiday homes and certain commercial properties.

Taxes applicable to real estate

All commercial and residential property is subject to yearly taxation based on the public value of the property. For commercial properties, the relevant applicable taxes are land value tax and, for certain uses, service charge, while residential properties are subject to land value tax and property value tax if the owner is using the property for residential purposes.
In Denmark, a new real estate valuation system is currently being implemented. The current real estate valuation system has been suspended since 2013, and therefore all

Danish properties' current valuation levels are in the price level of 2012 for commercial properties.

Commercial properties were assessed for the first time using the new valuation system on 1 March 2021. However, the valuations have been delayed due to a delay in the preparation of the valuations as well as technical issues. It is expected that the new valuations will be sent out in 2025-2026. However, there is a considerable risk that the valuations will be delayed further. For 2021, the real estate taxes for residential properties will be calculated based on the new real estate valuation as of 1 January 2020. In 2022, the real estate taxes for commercial properties will be calculated based on the new real estate valuation as of 1 March 2021.

If there is a discrepancy between the estimated market value and the public valuation of the property, it is possible to appeal the valuation to the Danish Tax Authorities under certain circumstances.

*According to the 10 December 2024 exchange rate

The Danish real estate market:

The Danish real estate market is facing a positive outlook for 2025. After some challenging years caused by high inflation and interest rates sentiment has begun to turn and an expected decline in financing costs will stimulate both private home purchases and commercial property transactions.

In the first half of 2024 the number of transactions has been modest compared to pre-pandemic levels but is expected to pick up with the stabilization and likely decrease in interest rates and improved macroeconomic conditions in general.

Especially in the largest cities Copenhagen, Aarhus, and Odense the urbanization is causing an increased demand for housing, which is reflected in higher prices, but also in initiation of housing projects and investments in modernization of existing buildings. Adding to this is the demographic development, which has increased the demand for senior housing significantly.

Besides the macroeconomic factors, sustainability and technology are expected to play a more dominant role in the Danish real estate market. Investors and property owners are expected to increase focus on making their properties more energy efficient and environmentally friendly to attract tenants and meet regulatory requirements. Buildings that do not meet these requirements may risk losing value. Prop-tech solutions that improve property management, energy efficiency and resident experiences are expected to become more widespread. Digitization of property transactions and property management is expected to lead to a more efficient sector.

Summing up, optimism is slowly returning to the Danish real estate market, but various global risks to the economy can quickly darken the picture.

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Real Estate Law in Dominican Republic

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Overview of the Dominican Legal System

General introduction to the main laws that govern the acquisition of assets in Dominican Republic – real estate rights

The Constitution of the Dominican Republic – supreme law of the country - in Article 51, recognizes the right to property as a fundamental guarantee. This provision ensures that all individuals, whether citizens or foreigners, can freely acquire, use, and dispose of property, provided that such actions are in compliance with the law. The Constitution not only protects the right to property but also establishes that property must fulfill its social function, meaning it should contribute to the common good, and may be subject to expropriation only in cases of public utility or social interest, with fair compensation.

In conjunction with constitutional provisions, the Civil Code of the Dominican Republic establishes the fundamental principles of property ownership. It governs how property can be acquired, transferred, and managed, providing a comprehensive legal framework for the rights and obligations of property owners. The Civil Code also regulates contracts related to the sale and lease of real estate, ensuring that transactions are legally binding and enforceable. For instance, it mandates the formalization of real estate transactions through written contracts, public notarization, and registration in the public registry.

Another legislation is Law No. 108-05 on Real Estate Registration, which provides the legal foundation for the registration of property rights. This law is vital in securing ownership and providing transparency in real estate transactions. By establishing a centralized land registry system, it ensures that ownership titles are legally recognized and publicly accessible. This system protects property owners from fraudulent claims and facilitates the verification of ownership prior to any sale or transfer.

This law also sets out the process for resolving disputes related to property boundaries and title claims.

Furthermore, Law No. 189-11 for the Development of the Mortgage Market and Trusts, regulates the use of mortgages as a mechanism for financing real estate acquisitions, making property ownership more accessible to individuals and businesses. It also introduces trust structures, which are increasingly used for real estate development and management. Trusts allow investors to pool resources for large-scale projects, offering a flexible and secure way to manage assets and liabilities in real estate ventures.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

In the Dominican Republic, various acquisition structures can be employed for real estate transactions, depending on the needs and goals of the investor. Typically, individuals and entities can acquire real estate directly through purchase agreements or indirectly through corporate structures such as local companies, joint ventures, or trusts. The use of corporate vehicles is common for larger projects or when foreign investors are involved, as it offers flexibility in managing ownership and investment interests.

For foreigners, the legal framework is generally favorable. Under Dominican law, there are no significant restrictions preventing foreigners from acquiring real estate in the country. Both individuals and legal entities, whether domestic or foreign, enjoy equal rights in acquiring and owning property. This openness has made the Dominican

Republic an attractive destination for international investors in the real estate sector, particularly in areas such as tourism and vacation homes.

However, certain restrictions apply in specific areas or for particular types of land. According to Article 10 of the Constitution of the Dominican Republic, foreigners are prohibited from owning properties within 50 kilometers of the national borders. This restriction is primarily for national security reasons and applies to land near the borders with Haiti to the west and other designated border zones. This constitutional limitation is enforced to protect the sovereignty and security of the country, and exceptions are not commonly granted.

Additionally, while foreigners can acquire beachfront properties, there are regulations regarding the use of the maritime zone—the 60-meter-wide strip of land measured from the high tide line along the coast—which is considered public domain and cannot be privately owned. Although the maritime zone cannot be owned outright, concessions can be granted for its use, typically for commercial or tourism purposes, subject to governmental approval.

Another potential limitation relates to protected areas designated under environmental and conservation laws. Real estate located in national parks, ecological reserves, or other protected zones may be subject to strict development regulations, and certain activities or construction may be restricted or prohibited altogether. These restrictions are intended to preserve the natural resources and biodiversity of these areas, aligning with the country's environmental protection policies.

Real estate registry system

The real estate registry system in the Dominican Republic is governed by Law No. 108-05 on Real Estate Registration and its accompanying regulations. This legal framework shows a comprehensive system for the registration and management of real estate transactions, ensuring the legal certainty and transparency of property ownership.

The National Registry of Title (Registro Nacional de Títulos) is the main entity responsible for maintaining the official record of property ownership. Every real estate transaction, whether it involves the transfer of ownership, the creation of a mortgage, or other encumbrances, must be duly recorded in this registry to be legally recognized. The registration of these transactions serves as public notice, guaranteeing that third parties are aware of any legal claims or rights over the property.

The process begins with the land demarcation and surveying by the National Directorate of Land Registry (Dirección Nacional de Mensuras Catastrales), which ensures that each property has a defined and recognized boundary. After the demarcation is completed, the property must be registered under the name of the rightful owner in the National Registry of Title, which issues a Certificate of Title (Certificado de Título) as proof of ownership. This certificate is essential, as it constitutes the only valid and legally binding proof of real estate ownership in the country.

One of the key features of the Dominican real estate registry system is its principle of publicity, meaning that all registered information related to a property is publicly accessible. This transparency is intended to protect the rights of property owners and prevent disputes, fraud, or multiple claims to the same property. Before any real estate transaction can be completed, it is customary to conduct a title search to verify that the seller is the legitimate owner and that there are no pending legal claims, liens, or encumbrances on the property.

Another critical element of the system is the guarantee of legal certainty provided by the registration process. The Dominican Republic operates under the Torrens System, where once a title is registered, the registered owner enjoys an incontestable right to the property, subject only to registered encumbrances. This system minimizes the risk of legal disputes over ownership and offers strong protection for property rights.

Additionally, the law facilitates the resolution of real estate disputes through the Land Courts (Tribunales de Tierras), specialized judicial bodies that handle issues related to property boundaries, ownership claims, and registration conflicts. These courts ensure that disputes are resolved within the framework of the real estate laws, providing an efficient mechanism for conflict resolution.

In summary, the real estate registry system in the Dominican Republic is designed to promote transparency, legal certainty, and the protection of property rights. It ensures that all transactions are properly recorded, and that ownership is clearly established, thus fostering a secure environment for both domestic and foreign investors.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

In real estate transactions in the Dominican Republic, the seller has significant legal responsibilities, which are typically formalized through contractual representations and warranties included in the purchase agreement. These representations and warranties serve to protect the buyer by ensuring that the seller guarantees certain facts about the property being sold, and by assuming legal responsibility in case these facts prove to be false or inaccurate.

One of the primary representations made by the seller is the guarantee of clear and marketable title. According to Dominican law, specifically the provisions of the Civil Code and Law No. 108-05 on Real Estate Registration, the seller must assure that the property being sold is free of encumbrances, liens, or claims by third parties, unless otherwise disclosed in the contract. This includes guarantees that the property is not subject to any pending legal disputes, mortgages, or unpaid taxes. The issuance of a clear Certificate of Title by the National Registry of Title is typically required to confirm that the seller holds valid ownership of the property and that it can be legally transferred to the buyer.

The seller is also responsible for ensuring that the property complies with all relevant zoning laws, land use regulations, and environmental protections. Failure to disclose any issues related to these areas can lead to legal claims by the buyer, as the seller is obligated to provide full and accurate information about any restrictions or legal requirements that could affect the buyer's use or enjoyment of the property.

The seller must also warrant that there are no hidden defects (vicios ocultos) that could significantly impair the value or use of the property, which were not apparent at the time of sale and not disclosed to the buyer.

Finally, it is common for purchase agreements in the Dominican Republic to include indemnification clauses, which specify the seller's obligation to compensate the buyer in case of losses arising from any breach of the seller's representations and warranties. These clauses provide further protection to the buyer, ensuring that they are made whole if any undisclosed or misrepresented facts cause financial harm after the transaction is completed.

In summary, the legal responsibility of the seller in Dominican real estate transactions is significant, encompassing both the obligation to transfer clear and marketable title, and the duty to disclose any material information that could affect the buyer’s decision to purchase the property. Failure to meet these obligations can result in legal claims, indemnification, or other forms of compensation.

Mortgages and other usual guarantees adopted in financing assets

In the Dominican Republic, mortgages are the most common form of guarantee used in the financing of real estate and other significant assets. Governed by the Civil Code and Law No. 189-11 for the Development of the Mortgage Market and Trusts, mortgages provide a legal mechanism by which a lender secures repayment of a loan by placing a lien on the property of the borrower. The property, while remaining in the borrower’s possession, serves as collateral for the loan, and the lender has the right to foreclose on the property in the event of a default.

A mortgage must be formalized through a public deed (acto auténtico), typically executed before a notary, and registered at the National Registry of Title to be legally enforceable. Once registered, the mortgage is noted in the property’s title record, providing public notice that the property is encumbered. Mortgages are commonly used not only for the purchase of real estate but also for refinancing existing properties or financing large development projects.

In addition to mortgages, several other types of guarantees are commonly used in the financing of assets in the Dominican Republic:

Pledges (garantías): This refers to a security interest in movable property, such as machinery, vehicles, or shares of stock. Unlike a mortgage, which applies to immovable property (real estate), a pledge can be applied to personal property that the borrower uses as collateral to secure a loan. The borrower retains possession of the pledged asset, but in the event of default, the lender has the right to seize and sell the asset to recover the loan amount. Pledges are governed by the Dominican Civil Code and require registration in certain cases, such as for shares in a company.

Trusts: These have become increasingly popular in the Dominican Republic for real estate and project financing. A trust allows an asset, such as real estate, to be transferred to a trustee who manages it on behalf of the beneficiaries. Trusts can be used to secure financing by placing the asset in a separate legal entity, ensuring that it is protected from claims by other creditors of the borrower. This structure provides a flexible and secure way to finance large-scale developments or manage investment portfolios.

In summary, mortgages remain the primary form of security in real estate financing in the Dominican Republic, but other guarantees such as trusts, are also commonly employed, particularly in complex or large-scale transactions. These guarantees provide essential protection for lenders while offering borrowers flexible options to access to financing.

Lease of assets and lease of business

In the Dominican Republic, the rental of movable and business property is regulated by several laws that affect both landlords and tenants, as well as the rights and obligations of both parties. Below is a summary of the laws and regulations governing the rental of movable property and the rental of businesses in the country:

Lease contract: The Dominican Civil Code regulates the contractual relations between landlord and tenant. In lease contracts for movable property (e.g., vehicles, machinery, or furniture) and business contracts, it is important that the contract is in writing and contains clauses that clearly define the rights and obligations of both parties. To guarantee the validity of the contract, it must contain information about the object of the lease, the amount of the rent, the duration of the contract, maintenance obligations, and the causes of early termination, among others. As for its registration and formation, it is not mandatory to register the lease of movable property, but it is advisable in certain cases, especially to avoid possible disputes. In the case of the rental of businesses or commercial premises, it is common for the contract to be registered with the Chamber of Commerce and Production of the place where the property is located, which helps to have legal support.

In addition to this, there are legal mechanisms for the protection of the tenant's rights in cases of disputes, breach of contract, or abusive rent increases. In the event of a conflict, the parties may resort to the courts or resort to alternative dispute resolution mechanisms, such as mediation or arbitration.

As for the duration of the lease of movable and business property, this is usually stipulated in the contract, and it may or may not be renewable. The termination of the contract may occur by mutual agreement, due to non-compliance by one of the parties, or at the end of the stipulated period.

In summary, the legal regime in the Dominican Republic offers a clear and well-regulated structure for leases of movable property and businesses, ensuring that both landlords and tenants are protected under the law. However, it is essential that contracts are formalized in writing and that the parties comply with their legal and tax obligations.

Administrative permits applicable to construction or restructuring of assets

In the Dominican Republic, the construction or restructuring of assets requires several administrative permits to ensure compliance with legal, safety, and environmental standards. These permits are granted by various government institutions depending on the type and scope of the project. Below is a summary of the main permits that are generally required:

Land Use and Zoning Permit: This is issued by the local municipalities. This permit ensures that the intended construction or restructuring project complies with the zoning regulations of the area where the property is located. Each municipality has specific land use plans that dictate whether a certain plot of land can be used for residential, commercial, or industrial purposes.

Construction Permit: This is also issued by the local municipalities. This is the primary permit required to begin any construction work. It ensures that the building plans meet local building codes, safety standards, and other technical requirements. The project must be reviewed by engineers or architects employed by the municipality.

Environmental Impact Assessment (EIA): This is issued by the Ministry of Environment and Natural Resources (Ministerio de Medio Ambiente y Recursos Naturales). For large projects, especially those involving significant changes to the landscape, an EIA may be required to evaluate the potential environmental consequences of the project. This applies to commercial buildings, factories, or projects near protected areas, water bodies, or urban developments.

Non-Objection Certificate: These can be issued by multiple entities, such as the electricity body, water regulator (INAPA), and/or the Ministry of Public Works and Communications (MOPC). There may be required for projects that involve the installation of utility systems such as electricity, water, sewage, and roads, the relevant authorities must provide no-objection certificates indicating their approval.

Fire Safety and Risk Prevention Permit: This is issued by the National Fire Department or a certified fire safety entity. This permit ensures that the construction or restructuring project adheres to fire safety regulations, including the installation of fire exits, sprinklers, and other necessary safety measures.

Health and Sanitation Permit: This is issued by the Ministry of Public Health, and is particularly important for commercial buildings, restaurants, hotels, and other facilities where public health concerns are vital. The project must comply with regulations on sanitation, waste management, and the installation of septic or sewage systems.

Approval from the Ministry of Tourism: This is required for any construction or restructuring project related to the tourism sector, such as hotels, resorts, or other tourism facilities. All tourism-related projects must receive approval from the Ministry of Tourism to ensure it aligns with the country's tourism development policies.

Other permits: Permits for the use of Natural Resources, Electricity and Utility Connection Permits, Certificate of Occupancy, among others are granted depending on the nature of the project (industrial, commercial, residential, etc.). Additional permits may be required. For example, restructuring heritage buildings or projects located in historical areas may require special approval from the Dominican Institute of Cultural Heritage.

Navigating the permit process for construction or restructuring in the Dominican Republic involves securing various approvals from municipal and national authorities. It is essential to work with local professionals such as architects, engineers, and legal advisors to ensure compliance with all legal requirements.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

In the Dominican Republic, the real estate sector must increasingly comply with ESG regulations and principles, which align with both national and international frameworks. The country's legal framework has been evolving to integrate sustainability, social responsibility, and governance aspects, particularly for real estate developers, investors, and companies involved in construction. Below is an overview of the applicable ESG-related regulations and practices in the Dominican Republic:

Environmental regulations: Environmental laws are among the most developed within the ESG framework for real estate projects in the Dominican Republic. These regulations aim to promote sustainability, reduce environmental impact, and ensure that projects do not harm ecosystems or communities.

Environmental Impact Assessment (EIA): Law 64-00 on Environment and Natural Resources is the principal law governing environmental issues in the Dominican Republic,

any construction, development, or real estate project that could affect the environment must undergo an EIA before receiving a permit to proceed. The Ministry of Environment and Natural Resources is responsible for evaluating and approving these assessments.

Increasingly, local regulations and standards are encouraging sustainable building practices. The government, along with organizations like the Dominican Association of Sustainable Construction (ADCS), is promoting the adoption of international standards such as LEED (Leadership in Energy and Environmental Design) certifications.

Protected areas: Law 202-04, which regulates the national system of protected areas, affects real estate projects near environmentally sensitive areas, such as national parks, coastal zones, and areas with significant biodiversity. Special permits or restrictions may apply to these regions. Developers must ensure that their projects do not harm protected species or ecosystems and may be required to restore or offset any environmental damage caused.

Social regulations: Social factors are also essential in real estate development, especially in terms of how projects impact local communities, labor rights, and housing availability.

Community impact and social responsibility: Developers are expected to engage in social responsibility initiatives, which could include investing in local infrastructure, affordable housing, or social programs that benefit surrounding communities.

Direct taxes applicable to sales or real estate properties in general

In the Dominican Republic, real estate sales are subject to several direct taxes that both the buyer and seller must consider during the transaction. These taxes are imposed by the Tax Authority (DGII). Below is an overview of the direct taxes applicable to real estate sales:

Transfer tax on real estate property: 3% of the property's sale price or the property's appraised value, whichever is higher. Typically, this tax is paid by the buyer. The tax is due within six months of the transaction. The property cannot be transferred to the new owner until this tax is paid and all legal documents are updated. Please note that the DGII assesses the property to determine its appraised value. If the purchase price declared is lower than the appraised value, the tax is calculated based on the higher value.

Capital gains tax: 27% on the net capital gain. Typically, this is paid by the seller. Capital gains tax is applicable to the profit made from the sale of real estate. The net capital gain is the difference between the selling price and the original purchase price (or appraised value if the property was inherited), adjusted for inflation, and any documented improvements or expenses directly related to the property.

Property tax on real estate holdings (IPI): 1% annually on properties with a value exceeding DOP 9,491,042 (2024 threshold, which is adjusted annually). This tax is paid by the property owners. This tax is not directly linked to the sale of property, but it is an important tax to be aware of for property owners (individuals). It applies to individuals who own real estate valued above the threshold. Properties below the threshold, as well as properties held by companies, are not subject to IPI. In real estate sales, unpaid IPI may need to be settled before the sale can proceed. The property used as a primary residence may also be exempt from this tax.

Inheritance tax: 3% on the appraised value of the property. This tax is paid by the beneficiary of the property (the person receiving the property by inheritance). If the property is transferred through inheritance, the recipient must pay this tax. This is similar to the transfer tax but is applied when the property is passed on outside of a sale.

Gift tax: The Dominican Republic imposes a gift tax at a rate of 27% and is typically paid by the person who receives the donation.

Tax on sales by non-residents: Non-resident sellers of real estate in the Dominican Republic are subject to the same capital gains tax as residents, but they may also face additional withholding taxes or reporting requirements depending on their country of residence and any applicable tax treaties. The Dominican Republic has double tax treaties with Canada and Spain.

Both buyers and sellers must be aware of all applicable taxes to ensure compliance and avoid delays in property transfers. Legal advice and tax planning are often recommended to navigate these tax obligations effectively.

Latest developments in Dominican Republic, and areas to focus on in the future:

- Economic growth and diversification: The country continues to be one of the fastest-growing economies in Latin America and the Caribbean, driven by tourism, construction, mining, and free trade zones. In 2023, GDP growth remained strong, supported by foreign investment and government spending on infrastructure. The mining sector, particularly gold and nickel, remains a key contributor to the economy. The government has also encouraged investment in renewable energy and technology, aiming to diversify the economy beyond traditional sectors.
- Digital transformation: The country is making strides in digital transformation by improving access to high-speed internet and encouraging digital literacy programs. Government initiatives such as República Digital are aimed at fostering a more connected digital economy, which will be essential for attracting foreign investment and creating high-value jobs.

Areas to focus on the future:

- Improving transportation and urban mobility: As urbanization increases, improving urban mobility is essential. projects like the Santiago Monorail and expansion of the Santo Domingo Metro are steps in the right direction, but further investments in public transportation systems are necessary to reduce congestion and improve quality of life in cities.

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Overview of the Salvadorian Legal System

General introduction to the main laws governing the acquisition of assets in El Salvador – real estate rights.

In El Salvador, the right to property is established as the "right to exclusively possess a thing and to enjoy and dispose of it, without any limitations other than those established by law or by the will of the owner" according to Article 568 of the Civil Code (CC).

According to the Salvadoran CC there are different ways of acquiring property: occupation, accession, tradition, and acquisitive prescription. Of these, the most relevant for the transfer of ownership of real estate are acquisitive prescription and tradition.

Acquisitive prescription is the legal principle by which ownership of real or movable tangible property is acquired through possession that meets specific legal conditions. Acquisitive prescription can be either ordinary or extraordinary. Ordinary acquisitive prescription is acquired after 10 years for real estate, while extraordinary acquisitive prescription requires 30 years.

Tradition is another way to acquire ownership of things, which consists of the delivery that the owner makes of them to another. This transfer requires both the owner's intent to relinquish ownership and the recipient's intent to acquire it.

For the tradition to be valid, the following requirements are required:

- It must be done voluntarily by the owner of the thing;
- The consent of the purchaser (the one who receives the thing) is required;
- A title transfer of ownership must exist, such as the sale, exchange, donation, etc. that proves the ownership of the thing; and
- The delivery of the thing.

Acquisition structure generally applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions.

The "structure" in transactions involving the acquisition of real estate refers primarily to the mode and title of acquisition. Tradition and sale are the most common mode and title to acquire ownership of this type of property. Additionally, according to Article 1,605 CC, the sale of real estate will be perfect until it is granted in a public deed.

The purchase and sale are defined in Article 1,597 of the CC as "a contract in which one of the parties is obliged to give something and the other to pay for it in money. The former is said to sell and the latter to buy. The money that the buyer gives for the thing sold is called the price."

The public deed of sale must be executed before a duly authorized notary public. The notary will record the sale in a protocol, constituting the instrument that must be presented to the public registry, so that it has full effect against third parties (Articles 667 and 683 CC).

To carry out the preparation of the deed of sale, which preferably requires the involvement of specialized legal counsel, some of the most relevant documents, in addition to the identification of the parties, are: (i) the extracted certification issued by the National Registry

Center of the property to be transferred; (ii) the tax solvency issued by the Ministry of Finance; and (iii) the municipal tax solvency issued by the corresponding mayor's office.

As for exceptions applicable to foreigners, the Constitution of the Republic establishes some related to the ownership of rural real estate. This type of real estate may not be acquired by foreigners in whose countries of origin they do not have equal rights for Salvadorans, however, the above is not applicable in the case of land for industrial establishments. On the other hand, the ownership of this type of real estate may not exceed 245 hectares for the same natural or legal person, whether Salvadoran or foreign. However, this limitation shall not apply to peasant cooperative or communal associations.

Real estate registry system

The real estate registries in El Salvador are the responsibility of the National Registry Center (CNR in Spanish), whose purpose is to guarantee legal certainty and registry publicity, in addition to ensuring the fidelity of the registry, geographical, cartographic, cadastral information and its periodic updating, as appropriate.

The real estate property registries include a Real Property and Mortgage Registry section, which serves as a centralized registry for all real estate in the country. This register is public and can be consulted by any interested person.

The importance of registering the document that guarantees the tradition of ownership of real estate and its possession in this registry is to complete the formal requirement established by the law to produce effect against third parties. In this sense, for any transfer of ownership of a real estate property to be recognized by third parties in addition to the seller and buyer, it must be duly registered in the Real Estate and Mortgage Registry of the CNR.

Legal liability of the seller in real estate transactions

The essential obligations of the seller according to Article 1,627 of the CC are:

- The delivery or tradition; and
- Remediation of the thing sold, this includes two objects: to protect the buyer in the domain and peaceful possession of the thing sold, and to answer for the hidden defects of the same, called redhibitory defects. (Article 1,639 of the Civil Code).

As for the delivery, it has already been mentioned that the intention to sell a property is not enough, but that the legal formalities established must be complied with to consider the transfer of ownership of the real estate perfect, which constitutes in the case of the sale, the tradition of ownership through a public deed executed before a notary; which in turn must be registered in the corresponding registry.

Regarding the reorganization, the seller is obliged to clean up to the buyer all evictions that have a cause prior to the sale, unless otherwise agreed. This reorganization may include, among other things, the restitution of the price and the legal costs of the sales contract that have been paid by the buyer.

Therefore, the seller is obliged to disclose any defect that the real estate may suffer, under penalty that the buyer can exercise actions for remediation for redhibitory defects, which includes the possibility of requesting that the sale be rescinded or that the price be reduced proportionally for the hidden defects. As general rules in the case of real estate, the action to rescind the sale may be exercised for one year from the actual delivery and the action to request the reduction in price may be exercised for 18 months to be counted from the actual delivery.

Mortgages and other customary guarantees adopted in asset financing

The most common method used in El Salvador for the acquisition of real estate is financing through mortgage loans granted by financial institutions, such as banks or other non-bank financial institutions. To guarantee the

payment of these credits, the most used figure is the mortgage.

Article 2,157 CC defines a mortgage as a right constituted over real estate in favor of a creditor for the security of their credit, without ceasing to remain in the possession of the debtor.

Some of the characteristics of the mortgage are:

- The mortgage is indivisible. Consequently, each of the things mortgaged to a debt and each part of them are obliged to pay the whole debt and each part of it;
- It must be granted by public deed;
- A mortgage can be constituted only by the person who is capable of selling them, and with the necessary requirements for their sale; and
- It extends to all increases and improvements that the mortgaged thing receives.

Likewise, according to Article 736 of the CC, the instruments in which this lien is constituted, transferred, modified, or cancelled must be registered in the Real Estate and Mortgage Registry. The foregoing, to have effects against third parties, and will be effective as of the filing in the registry.

To cancel a mortgage, a cancellation of the lien must be granted in a public deed, which must be registered in the corresponding registry so that the lien of the property is eliminated.

It is worth mentioning that mortgage contracts entered in foreign countries may be valid in El Salvador, as long as the public deed containing them is registered in accordance with the provisions of the CC.

The leasing of assets and the leasing of businesses

Lease contracts are regulated by Article 1,703 et seq. of the Civil Code and are defined as those in which the two parties are mutually obligated, one to grant the enjoyment of a thing, or to execute a work or provide a service (lessor), and the other to pay a certain price for this enjoyment, work, or service (lessee). In addition, the lease of houses, warehouses, or other buildings is regulated in Articles 1,758 et seq. of the Civil Code.

The obligations of the lessor are:

- To deliver the leased property to the lessee;
- To keep the leased property in a condition to serve the purpose for which it has been leased; and
- To free the lessee from any disturbance or embarrassment in the enjoyment of the leased property.

The obligations of the lessee are:

- Use the leased property according to the terms or spirit of the contract; and consequently, may not make it serve other purposes than those agreed (Art. 1,726 CC);
- Maintain the leased property;
- Carry out rental repairs, these repairs are understood as those necessary to maintain the property in the state in which it was received; but it is not responsible for deterioration that comes from legitimate time and use, or from force majeure or fortuitous event, or from the poor quality of the building, due to its antiquity, the nature of the soil, or construction defects (Art. 1,758 CC); and
- Payment of the price or rent.

Likewise, the lease can terminate:

- For the total destruction of the leased property;
- By the expiration of the time stipulated for the duration of the lease;
- By the extinction of the lessor's right; and
- By sentence of a judge in the cases provided for by law.

Formalities and enforceability vis-à-vis third parties

All contracts that exceed US$22.86, or that are of an indeterminate price, must be recorded in writing; as well as those where a periodic price is established that exceeds the same value each period.

Although the law does not establish the obligation to formalize a public deed to record the lease, it is common

for the parties to enter a private lease contract and then draw up a record in front of a notary, to convert said contract into an authenticated private document. Likewise, in case the lease is granted in a public deed, it may be registered, which guarantees the tenant respect for his right, in case the property is transferred as property to a third party. If the above does not occur and the owner loses his right and the new owner is not obliged to respect the tenancy, the tenant will only have the possibility of claiming compensation from the original owner.

The possibility of granting a sublease must be expressly granted by the lessor to the lessee, otherwise it may not do so. The sublessee may make use or enjoyment of the property under the same terms as the direct lease.

In case the lessee uses the property for an illicit purpose, or having the power to sublet it sublets it to a person of bad conduct, they will give the lessor the right to expel them.

In the case of renting a furnished property, it is understood that the lease of the furniture is for the same period as that of the property, unless otherwise stipulated.

Administrative permits applicable to the construction or restructuring of assets

If you wish to start the construction process of real estate projects, you must have various authorizations from the Vice Ministry of Housing and Urban Development, the Planning Office of the Metropolitan Area of San Salvador, where appropriate, the Ministry of the Environment or the Ministry of Culture (all institutions in charge of the executive body), and the corresponding municipal mayor's office.

As of 2023, the Directorate of Construction Procedures was created, an agency attached to the executive body. This is the competent office, to receive, manage and notify about requests for the presentation and processing of feasibility, authorizations, pronouncements, permits, reception of works and other procedures related to construction, to guarantee the simplification, facilitation, and agility of the administrative procedures, granted by the different institutions of the executive body that have the power to issue construction permits.

The phases that can be carried out before this Directorate are the following:

- Preliminary evaluation phase: This includes, among other procedures, the following: qualification of place; categorization of works or projects; Certificate of Feasibility with and without hydraulic work for the supply of drinking water and/or sanitary sewerage; road review and zoning; all the procedures in cadastral and registry matters that are applicable; and all the procedures in matters of public works that are applicable.
- Permit approval phase: This includes, among other procedures, the following: approval of plans in the event of major works; construction permit; subdivision permit; discharge permit; environmental permit resolution; all applicable cadastral and registry procedures; and all applicable public works procedures.
- Reception phase of works, projects, and other procedures: This includes, among other procedures, the following: the partial and/or final reception of aqueduct and/or sanitary sewerage systems or stages; reception of subdivision and/or construction works and a habitation permit; and an environmental operating permit,

As for the permits granted by the Municipal Mayors' Offices, these will depend on the municipality where the property in which the construction will be built is located. The general procedure for obtaining a permit involves several steps. First, a completed application form must be submitted, along with a copy of the property's registered public deed and the owner's identification documents. Next, the corresponding municipal tax must be paid. Following payment, the mayor's office will conduct an inspection of the property. Finally, upon successful completion of these steps, the permit will be issued.

Environmental and energy – ESG (environmental, social and governance) rules and implementation status

In El Salvador, for the construction of houses and apartments, real estate and construction companies must submit the project for approval by the Ministry of Environment and Natural Resources (MARN), specifically to the Environmental Assessment System (SEA) which aims to assess in advance the possible environmental damage that would be caused by the work, activity or project to be carried out, and to determine the actions that must be taken to minimize such impacts.

Before commencing any construction work or project, it is essential to obtain an environmental permit. The process begins by submitting an Environmental Form, either physically or online, clearly identifying the proposed project type. The system will categorize the activity, work or project automatically to determine whether or not it requires the presentation of an Environmental Impact Study (EIS), taking as a parameter the type of activity, work or project, its magnitude and the nature of the potential impact that it may generate on the environment.

If the Ministry assesses favorably and has no observations, it issues the requirements for the Environmental Compliance Bond and Environmental Compensation Agreement (when applicable). If applicable, the owner of the work or project must submit a Compliance Bond for the amount equivalent to the total costs of the physical works or investments that are required, to comply with the environmental management and adaptation plans that are contained in the EIS. This bond will last until such works or investments have been carried out, in the manner previously established.

Finally, once all the necessary information has been verified, the MARN prepares the following within 10 working days: the Favorable Technical Opinion and the Ministerial Resolution of Environmental Permit for the corresponding stage (location and construction and/or operation); which will be notified to the owner and the interested parties.

Direct sales taxes

In El Salvador there is the Real Estate Transfer Tax Law, which aims to regulate everything related to the tax that is made on the transfer of real estate, by inter vivos transaction.

The payment of the tax will be made according to the following rate, depending on the value of the property:

- Up to US$28,571.42, it will be exempt from the payment of this tax; and
- From US$28,571.43 onwards, the tax will be 3% of the amount of the excess.

The subjects obliged to pay the tax must submit a written and signed declaration on a form drafted and distributed by the General Directorate of Internal Taxes, within the term of 60 days and with the formalities established by law, accompanied by a testimony of the deed of sale, certification of the auction act or the award order, in their respective cases.
It is worth mentioning that this payment of the fee is a requirement for the registration of the Deed of Transfer of Ownership, since, when the sale is presented for due registration in the Real Estate and Mortgage Registry, the registrar will require the delivery of the duplicate of the receipt where it is shown that the corresponding fee was paid, without which it will not be able to make the requested registration and therefore will not have effects against third parties.

Latest developments in El Salvador and areas to focus on in the future:

- Law on the Creation of the Planning Authority of the Historic Center of San Salvador. This law seeks to establish a reorganization of the capital and encourage economic, tourist and cultural activity. The construction, remodeling, improvement, expansion, recovery, conservation of buildings and economic-social and urban development in the Historic Center of San Salvador will be allowed, thus seeking national and foreign investment for its development. This law provides for tax and municipal incentives for up to 10 years:
  - Income tax exemption: For a period of 10 years for those investments in construction, remodeling, improvement, expansion, recovery, and conservation of real estate in the amount of US$1,000 per square meter in real estate that has a minimum of 25 square meters. In those properties smaller than an area of 25 square meters, where the minimum investment generated is US$25,000, they will also be subject to this incentive.
  - Deduction of expenses: The donation of real estate, or in the construction, reconstruction, restoration, maintenance, lighting or improvement of parks, green areas, churches or any other site of public use and purposes that are within the delimited area, will be 100% deductible from income tax, according to the valuation made by duly authorized experts, by any natural or legal person. If it is done in accordance with the established requirements related to the issue of cultural heritage in accordance with the corresponding laws.
  - Exemption from municipal taxes: For a period of 10 years, 100% of the total municipal taxes authorized by the competent authority, within the territorial circumscription established in the law.
- The government of El Salvador promotes "Surf City" as its key strategy to position the country as an international elite destination, attracting investment, tourists and residents with a value proposition that encompasses comprehensive improvements. This project focuses on the transformation of public areas into high-quality tourist spaces, ranging from the optimization of basic services in tourist areas, to the training of specialized personnel. In addition, it includes the construction of first-class tourist facilities, the development of road infrastructure projects, and the modernization and expansion of communication networks.

- The Bitcoin Law is created with the aim of generating employment opportunities, promoting true financial inclusion, and generating economic dynamism. El Salvador becomes the first country to recognize Bitcoin as legal tender. In harmony with this law, the development of Bitcoin City is expected, according to information from the presidency of the republic, this city will have "residential, commercial and entertainment areas, as an additional value on the periphery of Bitcoin City will be built the Pacific Airport and the Pacific Train terminal, projects that will be the basis of transportation for residents and national and foreign tourists. 50% of the city will be dedicated to residential areas; 20% for recreation; 10% will be green areas; 8% will be occupied by industries and offices; 7% will be allocated for the installation of digital equipment; 3% will be for "eco-infrastructure"; and the remaining 2% will be infrastructure necessary for transport. The city has been designed to attract investors from all over the world, and, in addition, to turn it into a mega center of cryptocurrency operations and to be visited by foreign and national tourists."
- Law on the Issuance of Digital Assets, as part of the efforts in innovation, this law aims to "establish the legal framework that grants legal certainty to the transfer operations to any title of digital assets that are used in the issuances of public offerings carried out in the territory of El Salvador; as well as to regulate the requirements and obligations of issuers, digital asset service providers, and other participants operating in the public offering process, with the aim of promoting the efficient development of the digital asset market and protecting the interests of acquirers." During 2024, the tokenization of real estate projects covered by this law is expected.

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Overview of the Finish Legal System

General introduction to main laws that govern acquisition of assets in Finland – real estate rights

Under Finnish legislation, real estate refers to a land ownership unit entered into the cadastre. There may or may not be buildings located on the real estate. Real estate may either be owned by natural persons or legal entities, e.g., by real estate companies, mutual real estate companies or housing companies. The basis of the real estate legislation in Finland is set out in the Code of Real Estate (12.4.1995/540, as amended). The Code of Real Estate regulates, among other things, the sale and purchase of real estate, registration procedures as well as real estate rights and encumbrances.

Hence, the provisions of the Code of Real Estate are crucial when ownership of real estate is transferred. However, where the ownership of shares in a company possessing the ownership of a real estate (and not the real estate itself) is transferred, the provisions on the sale and purchase of the Code of Real Estate will not apply to the transaction as such. Instead, the provisions of the Finnish Limited Liability Companies Act (21 July 2006/624, as amended) or the Limited Liability Housing Companies Act (22 December 2009/1599, as amended) will become relevant for this type of transaction, depending on the company's form and the articles of association of the target company. Furthermore, the Finnish Contracts Act (13 June 1929/228, as amended) also applies to most contractual relationships as it is the general law in the field of contract law in Finland. In addition, there are various regulations in place governing, e.g., land use, building and environmental matters, as well as laws regulating the lease of real estate and premises, which usually are highly relevant in real estate transactions, irrespective of the structure applied. In terms of the sale and purchase of real estate, the Code of Real Estate particularly states that the principle of freedom of contract applies to the transfers of real estate, unless otherwise specifically provided by law. Thus, the parties may determine the terms and conditions of the transaction rather freely as far as no restrictions on the relevant matters are imposed elsewhere in the legislation. However, there are certain formal requirements that need to be met in order to make a direct transfer of real estate valid, the requirements of which have been itemized in the Code of Real Estate. In essence, the due diligence and the potential findings made in connection therewith play an important role when negotiating and determining the final terms and conditions of the sale and purchase agreement for each particular transaction, regardless of whether the transaction constitutes a direct transfer of real estate or an indirect transfer by the transfer of company shares.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Acquisition structures usually applied in real estate transactions

Real estate transactions in Finland, which normally require the involvement of specialized legal counsel, are usually structured in a way that either an ordinary real estate company (REC) or mutual real estate company (MREC) owns and possesses the real property, the latter alternative having been the most commonly used structure in recent years. An MREC differs from a REC to some extent. A REC is an ordinary limited liability company owning real estate, whereas an MREC is a limited liability company but with some specific characteristics typical for housing companies.

MRECs operate in the same way as housing companies, i.e., in MRECs, the shares entitle a shareholder to control specific premises in the building(s) owned and possessed by the MREC, or another part of the company's building or the real estate under its possession, as laid down in the articles of association. By contrast, shareholdings in RECs are, by their nature, similar to other limited liability companies, i.e., shareholders own a proportional share of the company corresponding to their shareholding.

Another important character of the MREC is that rental income deriving from the property owned by the MREC is not paid to the company but directly to the shareholders, whereas in the case of RECs, rental income goes directly to the company and may (if all legal requirements for the distribution of assets are met) be distributed as dividends to the shareholders. These options naturally have important tax implications and should therefore be carefully assessed when determining the transaction structure. Further, in contrast to RECs, MRECs typically receive their income from their shareholders through monthly maintenance charges, which are intended to cover expenses of the MREC, such as costs for maintenance, taxes, and insurance.

Restrictions applicable to foreigners and specific areas of the country

The principal rule is that there are no restrictions on real estate ownership by foreigners as such in Finland. Thus, foreign individuals or foreign legal entities may, as a rule, acquire and own real estate in Finland on the same basis as Finnish persons and entities. However, from 2020, foreign purchasers (both private individuals and legal entities) from outside the European Union (EU) and European Economic Area (EEA) are required to obtain a permit from the Ministry of Defence to acquire real estate in Finland, except for real estate acquisitions on the Åland Islands, which are governed by separate rules due to Åland's special status: The Åland Islands is a self-governing province located southwest of Finland. In order to give effect to the right of the people of Åland to own land on the Åland Islands, the acquisition and possession of real estate have been restricted by law and are subject to certain authority proceedings, which not only applies to foreigners but also Finnish individuals and entities. Additionally, in Finland, municipalities may, in certain situations, have the right to redeem real estate sold if the land is required for civil engineering, recreational, or protection purposes. Also, the state holds a pre-emptive right in real estate transactions involving properties located in the immediate vicinity of strategic sites, primarily referring to sites crucial for defense and national security.

Real estate registry system

The National Land Survey Authority of Finland maintains registers concerning real estate, such as the cadastre and the title and mortgage register. In addition to the National Land Survey Authority, many municipalities participate in the maintenance of the cadastre. The cadastre is a public register that is a part of the Land Information System. The Land Information System consists of information included in the cadastre (mainly property details and information on the location of properties) and in the title and mortgage register (mainly information on ownership, real estate mortgages, special rights and restrictions concerning properties) covering the entire country. In the field of real estate, registrations typically have major legal consequences, as most of the real estate rights are established only at the moment when relevant registrations take place. Hence, it is important that all required registrations are duly completed post-transaction and that deadlines provided by law are adhered to.

Residential and Commercial Property Information System

The Residential and Commercial Property Information System was introduced in Finland in 2019. The system is nationwide and maintained by the National Land Survey of Finland. It includes information on ownership, pledges, and restrictions of shares in housing companies and MRECs. Membership in the system is mandatory for all housing companies. Additionally, MRECs established in 2019 or later are automatically entered into the system, while membership is optional for older MRECs established before 2019.

Once a company has been entered into the Residential and Commercial Property Information System, the National Land Survey of Finland is responsible for maintaining the company's share register. Therefore, when a real estate transaction is structured as a sale and purchase of shares

in an MREC or housing company belonging to the Residential and Commercial Property Information System, the change of ownership should be notified to the National Land Survey of Finland post-transaction and registered in the system.

Notary role in the real estate transactions

There is no need for notarization of a real estate transaction in Finland. However, a public purchase witness acts as a witness to a transaction as well as identifies the parties and confirms the formal validity of the real estate transaction. A public purchase witness is required only in the case of a direct ownership change of real estate. Hence, there is no need for a public purchase witness for the sale and purchase of shares in a company possessing the ownership of a real estate. If a real estate transaction has not been duly witnessed, it is considered invalid, and the purchaser cannot be granted title to the property. Only a public purchase witness can witness a real estate transaction. However, if real estate is transferred using the Property Transaction Service administered by the National Land Survey of Finland, a public purchase witness would not be necessary.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

Legal responsibility of the seller

The principle of freedom of contract is, as a rule, applied to real estate transactions in Finland. Hence, the responsibility of the parties, including the seller's responsibility towards the purchaser, may be agreed upon rather freely between the parties of the transaction. Typically, the seller would not be liable for matters which have been fairly disclosed to the purchaser in connection with the due diligence process, unless otherwise specifically agreed between the parties in the sale and purchase agreement. There are, however, certain provisions defining the legal position of the parties. For example, the seller is by law responsible for any payment obligations that are regarded as public in nature (i.e., obligations towards authorities) and created prior to the transaction.

Contractual representations and warranties

As with other transactional contracts, representation and warranties (R&W) are typically an essential part of real estate sale and purchase agreements. R&Ws in real estate transactions are strongly dependent on the outcome of the due diligence review and findings. Also, the value of the transaction and the previous use of the real estate are typically relevant when determining how extensive R&Ws are necessary and reasonable in the transaction at hand. R&Ws are typically included with respect to, e.g., ownership and authority, mandatory permits and inspections, mortgages, easements, and encumbrances in relation to the property in question. When a real estate transaction is structured in the form of a sale and purchase of shares in a company holding the ownership of real estate, the R&Ws are, in many aspects, similar to those of typical share deals. R&Ws on corporate and compliance related matters would, for instance, typically be included in such share sale and purchase agreements in addition to those R&Ws relating to the actual asset.

Mortgages and other usual guarantees adopted in financing assets

In Finland, there are several ways to secure financing for real estate investments and to use real estate as a security. Practically almost any kind of asset can be subject to security provided that it can be identified, is assignable and can be subject to an enforcement procedure as well as has value as a subject of exchange. Typical forms of securities in the field of real estate include but are not limited to: (i) pledge over real estate or leasehold (mortgage); (ii) pledge of movable property (e.g., shares, receivables, bank accounts, rental income); (iii) floating charge; and (iv) contractual commitments, such as covenants and letters of comfort. The most common security arrangement used and relating directly to real estate is the mortgage, which may be registered over the relevant asset through a mortgage application process with the National Land Survey Authority.

Lease of assets and lease of business

Land leases

The lease of real estate property is regulated in the Land Tenancy Act (29 April 1966/258, as amended). The law applies in situations where a property or a part of it is let out by the landowner(s) against consideration. Typically, land lease agreements are very long, fixed-term agreements; the length also being dependent on the type/purpose of the relevant property, as the legislation includes certain rules on maximum and minimum durations depending thereon. Land lease agreements must, as a rule, be made in writing and include all terms and conditions. Such terms and conditions that have been left out of a written agreement are, by law, considered void. Furthermore, the agreements must inter alia be dated and signed by the parties and include detailed information on the object of lease, purpose of use, and the lease term. Although the freedom of contract is a strong principle, land lease agreements are, by their nature, more restricted contracts as the legislation is mandatory in many aspects, meaning that the contracting parties may not by contract deviate from the legal provisions.

A land lease agreement can be registered as a special right in the title and mortgage register. The entry is applied for from the National Land Survey of Finland. Once registered, the lease right always binds the new owner of the property that is the subject of the right. The registration also gives protection against the property owner's creditors in accordance with its priority order. Certain types of land lease rights are, however, subject to mandatory registration. These are fixed-term leases that can be transferred to a third party without hearing from the landlord, provided that buildings exist on the leased area, or that buildings may be constructed and/or appliances exist that are owned by the tenant. The registration requirement also applies to transfer of such rights. A registered leasehold may be used as security for debt.

Lease of business premises

The lease of business premises in Finland is regulated by the Act on Commercial Leases (31 March 1995/482, as amended). The act applies to leases of buildings or parts of buildings (premises) for other than residential purposes (commercial leases). Such leases may also comprise land areas which are to be used in connection with the business premises. The contracting parties may, in the lease agreement, deviate from the provisions of the act, unless otherwise provided for therein. When negotiating on a commercial lease agreement, it is therefore crucial to keep in mind that the provisions of the Act on Commercial Leases will apply to the tenancy as such, should the parties not specifically have agreed otherwise in the lease agreement. If a matter is not regulated in the act, the general principles of contract law will apply.

Commercial leases may be entered into for a fixed term or until further notice. As a rule, commercial lease agreements are made in writing to ensure that the contents of the tenancy are properly documented, which is highly advisable. Oral agreements are not, as such, prohibited, but these agreements are by law considered valid until further notice, although the parties would in fact have agreed on a fixed term. Commercial lease agreements typically tend to include provisions on the rent and its payment, rent adjustment, term of lease and termination, property maintenance, lease collateral, insurance, subleasing, and dispute resolution. Further, it is crucial to specify the object of the lease as precisely as possible as well as agree on the purpose of use, as the premises may only be used for such agreed purposes.

Administrative permits applicable to construction or restructuring of assets

The most significant act regulating construction work and other developments is the Finnish Land Use and Building Act (5 February 1999/132, as amended). Prior to starting any construction work, a building permit or an action permit must be obtained from the municipal building authorities. A building permit is required when constructing a new building and, for instance, when making major renovations and other alterations and repairs that correspond to new construction. For minor repairs and the construction of small outbuildings, an action permit, or a notification to the municipal building authority, as the case may be, is usually sufficient. In some cases, an environmental permit will also be needed if the activities to be carried out on the property may lead to, e.g., pollution or contamination of the environment. In addition, some other permits may be required depending on the location

of the property (e.g., depending on the zoning situation on the specific area) and the specific operations that will be carried out on the same.

Environmental and energy

Environment

With respect to the environment, the Finnish legislation inter alia sets out a framework for the treatment of contaminated areas. The prohibition of actions that may contaminate soil and groundwater and the general principles set out in the Environmental Protection Act (27 June 2014/527), aim to prevent contamination. Should full prevention not be possible, minimizing the environmental impact of harmful substances is the key principle.

The legislation also sets out provisions on the assessment of contaminated areas and the requirements for remediation of such areas, allocation of the responsibility for the remedial measures, permits required for such measures, as well as notification of obligations when selling or renting out property. Typically, specific environmental due diligence is carried out on site by experts in the field in connection with real estate transactions in Finland. Hence, the legal due diligence tends to focus primarily on reviewing potential documentation in relation to environmental permits and authorizations, environmental violations as well as environmental investigations and audits, to mention some key areas.

Energy

Energy-smartness and energy efficiency have become increasingly important in society in recent years. Naturally, this has also had implications for the energy requirements for real estate and buildings. Regulations on energy efficiency in respect of buildings are mainly set out in the Land Use and Building Act (5 February 1999/132, as amended). Buildings should, by law, be constructed for their intended use in such a way that energy and natural resources are used sparingly. The legislation also provides for the use of renewable energy for new buildings and extensively renovated buildings. An energy account may, depending on the project, be required for the building permit application.

In Finland, there is also a specific act on energy certificates. Energy certificates are, as a rule, mandatory for all buildings. The certificates constitute, inter alia, tools for comparing and enhancing the energy efficiency of buildings as well as promote the use of renewable energy in buildings. Typically, on-site technical due diligence is carried out by experts in the field in connection with real estate transactions in Finland to verify that the target property is technically compliant with the prevailing legislation and building standards.

Taxes

Transfer tax

The transfer of shares in a Finnish housing or real estate company (or in companies of other forms whose activities in practice consist mainly of directly or indirectly owning or controlling Finnish real estate) is subject to a transfer tax of 1.5%. This definition includes Finnish and non-Finnish holding companies. The tax base used for calculating transfer tax is: the purchase price plus any payment made by the purchaser that is a condition for the transfer in the transfer agreement (e.g., payments made in the closing event), plus any liability the purchaser assumes as part of the transfer where the transferor benefits from the arrangement (e.g., assumption of debt obligations), and where the seller or a related party to the seller benefits from the arrangement. Furthermore, generally, where shares are transferred in an MREC, loans that are attributable to the designated shares of the MREC would also be included in the tax base.

Transfer of Finnish real estate is subject to transfer tax at a rate of 3% on the purchase price.

The party liable to transfer tax is the purchaser. Generally, if the purchaser is a non-resident, the Finnish resident seller has a secondary liability on the transfer tax and thus may be liable to collect the transfer tax from the purchaser and remit that tax to the tax administration. Transfer tax is payable, and the transfer tax return is due within two months of the share acquisition (including shares of RECs) or within six months of the real estate acquisition.

Non-resident capital gain tax

Finnish non-resident capital gain tax at standard CIT rate of 20% applies on gain derived from disposal of Finnish real estate.

Further, a non-Finnish seller may be subject to Finnish non-resident capital gain tax if disposing shares in a (Finnish or non-Finnish) entity that is considered real estate rich for capital gain tax purposes.

A company is deemed real estate rich for capital gain tax purposes if more than 50% of the company's assets consists of directly or indirectly held Finnish real estate at disposal or at any time within 365 days preceding the disposal.

If the disposed company is deemed real estate rich, any gain is subject to non-resident capital gain tax at standard CIT rate of 20% under domestic legislation. However, double tax treaties may restrict Finland's right to impose non-resident capital gain tax. Further, Finland updated its Multilateral Instrument (MLI) position in 2023 by withdrawing is its reservation on Article 9 and chose to apply optional Article 9(4), which introduces provisions for the taxation of gains from the alienation of shares or comparable interests deriving more than 50% of their value from immovable property at any time during the 365 days preceding the alienation.

Value added tax (VAT)

The sale of real estate is VAT exempt in Finland. The VAT exemption also applies to the sale of shares of an MREC or REC. Further, the input VAT on transaction costs related to the sale of real estate or shares of a real estate company is typically not deductible in Finland, according to the Finnish tax authorities' guidance. Also, the leasing of real estate property is VAT exempt in Finland and, accordingly, the input VAT on costs incurred in relation to the VAT exempt leasing, e.g., VAT on new construction and maintenance costs, is not deductible. However, it is possible to opt for VAT for leasing of real estate property provided that certain conditions are met, e.g., the real estate or a part of it is used continuously for activity which is entitled to VAT recovery. When the lessor opts for VAT and the leasing of real estate property is subject to VAT, the input VAT on costs directly relating to this activity is also deductible.

Real estate investments, i.e., new construction or major renovation works, are subject to a 10-year VAT adjustment period. The adjustment period starts at the beginning of the calendar year during which the construction work was completed. If the taxable use of the premises decreases during the 10-year adjustment period, VAT deductions made may need to be adjusted, i.e., VAT is partially repaid. Respectively, if the taxable use of the premises increases, additional VAT deductions can be made.

Proper documentation should be maintained, and the taxable use of the premises should be monitored constantly during the 10-year adjustment period.

When real estate is sold, the adjustment liabilities and rights are, as a main rule, transferred to the purchaser of the real estate. The seller must provide a specification of the real estate investments subject to the VAT adjustments in order for the purchaser to be able to comply with the VAT legislation.

Emerging markets and new asset classes in Finland:

- Social infrastructure (daycare, hospitals, emergency services buildings, care facilities and others) for both newbuild and in particular for office conversions.
- Residential remains buoyant, with Finland remaining solid in payment behavior and one of the best environments for collection.
- Datacenters is a growing asset class and one where we expect to see significant growth in the near-term years.
- Conversion of industrial complexes (paper mills, other factories) with a strong energy infrastructure to multi-use.

By **Lars Björknäs,** M&A Partner, Deloitte Finland

Real Estate Law in France

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Corinne is a partner in Deloitte Legal France, responsible for the legal real estate practice. Prior to Deloitte, she was a partner in an international law firm where she was head of the legal real estate department. Her core expertise is transactional, and mainly advises French and foreign investors on their real estate investments (including portfolios, sale and leaseback), structuring, security and guarantees aspects, and asset management including all types of leases and real estate contracts. She also has significant experience of cross-border transactions.

Overview of the French Legal System

General introduction to real estate rights in France

Real estate rights are governed by the French civil code, also known as the Napoleon code, and generally include:

Full ownership of real property (droit de propriété)

This right confers on the owner the right to use the asset (usus), the right to collect any proceeds therefrom (rents, interest, etc.) (fructus), and the right to dispose of the asset (abusus). It is a title with full rights.

Subdivision of ownership (démembrement de propriété)

Ownership is divided into two rights: bare ownership (nue-propriete) and usufruct (usufruit), which includes the right to use the property and the right to collect any proceeds. These two rights belong to different persons. This structure is used for asset management purposes.

Co-ownership (copropriété)

Governed by the French law dated 10 July 1965, it is a way of organizing the ownership of a building consisting of several units. Each unit comprises (i) a privately owned area (e.g., an apartment) with full ownership rights and (ii) a proportional right over the common areas (e.g., staircases and corridors). The co-owners are required to abide by co-ownership rules and regulations relating to the use, maintenance, and costs of the property.

Ownership of volume units (division de propriété en volumes)

This type of ownership pertains to a property that is legally divided into volume units of different sizes and shapes (horizontally, vertically, or both; or into three dimensional units i.e., cubic meters). Each owner is entitled to build within the limits of their unit, subject to any easements. The principal difference with co-ownership is the independence of each volume unit and the absence of common areas.

Long-term leases

Long-term leases grant to the lessee the equivalent of real property rights or rights in rem (droit réel immobilier). The two main types of long-term leases (both granted for a term of 18 to 99 years) are: (i) construction leases (bail a construction) and (ii) long-term leases (bail emphytéotique) with or without an obligation for the lessee to build. Under both leases, the lessee enjoys a right in rem over the land and full ownership of any built premises until the end of the lease. Upon expiry of the lease, the land, as well as the constructions, revert to the landlord. The lessee's right in rem may be freely transferred or mortgaged.

Acquisition structure usually applied in real estate transactions

Usual acquisition structures

French real estate may be acquired through limited liability companies or unlimited liability and transparent special purpose vehicles (SPVs) such as SCIs (Société Civile Immobilière), usually depending on tax considerations.

French REITs also exist in the form of OPCI (Organisme de Placement Collectif en Immobilier) regulated investment funds. These funds may be used to acquire or build real estate assets with a view to lease them. They cannot be used to acquire and sell real estate. OPCIs are eligible for a preferential tax treatment.

Investments may also be made through listed property companies (SIIC), which are also subject to a preferential tax treatment.

No restriction on foreign investments.

Foreign-registered or foreign-controlled entities are free to carry out real estate investments in France, but they must file a declaration.

Specific restriction on acquisitions

Under French planning regulations, the direct sale of real estate assets most often gives rise to the application of a pre-emptive right on the part of the municipality or other public authorities. This right may also apply to the sale of shares in a transparent SCI company and to certain other real estate transfer transactions. As a result, clearance of such a pre-emptive right is required before the acquisition of a real estate asset may be completed, failing which the acquisition would not be valid. However, the pre-emptive right is not applicable in the event of a merger, demerger, or certain dissolution of companies, as such a restructuring involves the transfer of an entire estate, not a single real estate asset.

Real estate registry system.

To be enforceable against third parties, transfers of real estate ownership must be registered with the local land registry (services de la publicité foncière). Only notarized deeds of transfer authenticated by a French public notary can be registered.

Registration with the land registry is not an ascertainment of the validity of title of the registered owner. In other words, there is no state guarantee of title. Any interested third party can challenge the title in court.

Information available at the land registry includes the identity of the current and former owners, acquisition date, registered easements, registered mortgages and encumbrances, leases, and finance leases lasting over 12 years. Since the land registry is a public register, information is available to third parties.

Please note that the current land registry system will be reformed in the near future to simplify formalities and adapt the regulations to our current market (digital tools, updated security interests, etc.).

Notary role in the real estate transactions

In asset deals, the parties and the notary execute a notarized transfer deed. The notary authenticates and stamps the deed and must register it with the local land registry (see "services de la publicite fonciere" above) within one month of its execution to make the title transfer enforceable against third parties.

French notaries are public officers. They are liable for the legal efficacy of the transaction made through a notarized deed. As a result, they are responsible for verifying that there is no obstacle to the transaction, including verifying the root of title over a 30-year period.

A real estate transaction is usually a two-step process: First the execution of a conditional sale and purchase agreement or sale option or purchase option agreement. The sale of a real estate asset is most often subject to a pre-emption right on the part of a public authority. The agreement may also contain other conditions precedent, such as the buyer's obtainment of the necessary financing. Upon signing, the buyer usually pays a deposit guarantee (except in the case of a sale option), which remains in escrow with the notary, pending completion of the transaction.

When the conditions are met, the final notarized deed of sale may be executed, and the transaction is completed. The transfer of ownership is usually expressly deferred to the date of execution of the deed and simultaneous payment of the price.

Payment of the purchase price is made through the notaries' accounts. The latter are responsible for the payment of transfer taxes to the tax authorities and publication costs upon completion, such amounts being paid out of the funds transferred to the notaries. No transaction will be completed if the notary has not received in advance the price and any additional funds needed to pay the costs and taxes.

Notarized deeds apply to mortgages, restrictions on sale, easements, and leases of more than 12 years. Registration is extremely important for tenants as it renders the lease enforceable against a new owner of the property.

Share deals are completed by private agreement.

Seller's responsibility - contractual representations and warranties

The seller of real estate is bound by law to a compliant delivery obligation and a warranty obligation.

It is, however, market practice in investment transactions for the seller to exclude any warranty and provide for a sale of the asset "as is." This negotiation position is limited in (i) a compulsory eviction warranty (garantie d'éviction) which applies by law whatever the terms of the sale agreement, (ii) the seller's obligation to provide information under environmental laws and (iii) any express warranties granted by the seller in the agreement. Usually, the seller provides that the matters raised in the data room to which the buyer was given access exclude any warranty. The exclusion of a specific warranty is admissible provided that the information provided is accurate. The same applies to the seller's representations in the deed of sale (relating to mortgages, encumbrances, easements, building and operational permits, works, authorized use, and so on).

In asset deals, sellers must provide certain compulsory information and documents. Regarding environmental matters, the seller is generally bound by an obligation to inform the buyer about the environmental condition of the asset to be sold. No exclusion of warranty may apply if this obligation is breached.

In the case of share deals, it is market practice to require from the seller the same information and environmental/technical reports and diagnoses.

The seller's obligation of indemnification may be limited. It is market practice to exclude any such limits regarding the subject matter of the deal, such as title to the shares and real estate. The seller's liability is usually excluded if the buyer's claim relates to any matter disclosed in the due diligence process (in particular in the data-room) or in the transaction documentation. Title insurance is developing in the French real estate market, notably among professional real estate investors.

Mortgages and other usual guarantees in real estate financing

Usual security interests

- General real estate privileges: Securities provided by law that confer a right of preference and take precedence over other real estate securities (for court costs, employee remuneration, etc.).
- Contractual mortgages: Granted under a notarized deed, which is subsequently registered with the local land registry.
- Assignment of receivables: For receivables such as rents, a Dailly (from the French Monetary and Financial Code) assignment is usually required by the bank; the borrower must fill out a Dailly assignment forms in order for the assignment to be effective.
- Specific legal mortgages: Specific security interests of benefit to the seller of real estate when the price is not fully paid upon completion of the sale and to the lender who finances in whole or in part the acquisition of real estate.
- Pledges of the borrower's shares and pledges of the borrower's bank accounts are also market practice.
- Another type of security interest is particularly relevant for real estate financing: the "fiducie" which is similar to the concept of trust in Anglo-Saxon countries. It is a very efficient security interest since the real estate

asset is excluded from the debtor's assets (and risks) during the security term. It remains an expensive security to create.

Protection of the lender

As a condition precedent, lenders typically require from the borrower a valuation report on the financed assets; in accordance with the financing documentation, the borrower must comply with financial ratios and specific covenants.

In addition to the mortgages and assignments of receivables referred to above, the lender may require additional guarantees from another guarantor (e.g., joint and several guarantee, autonomous guarantee, letter of intent, cash reserve, etc.). If the debtor defaults under the loan, a mortgage entitles the lender to:

- Require the sale of the property by public auction or on an amicable basis to a transferee and be reimbursed from the proceeds; or
- Obtain a court order transferring title to the secured property to the creditor as payment of its claims.

Leases

Civil leases: Unless a compulsory legal regime applies to a lease due to the tenant's activity or use, or to the type of property, the lease is governed by the French Civil Code and there are no compulsory provisions. Residential leases are governed by specific legislation with significant protection of tenants and potential limits on rent depending on the municipality where the residence is located. Such limits are applicable in Paris for example.

Commercial leases: leases of premises for most professional activities have a specific status as commercial leases.

Duration of the lease

The minimum term of a commercial lease agreement is nine years. In principle, the tenant has a break option, which may be exercised at the end of each three-year period. However, in certain conditions, the parties may agree on a fixed term, even for the whole term of the lease and/or other break options.

Renewal of commercial leases

Under certain conditions, the tenant has a right to require the lease renewal. Accordingly, if the landlord refuses to renew the lease, the latter must pay an eviction indemnity to compensate the damage suffered by the tenant. The lease is normally renewed under identical terms and conditions, save for the rent, unless otherwise agreed upon by the parties.

Rent

Usually, the rent is either a fixed amount (e.g., for office buildings) or twofold, i.e., fixed rent (guaranteed minimum rent) coupled with a variable sum based on a percentage of the tenant's turnover (e.g., for retail space). It may also consist in a step rent.

Indexation of the rent

Indexation clauses are market practice and subject to strict legal requirements. Rents cannot be indexed directly on the general cost of living or level of salaries.

Works and repairs: since the Pinel Law

A complete inventory of charges and taxes must be attached to the lease and clearly specify, for each category of charges and taxes, whether they are borne by the landlord or the tenant. This list relates to works, repairs, maintenance and replacement of equipment/the premises.

Major repairs governed by Article 606 of the French Civil Code must be borne by the landlord.

Assignment

Generally, the tenant may not transfer the lease agreement without the prior authorization of the landlord, except for a lease transfer as part of the sale of the tenant's ongoing business.

Sale of the property

Since the Pinel Law came into force, the tenant enjoys, under certain conditions, a pre-emption right should the lessor decide to sell the leased commercial premises.

Hotel lease

Several types of agreements may relate to the operation of a hotel. The tenant under a lease is the owner of the hotel business (and not the hotel property). Whether the hotel business owner is the tenant or the owner of the property it may operate the hotel directly or grant a lease over the hotel business (location-gérance) or take a franchise for a brand or even grant the management of the hotel to a manager acting on behalf of the owner. Such a possible combination of operational agreements must be carefully looked at with a legal adviser.

Administrative permits applicable to construction or restructuring of assets

Building permits are required to:

- Construct new buildings; or
- Undertake construction works on existing buildings if such works result in a change of function of the various parts of the premises or the creation of additional surface area.

In addition, in the Ile-de-France region, a specific authorization (agrément) is required from the competent authorities if the building is dedicated to certain activities (office, industrial, commercial, professional, administrative, technical, scientific, or educational uses). Separately, authorizations (or registration/notification) to operate on-site facilities subject to environmental protection regulations (ICPE) may also be required.

Environmental and energy – ESG rules and status of implementation

Because of the ambitious and overreaching scope of the EU's Green Deal a number of new policies, and new legislative acts, will be gradually implemented. Consequently, the ESG rules will be evolving and should be closely monitored.

Protection of the environment

Classified Installations for the Protection of the Environment (ICPE) regulations apply specifically to facilities likely to cause nuisances, hazards, and pollution (including land pollution). As a consequence, a specific authorization (or registration or notification) delivered by the Préfecture is required for the installation of an ICPE. Specific obligations/requirements may be imposed on the ICPE operator. Changes in the operator and discontinuation of the facility's activity are also regulated. Beyond this specific legislation, operators responsible for pollution are liable for its remediation.

In accordance with the ALUR Law of 24 March 2014 the seller or landlord of a property located in a specific "soil information zone" has the obligation to inform the purchaser or tenant of this situation in writing. The purchaser or tenant may even request the cancellation of the sale/lease, the repayment of a portion of the price or a reduction of the rent, or the rehabilitation of the polluted site if the pollution makes the land unsuitable for the use stipulated in the agreement. Subject to the approval of the Préfecture, the ALUR Law expressly authorizes the transfer of the rehabilitation work to a third party (such as a purchaser).

Green leases

French law requires that leases of premises dedicated to professional activities exceeding 2,000 square meters contain a "green appendix" under which the parties must exchange information on overall consumption and waste removal and must cooperate to improve the energy and environmental performance of the premises. They should also work to develop a program of works to be carried out. This is more an incentive than an obligation to reach certain objectives. However, it is now often completed with the following new obligations regarding energetic performance/installation of renewable energy and so on.

Energy performance and more

Following the Grenelle 1 and Grenelle 2 Laws, and more recent legislation, buildings are subject to strict requirements with respect to their future energy performance. Under the ELAN law of 23 November 2018, specific targets were assigned to buildings where more than 1,000 square meters are used for professional activities. Compared to a chosen reference year (which cannot be prior to 2010), energy consumptions in a building must be reduced by 40% by 2030, 50% by 2040, and 60% by 2050.

This legislation is now completed by the European Directive 2024/1275 which aims at enhancing the energy performance of buildings across the European Union, with long-term goals such as achieving a decarbonized building stock by 2050.

A specific decree of 23 July 2019 sets out various obligations affecting the landlord and tenant, starting with an obligation to record the building's energy consumption on a government web platform on 30 September each year; and an obligation to set up a plan of works to achieve the legal objectives and to carry out the said works.

Other regulations are being implemented to reduce the energy consumption of buildings, notably the BACS decree (Building Automation and Control Systems), which requires the installation of automation and control systems to monitor, analyze, and adjust the energy consumption of tertiary buildings in order to enhance their energy efficiency.

With the objective to reduce energy consumption, office or warehouse buildings will have to be equipped with solar panels or a green roofing system under certain conditions by 1 January 2028. Similarly, outdoor parking lots will need to be fitted with canopies incorporating renewable energy production systems by 1 July 2026 or 2028, depending on their size.

The National Low-Carbon Strategy (SNBC) adopted by France sets a target of reducing greenhouse gas emissions by 49% by 2030 compared to 2015. Greenhouse gas emissions can be reduced either through the decarbonization of energy sources or through energy efficiency measures (such as in the specific decree of 23 July 2019). To meet these objectives, France has notably implemented a more ambitious and demanding energy and environmental regulation (RE 2020) for the construction sector, which incorporates not only energy consumption but also carbon emissions, including those related to the building's construction phase. This regulation imposes strict requirements regarding energy efficiency, decarbonization of energy, and the reduction of carbon impact. The RE 2020 is progressively applicable to various types of buildings.

Taxes applicable to real estate transactions

The following developments cover the regime applicable to corporate investors.

Sales and acquisitions of French real estate assets

Direct taxes

Capital gains on the sale of French real estate assets are subject to French Corporate Income Tax (CIT) at the standard rate applicable at the time of the sale. The CIT rate is currently set at 25% plus the social surcharge of 3.3% levied on the part of the CIT liability which exceeds €763,000 (US$805,697*) tax losses that are available at the level of the entity disposing of the French real estate assets can be offset against the taxable capital gain. As a general rule, tax losses can be carried forward without any time limit (except in case of change of activity or in certain cases of restructuring). However, carry-forward tax losses can only be used to offset in a given financial year up to €1 million (US$1,055,960*) plus 50% of the taxable profit of that year exceeding €1 million (US$1,055,960*). Upon proper election, tax losses may also be carried back but only up to €1 million (US$1,055,960*) and offset against the taxable profit of the preceding year.

Indirect taxes

Upon acquisition of French real estate assets, transfer taxes should be due at circa 5.8%, plus additional duties and notary fees, unless certain commitments are taken by the purchaser to rebuild or to resell the property within a certain timeframe. These charges are a liability of the purchaser, but the seller may be held jointly liable.

Acquisitions of French real estate assets may also be subject to value added tax (VAT) when the seller is subject to VAT. The standard VAT rate is 20%. Reduced rates may be applicable to certain residential buildings. Certain transactions are VAT exempt. However, the seller may waive the exemption. VAT is, in principle, due on the price. Under certain circumstances, VAT is due on the margin (sale price less acquisition price). A "transfer of going concern" VAT exemption is applicable, under certain

conditions, when the sale of the real estate assets occurs in the context of a transfer of activity, e.g., the asset is sold with a lease subject to VAT by the lessor to another lessor, who will continue to rent the asset
with VAT.

Sales and acquisition of shares in real estate companies

Direct taxes

Subject to the provisions of applicable double tax treaties, if any, capital gains on the sale of the shares in a company qualifying as French real estate company for capital gain taxation purposes is, in principle, subject to French CIT at the standard rate applicable at the time of exit (i.e., currently 25% plus the social surcharge of 3.3% levied on the part of the CIT liability which exceeds €763,000 (US$805,697*)).

Under French domestic law, a French real estate company is defined as any French or foreign unlisted company, the assets of which, at the closing of the three fiscal years preceding the disposal (or at the closing of the financial years for which it existed if it has closed less than three financial years at the time of the disposal), derive more than 50% of their value from French real estate properties or shares of an unlisted company which itself is a "real estate" company. The assets that are used by a company or its parent company for the purposes of its operational commercial or industrial activities are disregarded for the appreciation of the 50% threshold.

If the company the shares of which are sold is a French tax transparent entity, capital gains arising from the disposal of its shares should be calculated following the specific rules provided by the Quemener Case Law. Under this case law, capital gains or losses on the disposal of shares in a tax transparent subsidiary must be calculated taking into account several adjustments.

Indirect taxes

The acquisition of shares in a company qualifying as a French real estate company for transfer taxes purposes is subject to transfer tax at the rate of 5% applied on the sale price (or fair market value if higher). This is a liability of the purchaser, but the seller may be held jointly and severally liable.

A French "real estate company" is defined for transfer tax purposes as a non-listed French or foreign company whose assets are comprise more than 50% in value of French real estate or rights in rem or shares in companies qualifying themselves as French real estate companies. The test is applied either at the time of the transaction or any time during the previous year.

Some tax considerations regarding lease agreements

Lease agreements of more than 12 years in duration are subject to registration duties. Registration duties will apply at the rate of circa 0.715% (plus CSI at 0.1%) and be assessed on the estimated total amount of the rents and service charges over the rental period (broadly limited to 20 years). This is in principle a tenant's liability, but the lessor can be held jointly and severally liable.

In accordance with the provisions of an ordinance dated 19 June 2024, lease agreements of more than 12 years should no longer be subject to the current publication/registration formalities and duties by 1 January 2029 at the latest. Specific publication and registration formalities should still apply to specific leases including those granting real estate rights to the tenants. The matter should be followed-up as further clarifications are expected to be provided by decree.

*According to the 10 December 2024 exchange rate

New asset classes and emerging opportunities in France:

New asset classes and emerging opportunities in France

The economic and financial environment has faced a series of repeated crises over the past four years. The increase in remote working due to COVID-19 has shifted housing demand to rural and peri-urban areas. The real estate market has been significantly slowed down by the rising construction costs and interest rates related to the war in Ukraine and the return of inflation. Global geopolitical tensions and climate challenges are leading to increased economic uncertainty, making investors more cautious and slowing down the real estate market.

In 2024, the real estate market is characterized by a general downward trend in prices. This price correction will be accompanied by a significant slowdown in transactions. The sector will be affected by the rise in interest rates, which will stabilize. Despite these challenges, there are signs of a gradual recovery, thanks to the return of banks to the market and a slight fall in borrowing rates since the summer of 2024.

Office

Since the beginning of 2024, the Île-de-France office market has seen a slight decline in demand, influenced by remote working and flex-office arrangements. Paris now accounts for a record share of demand, driven by significant transactions outside the Central Business District (CBD). Vacancy rates are uneven across the region, with lower rates in Paris and higher rates in the inner suburbs. One-year supply continues to rise, while rents in Paris have reached new highs. Conversely, the investment market is at its lowest level since 2009, with transactions concentrated in the Paris CBD.

Retail

The French retail market is showing mixed trends. E-commerce is on the rise, but overall consumer spending is stabilizing due to rising inflation. There's a noticeable shift towards smaller investment transactions under €30 million, which now account for a significant proportion of deals. The Champs-Élysées has undergone significant changes ahead of the Paris Olympics, attracting major brands. Meanwhile, tourist arrivals are expected to decline.

Logistics

The logistics/industrial asset class bucked the trend with an increase in investment amounts in 2024, including three transactions of over €100 million each (e.g., Ares Management acquired the “Montclair” portfolio for €323 million). The growing attractiveness of logistics also led to stronger regional performance, with the regions accounting for most national investments for the first time.

Hotels
In 2024, the French hotel industry will comprise 16,722 establishments with a total of 656,965 rooms. The hotel sector has shown contrasting trends since 2015, with growth in Paris and the provinces, but a slight decline in Île-de-France (excluding Paris). High-end hotels represent a significant share in Paris and continue to grow in the provinces.

The French real estate landscape in 2024 reflects a period of transition and adaptation in the face of economic and societal challenges. Despite current difficulties, particularly in the office and retail sectors, there are encouraging signs of innovation and resilience. Logistics is emerging as a particularly dynamic sector, while the hotel industry is reinventing itself to meet the new expectations of travellers. Looking ahead, the French real estate market will need to continue to transform to meet the challenges of sustainability, flexibility, and digitalization.

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Overview of the German Legal System

General introduction to main laws that govern acquisition of assets in Germany – real estate rights

Private law

Most of the relevant regulations related to real estate, both with respect to the acquisition and financing of ownership and lease agreements, as well as the relationship between landlords and tenants, are found in the German Civil Code (in German: Bürgerliches Gesetzbuch (BGB)).

The German Civil Code contains regulations related to the different types of property rights, their creation and transfer, as well as provisions dealing with the creation, transfer, and enforcement of security rights with respect to real estate, by which the real estate can be used as collateral for financing arrangements.

In addition, there are numerous other laws regulating specific real estate-related issues, such as – for example, but not limited to – the German Hereditary Building Rights Act (Erbbaurechtsgesetz), regulating details with respect to hereditary building rights, and the German Residential Property Act (Wohnungseigentumsgesetz), regulating the legal relationship within a condominium/community of owners of apartments and/or commercial units in a specific building.

Public law

Issues related to the planning, construction, and use of buildings are regulated by public law.
One of the cornerstones of public construction regulations is the German Federal Building Code (Baugesetzbuch (BauGB)) and the German Land Use Ordinance (Baunutzungsverordnung), which deals with building zones and different types of usage. The provisions in these acts are supplemented by building regulations for each individual German federal state regulated in the corresponding Federal State Building Codes (Landesbauordnungen), which determine the rules for building permits.

Apart from setting the rules for zoning and building permits, public law also regulates many other relevant aspects, such as the permit to operate certain businesses (e.g., hotels or restaurants) or laws dealing with contaminated sites.

Types of property rights in real estate

The strongest right in rem is the ownership of real estate. German law follows a general principle by which the ownership in a building is, at least in principle, inseparable from the ownership in the land that the building is built upon. In other words, save for specific property rights as e.g., heredity building rights, the ownership in the land also comprises the ownership of all buildings on the land as well as the essential integral parts of these buildings. The ownership in real estate (including the buildings located on real estate) is transferred by notarial deed and registration of the new owner in the land registry (which is compulsory in order for the ownership to transfer). In Germany, the land registry is administered by the local civil law courts (Amtsgerichte).

The hereditary building right (Erbbaurecht (HBR)) creates an ownership-like position regarding the building erected on a certain plot of real estate for the building owner, which is typically not identical to the owner of the plots of real estate, which is limited in time (but usually entered into for a term of 60 to 99 years). The HBR must be granted by the owner of the real estate. HBRs used to be quite common in residential real estate, used by municipalities to enable lower-income individuals to

become homeowners, and in commercial or infrastructure projects. In principle, HBRs can be sold, inherited, and encumbered in the same way as ownership rights to real estate. The beneficiary of an HBR usually pays the owner remuneration (Erbbauzins) for the HBR, which is typically calculated per annum. Upon expiry of the HBR term, the owner of the land usually becomes the owner of the building, while the former beneficiary of the HBR is compensated for the loss of their right to the building.

Easements (Dienstbarkeiten) can be of private or public nature. An easement is a means of providing security in rem for certain rights to a plot of land that is owned by another person. Such a right can either be a right of use (e.g., right of way or a passing right) or a right to demand that an owner of the land must tolerate the beneficiary's actions or buildings (e.g., tolerance of a border building, i.e., a building extending to the borders of another plot of land). An easement can be granted for the benefit of a certain plot of real estate (e.g., its respective owner) and thereby be tied to another plot of real estate rather than a specific person (Grunddienstbarkeit) or be of subjective nature and tied to a specific person (individual or entity) (beschränkte persönliche Dienstbarkeit).

Certain transfer restrictions apply to the latter. For an easement to come into existence, it must be registered with the land registry. It may not be deleted from the register without the approval of the registered beneficiary of the associated right.

Public easements can also relate to certain public requirements or duties vis-à-vis the building authority which cannot be derived from the law already (e.g., the duty to provide enough parking space when planning a new building). In most federal states, easements must be registered in a special local register, the so-called Register of Public Easements (Baulastenverzeichnis), and may not be deleted without the approval of the holder of the associated right. This means that in order to have a good overview of existing encumbrances, one will not only have to look into the land registry but also in the register of public easements. The exception is the federal state of Bavaria where, rather than in a special register, public easements are registered in the land registry.

Transfer of title/asset deal/registration of owner

In Germany, direct ownership of a plot of land (and the building erected on such a plot of land) is typically acquired through an agreement for the acquisition of the respective plot of land, i.e., an acquisition of an asset by means of a notarial real estate sale and purchase agreement (SPA) (Grundstückskaufvertrag).

In real estate transactions, an alternative route is to acquire (the shares in) the legal entity owning the respective plot or plots of real estate, mostly a special purpose vehicle (SPV) whose purpose is limited to owning (and operating) the respective real estate, i.e., to go for an acquisition by means of a share deal on the basis of an SPA (Anteilskaufvertrag).

Germany follows the separation principle, pursuant to which one must distinguish between the obligatory part of a transaction and the in rem part of a transaction. To transfer the ownership in/the title to real estate, the parties must declare the conveyance (Auflassung). The conveyance of property is a specific in rem agreement between the transferor and the transferee regarding the transfer of the ownership of the real estate. Although typically declared as part of the respective sale and purchase agreement, it is different from and comes in addition to that (obligatory) agreement. The conveyance must be declared by both parties in the presence of a notary. The conveyance of ownership is most commonly declared within the notarial sale and purchase agreement, and mostly does not require the execution of a separate notarial deed.

The entry in the land registry completes the sale and purchase of a plot of land and brings about the transfer of the property, i.e., the transfer of the title to the plot of land. Only upon the buyer being entered as the new owner of the real estate in Section I of the land registry (administered by the local civil law courts, Amtsgerichte, see above), the transfer of title is complete and effective.

The process of registration in the land registry can take several weeks or even months to be finalized. In-between signing the purchase agreement and registration of the transfer of title in the land registry, the buyer's claim to become owner of the real estate is generally unsecured and might even become unenforceable, for example, if the

seller decided to sell and transfer the respective property to a third party (which can of course lead to claims for compensation by the buyer against the seller). To protect the buyer in this interim period, the purchase agreement will normally provide for the immediate registration of a so-called priority notice (Auflassungsvormerkung) for the buyer in the land registry.

Share deal

Besides an acquisition by asset deal, real estate can also be acquired indirectly by acquiring shares in the legal entity holding the ownership of the respective real estate, i.e., by means of a share deal. Sometimes, and provided that less than 90% of the shares are acquired, an acquisition by share deal can also be used to avoid real estate transfer tax (RETT) (Grunderwerbsteuer). The German legislator recently brought about changes to the relevant provisions in the RETT Act (Grunderwerbsteuergesetz) and thereby considerably limited the avoidance of paying RETT through share deals and considerably increased the scenarios in which RETT can be triggered. Tax advice is invaluable also in these cases.

The acquisition of real estate by means of a share deal also entails some risks:

- The buyer of shares in an entity holding real estate cannot be secured by means of a priority notice (Auflassungsvormerkung, see above), because the legal entity will remain the direct owner of the real estate before and after the share deal transaction and accordingly, there will be no change in ownership with respect to real estate eligible for a priority notice. Therefore, the share purchase agreement should provide for alternative mechanisms protecting the buyer's legitimate interest, such as for example, clauses protecting the buyer, preventing the owner from selling the real estate to a third party prior to the transfer of the shares to the buyer.
- Furthermore, unless otherwise agreed by the parties, the buyer will not only indirectly acquire the real estate, but also "inherit" a legal entity "with a history" and, therefore, potential risks stemming from the past. Therefore, sufficient due diligence should be undertaken and representations and warranties to be granted by the seller discussed as part of the negotiations of contractual arrangements. In that context, the buyer should always consider that any representations and warranties given by the seller will only be as good as the person or entity giving such warranties and strongly depend on the seller's financial covenant. Also, it must be considered that in case of a share deal, the real estate asset cannot generally be used as collateral for financing the purchase price because the buyer (who is the borrower of any financial means) is not and will not become the registered owner of the real estate to be encumbered. Hence, alternative security/collateral mechanisms, such as a pledge of shares etc. must be considered.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Generally, any individual or legal entity with legal capacity, whether resident or non-resident, can invest in and own real estate in Germany. This includes legal entities under private law, e.g., stock corporations (Aktiengesellschaft (AG)) limited liability companies (Gesellschaften mit beschränkter Haftung (GmbH)) or partnerships (mostly in the form of a German limited partnerships with a German GmbH acting as sole general partner, i.e. a so-called GmbH & Co. KG (KG)) as well as legal entities under public law.

The so-called civil law partnership (Gesellschaft bürgerlichen Rechts (GbR)), which is a partnership with unlimited liability of its partners, also has legal capacity to own real estate. Since according to the legal situation applicable until the end of 2023, a GbR could not be registered in the commercial register, it had to be registered with both the name of the GbR itself as well as the names of all its partners. Changes in the composition of the partners also had to be registered in the land registry. However, due to changes to the applicable provisions of German law applicable as from January 2024, civil law partnerships can also be registered in a special register and thus acquire the status of a so-called "registered civil law partnerships" (eingetragene Gesellschaft bürgerlichen Rechts). While, generally speaking, civil law partnerships can opt for acquiring that status, those civil law partnerships who act as

acquirers/owners of real estate will not have that choice, but will be under an obligation to become registered in the special register and acquire the status of a registered civil law partnership, which makes make the process of becoming registered as an owner of real estate easier and avoid the need for having any changes in the composition of the partners registered with the land registry.

Foreigners and legal entities with a foreign domicile can become owners of real estate in Germany as well; however, there are some practical hurdles (see notarization below). Please note also that foreign entities holding directly real estate or directly or indirectly owning 90% or more in companies holding real estate located in Germany, these entities need to be registered in the transparency register (see "Requirements pursuant to anti-money laundering legislation" below).

The structure in which investors acquire real estate is to a large extent tax driven, most common vehicles are limited liability companies and limited partnerships domiciled in Germany or corporations and partnerships from other EU member states, often domiciled in Luxembourg or the Netherlands.

Real estate registry system

Land registry/structure

The legal status in rem of real estate located in Germany is registered in the land registry (Grundbuch). The land registries (Grundbuchämter) are located at and administered by the German (civil law) local courts (Amtsgerichte).

Form and sections

The particulars of plots are registered on so-called folios. Each folio of the land registry is divided into three sections (Abteilungen) and a reference list (Bestandsverzeichnis). The reference list contains a detailed description of the plots registered on the particular portfolio and corresponds with the cadastral plan indicating the size and location of the plots. Section I lists the former and current owner(s) of the land in historical order. Section II contains all relevant covenants and restrictions (Belastungen und Beschränkungen), e.g., hereditary building rights, private easements, pre-emptive rights etc. which encumber the plots. Finally, Section III lists the former and current land charges and mortgages encumbering the plots.

The land registry does not list public easements (with the exception of Bavaria, see above) and does not list "defects" with respect to the real estate, such as contamination, etc. Therefore, prior to acquiring real estate, research should be undertaken into the information available in other registers, such as the register of public easements (Baulastenverzeichnis) or the register for contaminated soil (Altlastenkataster) and/or other public registers.

Compulsory nature of registrations

Registration with the land registry is compulsory for in rem rights to come into existence or be transferred. If the creation or transfer of in rem rights have not been registered, they are not effective (exceptions apply to certified land mortgages and land charges which can be transferred without registration, by a certified agreement and handover of the certificate).

Public reliance

The land registry is a public register granting public reliance (öffentlicher Glaube). This means that everyone can rely on the registrations in the land registry. Consequently, it is possible to acquire a plot of real estate from a person or entity registered as owner in the land registry, even if this person or entity is in fact not the legal owner of the respective plot of land because the land registry entries were not correct, provided the buyer was not aware of the incorrectness. Given the public reliance on the land registry, parties to any real estate transfer agreement should always review the content of a recent excerpt from the land registry prior to signing the sale and purchase agreement and the notary public is held to elaborate on the content during the execution of the notarial deed. It is also advisable to have the notary public verify with the competent land registry whether there are any pending applications.

Notary role in the real estate transactions

Sales and purchase agreement/formal requirements

Purchase agreements related to real estate located in Germany require the form of a notarial deed if the real estate is the purchase object (i.e., in an asset deal). A private written agreement is not sufficient to constitute legally binding and enforceable obligations to transfer real estate, or to bring about the transfer itself. The notarial deed contains the contractual obligations of parties as well as the conveyance in rem – "Auflassung" (although this could be done in a separate deed which might be recommendable under certain circumstances, e.g., if the purchase object still needs to be measured out of several plots). The deed will also contain the necessary applications to the land registry which the notary will then file and execute.

Whereas a legally binding agreement to transfer real estate by asset deal might be validly notarized by a foreign notary (provided that the foreign rules on notarization and the status and competences of the notary are comparable to the German rules), the conveyance as pre-condition of the registration of the new owner can only be notarized by a German notary (and by German consulates abroad), but not by foreign notaries.

The notarization requirement does not apply to share deals, provided that the transfer of shares of the particular entity does not require notarization which will be the case for the transfer of shares in German limited liability companies. The transfer of shares in stock corporation or interests in (limited) partnerships does, however, not require notarization.

Extended reach of formal requirements

If an asset deal is associated with (the conclusion of) ancillary agreements so closely linked to a sale and purchase of real estate that neither can stand alone, e.g., construction contracts, lease agreements, finance agreements etc., then the entire contractual package can require execution by notarial deed, even if the relevant ancillary agreements would not be subject to specific formal requirements executed on a standalone basis.

Notary fees

Notarial costs in a German real estate transaction depend on the value of the land and buildings and can be considerable.

Requirements pursuant to anti-money laundering legislation

The notary is obliged before notarization to gather information from the parties on their corporate structure and their beneficial owners. If such information is not provided or contradictory to information available from the transparency register (the register of the beneficial owners of companies and partnerships which has been established due to EU legislation 2017), the notary is obliged to refuse notarization. The notary also must inform the competent authority in certain circumstances which indicate unlawful transactions and must postpone notarization and may only proceed if the authority has not prohibited the transaction within certain delays.

Requirements in case of non-German entities acting as buyers

A foreign purchasing entity needs to be registered in the transparency register (see above) of Germany or an EU member state, otherwise the notary must refuse notarization.

If a legal entity with a foreign domicile or a non-German legal entity purchases real estate property in Germany, some additional formal requirements may have to be complied with. For example, the foreign company acting as the acquirer must prove its existence. This is typically done by presenting/submitting an excerpt from the commercial register of the country in which the company is registered, which excerpt will have to be translated into German and legalized (to the extent the country of origin is a signatory to the Hague Convention by a so-called Apostille). Furthermore, the persons acting as signatories will have to render proof of their authority to act on behalf of the foreign company acting as acquirer.

If the company acting as acquirer originates from other countries, dealing with the relevant formalities can be tedious and time-consuming, as the German (land and other) registers are not always familiar with the respective local laws and the involvement of consulates or embassies can be required.

Notification to tax authorities

As the acquisition of real estate generally triggers real estate transfer tax (RETT), the parties to real estate transfer transactions are obliged to notify the tax authorities of any such transactions. If such notification duties are not complied with, the parties might not be able to recover RETT in case of the exercise of a rescission right by one of the parties or an abrogation of the purchase agreement.

German notaries public are also under an obligation of informing the competent tax authorities of any transfer of ownership stipulated in any deed that they execute, however the information by the notary does not substitute the duty of the parties to notify.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

General

German statutory law obliges the seller of real estate to transfer full legal title to the property to the buyer and to deliver the plot of land and building free from defects.

Individual liability concept

As a general rule, in an agreement for the sale and purchase of a plot of land, rather than relying on the standard liability concept set by statutory laws, the buyer and the seller would typically agree on a specific set of representations and warranties and liability regime.

Scope

The exact scope of the representations and warranties, as well as the consequences of a breach of these, also in terms of de minimis, basket and cap provisions, largely depends on the individual case as well as the market circumstances, negotiation position, and bargaining powers of the parties to the transaction. When markets are overheated, as they were until recently in many regions of Germany, there is a certain tendency by prospective sellers to limit the scope of the representations and warranties and/or work with high thresholds and low caps.

Market research shows that there are certain swings following market circumstances and that it is very hard to define an over-arching customary practice or market standard.

Common representations and warranties – land

Representations and warranties that are commonly provided for would generally inter alia include:

- Title (i.e., the guarantee that the transferor holds full and unrestricted legal and beneficial ownership and title to the property);
- No encumbrances (i.e., that the property is not subject to easements and encumbrances other than those specifically disclosed); and
- That the transferor is not aware of any contamination of soil (regulations dealing with contamination are often a hot topic and heavily debated during the negotiations).

Common representations and warranties

Buildings

Where the acquisition of the real estate relates to and includes one or several buildings, additional representations and warranties often include that:

- Apart from normal wear and tear, the building is in normal condition and that the transferor is not aware of any specific grave defects; and
- All the relevant building and other permits exist, and that the transferor is unaware of any breaches of the existing permits and/or any intentions of the relevant authorities to change, amend or withdraw the relevant permits.

Common representations and warranties - Lease agreements

Where the transaction relates to real estate and buildings for which lease agreements exist, as this will regularly be the case for financial investors, representations and warranties will often also relate to:

- The existence, validity, remaining term of the lease agreements, and/or the WALT (i.e., weighted average lease term); and
- The actual net rent per annum generated under the existing lease agreement.

Knowledge

The representations and warranties are often qualified by specific or general knowledge qualifiers ("to the best knowledge of transferor"; "unless the circumstances giving rise to the claim were known to the acquirer or would have been known to the acquirer had he exercised sufficient diligence") or limited by specific or general disclosures ("save as explicitly disclosed in Schedule X", "unless the circumstances constituting a breach and/or giving rise to the claim were discernible from the information made available in the data room") and, finally, come with limitations for damages payable by the transferor in case of a breach ("the transferor's aggregate liability for a breach of any of the representations and warranties is limited to x% of the purchase price").

Also, unless regulated otherwise, a buyer is generally limited in exercising rights for a breach of the representations and warranties to the extent the underlying circumstances were known to the buyer or should have been known to the buyer. This general concept is often deviated from as part of the corresponding agreements.

Environmental issues

Environmental insurance is usually taken out if the acquired property is burdened with an elevated environmental risk (such as a petrol station). In that context, German environmental legislation stipulates that, apart from the user (tenant/occupier) that has caused the contamination, both the former and the current owner of a property can be subject to environmental liability for the same event of damage. Therefore, in purchase agreements a balance must be struck between the seller's interest in being relieved from liability and the buyer's interest in not being held liable for damages caused by the seller or even by the previous owner. This is most commonly intensely negotiated. Generally, a seller or occupier remains liable for environmental damages even though the real estate has been transferred (for further information see section "Environmental and energy").

Disclosure obligations

When discussing representations and warranties, as well as associated liability of the seller, German law stipulates a seller - even without explicitly being asked for it - is held to disclose such information to the buyer that is substantially relevant to the buyer's purchase decision. If the seller fails to duly inform the buyer - and subject to more specific regulations in the underlying agreements - the buyer may void the contract or claim compensation on the grounds of willful deceit (arglistige Täuschung).

Mortgages and other usual collateral adopted in financing assets

General

The "classic" means of providing collateral for financing real estate purchases are the creation of land charges (Grundschulden) or mortgages (Hypotheken). If a loan is secured by that type of collateral and the borrower does not fulfil their obligation under the loan, the lender can satisfy the debt by enforcing and realizing the collateral, e.g., in the case of mortgages or land charges finally by having the land sold (by auction). In the past, the legislator had thought of the mortgage as the primary instrument to be used. In practice, land charges have become more commonplace.

Mortgage

The mortgage (Hypothek) is one of the instruments typically given to a financial institution as collateral for a loan to be received by the owner or acquirer of real estate. A mortgage is granted for one specific claim/loan with limited possibilities of exchanging the loan that is secured by the mortgage without affecting the mortgage itself.

Given its nature as an accessory right, a mortgage automatically decreases in amount to the extent the loan is repaid. A mortgage loan usually covers around 60-70% of the real estate's market value.

Among others, typical kinds of mortgage are the fixed interest loans structure (with capital and interest repayment) and interest only loans structure (Zinszahlungsdarlehen). There are also supporting programs like the Bank Home Ownership Program (Kreditanstalt für Wiederaufbau (KfW).

To grant a mortgage, the mortgagor must register the mortgage with the land registry. When doing so, the mortgagor is obliged to specify the mortgagee, the secured claim, and the lending rate. The mortgagee usually acquires the mortgage by obtaining the mortgage certificate. However, the issuance of a mortgage deed can be excluded. In case of the latter, the mortgagee acquires the mortgage as soon as it is registered. The mortgage is strictly accessory in nature, i.e., its existence depends on the existence and "fate" of the secured claim.

Land charge

Whilst the mortgage is a so-called accessory right which is strongly linked to the contractual claim it secures as referred to in the corresponding loan agreement, the land charge (Grundschuld) is an abstract right. This means that the land charge and the obligations thereunder are independent of a specific contractual claim and may even exist in the absence of an underlying claim that it secures, only for the purpose of securing a certain rank in the land registry. The land charge may be used to secure other, also future obligations.

While in practice many land charges take the form of a security land charge (Sicherungsgrundschuld), where the exact scope of secured claims and other terms and conditions for its enforcement are regulated in a separate contractual arrangement, the so-called security agreement (Sicherungszweckvereinbarung) between the owner and the financial institution, this does not change the abstract nature of the land charge as such.

A land charge does not decrease in amount where repayments with respect to the claims that it secures are being made. Also, the land charge can typically be enforced without having to demonstrate that the underlying claims that it secures (still) exist.

For these reasons, land charges bring along advantages with respect to enforceability and flexibility, and, therefore, have become the most prevalent collateral in real estate transactions. However, as a result of legislative changes (which were at least in part owed to some cases of abuse of the abstract nature of the land charge by financial institutions) this flexibility has suffered in recent years. While previously it was possible to acquire a land charge free from any pleas or defenses of the debtor if the buyer was in good faith, the owner may now resort to pleas or defenses deriving from the contractual arrangements originally entered into by and between the owner and the financial institution.

Therefore, irrespective of the abstract nature of the land charge, at least where a land charge has the character of a security land charge, the owner can now invoke the regulations contained in the contractual arrangements pursuant to which the bank has declared that it would not enforce the land charge to the extent the secured claims have already been satisfied.

Lease of assets and lease of business

Applicable laws/types of leases

Main source

The majority of the regulations of German tenancy law is found in Book II (Law of Obligations) of the German Civil Code (BGB), §§ 535 ff. BGB.

Other sources

Other legislation - some of which are only relevant for specific types of real estate – include:

- The Ordinance on the Calculation of Heating Costs (Verordnung über Heizkostenabrechnung – HeizkostenVO) setting forth rules on the calculation and allocation of costs for heating and warm water for premises with more than one apartment;
- The 2nd Ordinance on the Calculation of Housing Costs (II. Verordnung über wohnungswirtschaftliche Berechnungen = II. BV) contains a full set of rules on

the calculation and allocation of costs, charges, encumbrances etc.; and

- Special regulations concerning stable-value clauses, as contained in the German Price Clauses Act (Preisklauselgesetz), operating costs, as contained in the Operating Costs Ordinance (Betriebskostenverordnung) and so forth, must also be taken into consideration, but cannot be described in further detail, here.

Distinction between various classes of users/classes of use

Some general rules related to lease agreements are applicable to virtually all asset classes, but German law provides for a clear distinction between the rules applicable to residential real estate, i.e., regulating the relationship between the landlord and tenants, mostly individuals, for residential buildings on one hand, and the rules applicable to commercial real estate, i.e., regulating the relationship between landlords and businesses, on the other hand.

High level of protection in residential tenancy law

German residential tenancy law is characterized by a remarkable level of tenant protection, where sometimes the tenants' right of use as interpreted by German courts shows features that would typically be associated with ownership rights. The same does not necessarily hold true for commercial lease agreements. That said, it must also be considered that the percentage of self-owned, self-used residential real estate in Germany is much lower than it is in other EU member states.

Lease agreements general

As it is the case with other agreements, a lease agreement is brought into existence by reciprocal declarations of intent (Willenserklärungen), i.e., an offer and an acceptance.

Written form requirement

Although a lease agreement does not have to be executed in writing to be valid, § 550 (1) BGB states that contracts for a term of over one year must be executed in writing or else they are deemed to have been concluded for an indefinite period in time and can be terminated at any time according to statutory provisions. A wide range of court decisions deals with the prerequisites of § 550 (1) BGB.

Freedom of contract

While the parties to a commercial lease contract generally enjoy ample liberty to deviate from statutory tenancy law, it is not the same with residential tenancy agreements for which numerous compulsory provisions must be observed.

Standard agreements/GTC

Making use of standard agreements and/or general terms and conditions is generally allowable; however, particularly in residential tenancy agreements, where the vast majority of tenants are individuals, but also to a lesser degree, in commercial tenancy agreements, standard agreements, standard clauses and GTC (i.e., general terms and conditions) are subject to strict scrutiny by German courts.

Minimum content

Any tenancy contract, especially a commercial lease agreement should at least describe the parties, the rental object, the term, the amount of rent and the residential purpose, which is especially necessary in case of a mixed-use tenancy.

Other provisions that would typically be included relate to information on the start date for the first term, the size of the rented premises, the purpose for which the premises are to be used, scope of use, terms on the keeping of animals, contracts of supply, the allocation of costs for utilities, and the duty to carry out cosmetic repairs as well as to bear the costs for minor damages.

Residential lease agreements

Tenant protection

German law provides for a high level of tenant protection. Residential lease agreements cannot be freely terminated by the landlord, the amount of rent payable by residential tenants is regulated and, in order to have tenants effectively vacate dwellings after a justified termination of the lease agreements, can require going through potentially tedious (court) procedures.

Recent developments

Residential lease contracts which were always highly regulated have in the last years become even more regulated with the introduction of a cap on city rent rises (Mietpreisbremse) in §§ 556 d – 556 g BGB.

More than five years have already passed since the legislator introduced these new rules related to caps on residential rent, which puts statutory restrictions on increases in rent in certain regions. In regions with a so-called tightened/overheated residential real estate market (Gebiete mit angespannten Wohnungsmärkten) the initial rent due under newly concluded residential lease agreements may not exceed the comparative local customary rent (ortsübliche Vergleichsmiete) by more than 10%, unless the rent owed by the previous tenant was higher.

By means of the Act, governments of the federal states have been authorized to - by means of ordinance and for periods not exceeding five years - establish those regions with tightened/overheated residential real estate markets, to which the respective rules apply. In fulfilment of the respective authorizations and following the entering into force of the Act on 1 June 2015, many ordinances have already been enacted in several federal states or have already been abolished. Currently, regions with tightened/overheated residential real estate markets include Berlin, Bremen, Düsseldorf, Frankfurt a.M., Hamburg, München, Potsdam and Stuttgart. On the contrary, the federal states Saxony, Saxony-Anhalt and Saarland have not yet introduced those ordinances (status as of June 2022).

Common problems

Common problems between landlords and tenants involve security deposits and the termination of the lease.

The tenant usually must pay a security deposit which serves the purpose of securing proper fulfilment of its obligations by the tenant. Security deposits often equal two- or three-months' rent, the latter also representing the allowable maximum amount. The security deposit may be paid in three monthly instalments, whereby the first instalment falls due upon the beginning of the lease. The landlord must keep the security deposit in a separate account. If the landlord intends to retain all or part of the deposit, they must provide the tenant with a list of the damages and repair estimates within a reasonable period of time after the tenant moves out. In the case of a real estate transaction, i.e., the acquisition of real estate with existing lease agreements, the buyer would have to ensure access to these security deposits, as they may be held liable for repayment by the tenants.

In Germany, a landlord cannot freely terminate a residential lease agreement. They are only entitled to terminate where sufficient cause exists. German law describes several acceptable reasons: A landlord who needs to use the rented premises personally, or for family, or for a member of their household, has valid reasons, but only if the need is compelling. Termination is also lawful if a landlord wishes to sell the residential property and can prove that selling the property "with tenants" will result in substantially less profit than selling it "without tenants." A landlord may also terminate a lease if the tenant permanently/repeatedly violates the lease.

A landlord wishing to terminate a lease, must give the tenant a written termination notice. For leases of up to five years, the notice must be given three months prior to the termination date. Longer leases require longer termination periods. The notice must explain the justification for the termination.

Therefore, it is difficult for a landlord to terminate any residential tenancy agreements.

Commercial lease agreements

General

Unlike residential leases, the statutory regulations governing commercial leases do not cover every relevant aspect and provide for a higher degree of freedom of contract for the parties.

Termination rights

For commercial lease agreements, no statutory regulations excluding ordinary terminations or making terminations subject to sufficient cause exist. Also, there are no specific rules governing rent adjustments.

This means that more issues must but also can be regulated in the respective agreements and the continuous developments in case law on a wide range of standard clauses/contractual conditions must be taken into consideration when entering into commercial lease agreements.

Fixed term

In contrast to most residential lease agreements, commercial lease agreements can be and often are concluded for a fixed term. Depending on the exact asset class and the parties, commercial lease agreements often provide for a fixed term of five or 10 years, commonly combined with extension options for the tenants.

Formal requirements

If commercial lease agreements have a term of more than one year (which is quite often the case), both the conclusion of and any and all amendments to a commercial lease contract must be made in writing, otherwise the parties run the risk of triggering statutory termination rights allowing for premature termination of a fixed-term lease contract (see above "Written form requirement"). Stricter formal requirement can apply where a lease agreement is concluded in the context of a transaction which requires execution by notarial deed.

Also, parties sometimes agree on a right of purchase wording as a unilateral option, by which a preliminary contract or a conditional contract of sale is then incorporated in the lease agreement. This can lead to the entire lease agreement being considered null and void because it has not been recorded by a notary. The same principle applies when an in rem pre-emptive right is granted.

Minimum contents

The leased object and the purpose of the lease must be described exactly. Prior to the conclusion of the agreement, the competent authority must have approved the property's use for commercial purposes in general, and its use for the specific purpose intended by the tenant, in particular, so-called "Bau-/Nutzungsgenehmigung."

Amount of rent

The parties to a commercial lease agreement are generally free to agree on any amount of rent for as long as the amount of rent is not unconscionable. The amount of rent is deemed to be unconscionable if the rent exceeds the customary local rent for similar properties by 100%. In case it is determined that the amount of rent was or is unconscionable, the tenant may demand that the landlord repays any excess amount received.

The amount of rent will not increase or decrease automatically. It is common practice for commercial lease agreements, however, to include indexation clauses that allow for the rent to be adjusted to changes in the consumer price index. While previously such indexation clauses were subject to approval, this is no longer the case.

Nevertheless, certain prerequisites would have to be fulfilled in order for indexation clauses to be lawful and enforceable.

Frustration of contract/clausula rebus sic stantibus (Wegfall der Geschäftsgrundlage)

Following the outbreak of the COVID-19 pandemic and the consequences associated with the pandemic and the measures taken by governments to limit its spread, the issue arose as to whether a tenant, who, because of state imposed restrictions, cannot make use of the leased space at all or only to a limited extent, can claim a reduction of the rent for those periods in time in which usage was limited. Where landlords and tenants were unable to find an amicable solution for the issue, the German courts were called in to decide on the matter, often on the basis of court actions initiated by landlords for payment of rent that the tenant had refused to pay or withheld. German courts took deviating decisions on the matter. In a court ruling issued in January 2022, the German Federal Supreme Court (Bundesgerichtshof) ruled that the pandemic and its consequences can entitle a tenant to reduce the rent, based on the concept of the so-called Wegfall der Geschäftsgrundlage, the German variant of the clausula rebus sic stantibus developed in Roman law. As regards both, the general existence of a corresponding claim for a reduction of the rent as well as the amount by which the rent can be reduced, the German Federal Supreme Court indicated that this would need to be established on the

circumstances of the individual case and that there is no rule of thumb, pursuant to which a 50/50 solution could per se be considered appropriate.

Administrative permits applicable to construction or restructuring of assets

Building/planning restrictions

The construction, alteration, change in use, and demolition of a building structure in Germany generally requires a building permit in accordance with state building regulations. While the exact requirements for obtaining a building permit are contained in building regulations issued by each individual German federal state, building regulations are fairly standardized throughout Germany.

Each project involving construction, change, or demolition must comply with the specifications of zoning laws and building regulations. The zoning law covers the so-called land-use planning and distinguishes two levels of detail: the first level is the land utilization plan (Flächennutzungsplan) which is a preparatory plan; and the second level is the development plan (Bebauungsplan) which is the legally binding plan showing the permitted use of land.

Development plan

The development plan (Bebauungsplan) is the decisive regulation for building permits. Whether and how a piece of land may in principle be developed and built on is governed by public planning law. The urban development permissibility of a building project depends on the development categories in which the area/site to be developed is situated. The federal building code provides for three different development categories:

Designated development area

If a piece of land falls within the scope of a local development plan which contains specifications regarding the type and extent of the development, areas to be developed, and the local public access areas, then the building project is generally permitted.

Developed areas without local development plan

Development is also permitted inside continuous built-up areas for which a local development plan does not exist. However, this only applies if the type and extent of the building project, the construction method, and the area which is to be built upon fit into the surrounding area and development infrastructure.

Non-developed area

If the land is not located within a continuous built-up area and if there is no local development plan, then a building project is only permitted if it does not conflict with public interests, that the development infrastructure is assured, and that the building project is a privileged project, e.g., agricultural plants, power plants, etc.

Building permit

Once the plans for a building project have been drawn up and prior to its implementation, a building permit (Baugenehmigung) must be applied for and obtained. The exact requirements for the issuance of a building permit vary according to the different statutory laws of the federal German states. In order to obtain a building permit, a written application accompanied by several documents required by law must be filed with the competent building control authority (Bauaufsichtsbehörde). This involves coordinating with architects etc. If the building project complies with local development plans and does not infringe any public-law requirements, then the local authority will issue the building permit, possibly subject to fulfillment of some additional requirements (Auflagen) e.g., relating to fire protection and building safety. The neighbors adjacent to the site will be notified and given an opportunity to comment on the permit. Neighbors may file objections and/or initiate legal proceedings against the building permit within a statutory term on the grounds that neighbor interests might be violated. This may hinder progress of construction work.

Environmental and energy – ESG rules and status of implementation

Environmental issues

The Building Energy Act (Gebäudeenergiegesetz (GEG)) is a German federal law. It brings together the Energy Conservation Act (Energieeinsparungsgesetz (EnEG)), the Energy Conservation Ordinance (Energieeinsparungsverordnung (EnEV)) and the Renewable Energies Heat Act (Erneuerbare Energien Wärmegesetz (EEWärmeG)). It was enacted as Article 1 of the Act to Unify the Energy Conservation Law for Buildings and to Amend Other Laws, which unifies the energy conservation law for buildings and amends other laws.

With few exceptions, the GEG applies to almost all new buildings. Owner-occupied homes and public buildings are particularly affected by the requirements of the GEG. However, there are also important requirements for heating systems, insulation, and modernizations for existing buildings.

Waste law

Waste management is an integral part of environmental protection, especially for commercial properties.

The main issues to be resolved are the avoidance of waste, and the proper recycling or converting of materials into energy. Production plants and other real estate development projects must comply with extensive waste prevention regulations.

Soil protection

"Inherited" environmental liability can lead to an enormous financial burden and thus is one of the critical issues in real estate sales. Therefore, the examination of contamination/environmental issues is a recommended/ essential component of due diligence to be undertaken by the buyer, at least when the real estate in question is known to have been used for industrial purposes.

Liability for inherited environmental obligations is mainly governed by the Federal Soil Conservation Act (Bundesbodenschutzgesetz). This Act states that contamination must be avoided and precautionary measures to avoid contamination must be taken. Contaminated soil must be cleaned up. These statutory regulations are especially important because it is not only the party having caused the contamination which is held liable and obliged to remedy the damage.

In general, the authorities choose the most effective means of averting risks for the general public and may decide between a number of possible parties. It can either be the party that has caused pollution/ contamination (such as previous tenants/owners that have operated facilities on the real estate, as far as these can be identified) or the owner of the real estate or the party exercising actual control of the real estate, such as a current tenant, even if such party has neither caused nor been or is aware of any contamination of soil.

There are many areas in Germany that have been used for industrial and comparable purposes and could therefore, cause events of inherited environmental liabilities. Allocating the economic risk stemming from potential liability for environmental issues is frequently a major topic in negotiations. It is recommended that the buyer undertakes a thorough due diligence review prior to acquiring certain pieces of land. Sale and purchase agreements generally contain detailed provisions dealing with environmental liability. This allows a risk assessment and the allocation of risks between the parties concerned. These aspects should also be considered when negotiating a lease agreement.

ESG status of implementation

At the level of the individual federal states, state-specific climate protection and energy transition laws have already been enacted in some cases, such as the Berlin Solar Act, which has been in force since mid-July 2021 and provides for an obligation to install photovoltaic or solar thermal systems for all new buildings (from 50 square meters of usable building area) for at least 30% of the gross roof area from 1 January 2023. Other German states are following suit.

The Federal Climate Protection Act (Bundesklimaschutzgesetz (KSG)), the Building Energy Act (GEG) and the Act on the Digitization of the Energy Transition apply. The apportionment of the CO2 price was introduced under the Fuel Emissions Trading Act (BEHG)

with effect from 1 January 2024 and is based on a tiered model according to building energy classes. Since 1 January 2024, every heating system installed in a new building must be operated on the basis of 65% renewable energies. Also from 1 January 2025, all new buildings are to comply with the Efficiency House (EH) 40 standard. Since 1 January 2024, the parts to be replaced in major extensions, conversions and extensions to existing buildings are to comply with an EH 70 standard. The "Federal subsidy for efficient heating networks (BEW)" for the expansion and decarbonization of heating networks, as well as a "Federal subsidy for energy and resource efficiency in industry (EEW)" for the use of industrial waste heat have been introduced in recent years.

Direct taxes applicable to sales

Real estate transfer tax

The transfer of real estate located in Germany is subject to the real estate transfer tax (RETT). RETT also generally applies to the direct or indirect transfer of at least 90% of the shares in a company holding German real estate.

In a direct transfer of real property, RETT is calculated on the purchase price. For direct and indirect share transactions, it is determined based on the special tax value of the property, which following recent court decisions would typically be similar to its fair market value.

Since September 2006, the federal states have been free to set their own rates (prior to which RETT was levied at a standard rate of 3.5%). Consequently, there has been an ongoing trend to increase the RETT rate to improve the state budgets. The following table summarizes the RETT rates in all the German states as of 31 December 2021:

Federal state	RETT rate	Valid from
Baden-Württemberg	5%	5 November 2011
Bavaria	3.5 %	1 January 1997
Berlin	6%	1 January 2014
Brandenburg	6.5%	1 July 2015
Bremen	5%	1 January 2014
Hamburg	5.5%	1 January 2023
Hessen	6%	1 August 2014
Mecklenburg-Vorpommern	6%	1 July 2019
Lower Saxony	5%	1 January 2014
North Rhine-Westphalia	6.5%	1 January 2015
Rhineland-Palatinate	5%	1 March 2012
Saarland	6.5%	1 January 2015
Saxony	5.5%	1 January 2023
Saxony-Anhalt	5%	1 March 2012
Schleswig-Holstein	6.5%	1 January 2014
Thuringia	6.5%	1 January 2017

Although pursuant to the law, RETT is owed by both the seller/transferor and the buyer/transferee, agreements for the acquisition of real estate frequently contain regulations pursuant to which in the relationship between the parties, RETT is imposed on the acquirer, which also from an economic perspective is in line with customary practice.

Because RETT will regularly be triggered at the date when the purchase agreement is actually signed (regardless of the date of transfer of economic ownership or the date of payment of the purchase price), one must be careful when entering into pre-contracts (in particular: pre-emptive rights, option rights) and/or when entering into agreements incorporating so-called designation rights, where discussions about the entity to act as final purchaser, for example, an SPV are still ongoing.

Indirect tax

The regular value added tax (VAT) rate in Germany is 19%. Depending on certain characteristics of the acquired real estate, the acquisition of real estate may be regarded as a transfer of a business unit (Geschäftsveräußerung im Ganzen) on which no VAT is levied. In addition, the buyer enters the seller's VAT position with respect to the deducted input VAT amounts and a potential correction. Therefore, should – following the acquisition – the use of the real estate change (i.e., property that was let without charging VAT on the rent prior to the acquisition, but is let with a VAT charge after the acquisition and vice versa), input VAT on the initial acquisition/construction of a building or on services to renovate a building may either be refunded on a pro rata basis (to the extent it could not be claimed in the past) or it may have to be repaid on a pro

rata basis (to the extent it was claimed in excess in the past). The correction period for such a refund/repayment is up to 10 years following the acquisition/construction of a building or on services to renovate a building. For assets that are “fixed” (i.e., certain kinds of operational facilities which cannot be easily separated from the building), the 10-year correction period also applies. Additionally, construction costs etc. generally lead to separate correction periods which start after this has been completed. For all other assets that are not ”fixed” in nature but can be separated easily, a five-year correction period applies. Even if the transfer of the real estate does not fulfil the requirements for qualifying as a transfer of a business unit, the sale is generally VAT-exempt. However, the seller may waive the exemption and opt to charge VAT. In this case, the buyer is obliged to calculate and pay the VAT according to sec. 13b VAT Act (“reverse charge”). The seller must issue an invoice without VAT, but with a reference to sec. 13b VAT Act.

Real property tax

Every property owner in Germany is liable to pay real property tax (Grundsteuer). The tax rate depends on the type of real property, which is sorted into two categories; (i) real property tax "A": real property used for agriculture and forestry; and (ii) real property tax "B": constructible real property or real property with buildings.

The real property tax burden is calculated by multiplying: (i) the assessed value of the real property; (ii) the real property tax rate; and (iii) the municipal multiplier. The real property value for purposes of the tax assessment is determined by the tax authorities according to the German Assessment Code (Bewertungsgesetz). The German Assessment Code refers to historic property values that are usually significantly lower than their current market values.

The tax rate varies between 0.26% and 1% (if calculated on the basis of market values) depending on the federal state (in which the real estate is located) and the use of the property.

By passing the legislative package to reform the real property tax within the deadline set by the Federal Constitutional Court by the end of 2019, the federal legislature has fulfilled its responsibility to maintain the real property tax as a significant source of revenue for municipalities beyond 2019. Based on the reformed property tax and valuation law, new assessment bases are to be determined for all of the approximately 36 million economic units of real property for property tax purposes from calendar year 2025.

The majority of the federal states implement the new property tax according to a federal model, which was introduced with the Property Tax Reform Act. In the area of the so-called Grundsteuer A (agricultural and forestry assets/agricultural and forestry enterprises), most of the states implement the federal model. In the area of the so-called Grundsteuer B (real property/land), the states of Saarland and Saxony deviate from the federal model only in the amount of the tax assessment figures. The states of Baden-Württemberg, Bavaria, Hamburg, Hesse, and Lower Saxony, on the other hand, apply their own property tax model.

Emerging markets and new asset classes in Germany:

The last years have underlined the fact that the German real estate market was and will continue to be in the focus of German and non-German investors. Looking into the near future investors will continue to invest in German real estate, because real estate assets in Germany tend to hold their value, including in times of crisis, but also because investors expect a positive development and certain catch-up effects, In order to avoid unnecessary risk, however, it is recommended to proceed with caution, continuously monitoring the market, thoroughly examining any potential investment opportunity, and ensuring that in any potential transaction, sufficient diligence is applied, and appropriate safeguards are implemented. We expect a moderate increase in real estate prices in 2025, depending on the region or city. With respect to residential property this trend will be supported by the ongoing shortage of new buildings and the continued high demand in sought-after urban areas.

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Overview of the Ghanaian Legal System

General introduction to the main laws that govern the acquisition of assets in Ghana – real estate rights.

The highest legal document governing the acquisition of land in Ghana is the 1992 Constitution of Ghana. The Constitution makes provision for state acquisition of lands; the establishment of a Lands Commission to manage public lands and any lands vested in the President, and the ownership of land in Ghana.

The Lands Act 2020 (Act 1036) provides a consolidation of all laws related to land in Ghana and outlines the legal framework for the acquisition, ownership, and use of land in the country.

The Real Estate Agency Act 2020 (Act 1047) provides for commercial transactions in real estate including the sale, purchase, rental and leasing of real estate and related fixed assets and related matters.

Other laws that may apply to the acquisition of real estate rights in Ghana include the:

- Borrowers and Lenders Act 2020 (Act 1052);
- Environmental Protection Agency Act 1994 (Act 490);
- Land Use and Spatial Planning Act 2016 (Act 925);
- Mortgages Act 1972 (NRCD 96);
- National Building Regulations 1996 (L.I. 1630);
- Rent Act 1963 (Act 220);
- Rent Control Act 1986 (P.N.D.C.L.138); and
- Stamp Duty Act 2005 (Act 689).;

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

The most common acquisition structure used in real estate transactions in Ghana is a lease agreement which typically outlines the terms under which the lease of a real estate asset is granted by one party to another.

A lease in Ghana is a temporary interest granted to the user of the immovable property, under certain conditions. A lease may be granted directly by the legal owner of the land or through a sublease or an assignment of the unexpired term of the interest in the property to a real estate property or through a sub-lease. A lease or sub-lease does not take away the rights of the holder of an allodial title (i.e., the highest title in land recognized by law) to the land.

In addition to asset transfer, real estate can be obtained through the acquisition of the company owning the targeted real estate. The transaction due diligence in this case, which should be conducted by highly specialized attorneys, will typically include detailed due diligence on the targeted real estate.

Restrictions on foreigners

Ghanaian legislation imposes restrictions on non-Ghanaians in connection with acquisition of interest in real estate in Ghana. Foreign individuals and entities cannot acquire lease interest in real estate in Ghana for more than 50 years at a time. Also, foreign individuals or entities cannot have freehold interest in land in Ghana. Any agreement or deed purporting to grant a foreigner a

freehold ownership right over land in Ghana is automatically invalid. For the restriction on foreign ownership in real estate, a company or corporate body is not a citizen of Ghana if more than 40% of its equity shareholding or ownership is held by non-Ghanaians.

Real estate registry system

Ownership and other rights over land in Ghana are registered with the Lands Commission (Commission), which is the primary statutory body responsible for managing interest in land in Ghana. Its functions include overseeing land use planning, managing public lands, regulating surveying, and mapping activities, providing valuation services, facilitating land acquisition, and promoting sustainable land development.

The Commission also plays a crucial role in addressing land-related issues such as disputes, encroachment, and illegal land transactions.

Registration of land title in Ghana is critical for providing legal protection to landowners and investors. It provides a definite record of ownership. Without registration, ownership of rights to land in Ghana may be disputed.

Under Act 1036, there are three systems for recording and registering interest in land in Ghana:

- Recording of customary interests and rights;
- Registration of instruments relating to land; and
- Registration of title, interest, and rights in Land.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

Act 1036 imposes mandatory obligations and warranties on the seller in relation to real estate transactions in Ghana, depending on the type of transaction (i.e., whether a lease, sub-lease, or an assignment).

The following obligations and warranties will apply even where the transaction documents do not expressly include them:

- Right to convey;
- Freedom from encumbrances;
- Quiet enjoyment;
- Further assurance;
- Validity of head lease;
- Past observance of head lease;
- Further observance of head lease; and
- Production of title deeds and delivery of copies.

Mortgages and other usual guarantees adopted in financing assets

In Ghana the Mortgages Act 1972 (NRCD 96) provides that a mortgage can be created on any type of asset that can be legally sold or transferred.

A mortgage is a contract charging immovable property as security for the due repayment of debt and any interest accruing thereon or for the performance of some other obligation for which it is given, in accordance with the terms of the contract.

Security interest in real estate must be registered with the Collateral Registry in accordance with the Borrowers and Lenders Act 2020 (Act 1047) within 28 days after creation of the interest. Registration of security with the Collateral Registry makes the security enforceable against third parties and gives the security interest priority over security interest registered under any other law.

The security interest must also be registered with the Lands Commission within three months in accordance with the Land Act 2020 (Act 1036), and the Office of the Registrar of Companies within 45 days of creation of the charge where the security is created over real estate assets of a company.

Lease of assets and lease of business

In Ghana, the rent or lease of real estate property is generally governed by the Rent Act 1963 (Act 220). The purpose of Act 220 is to consolidate laws related to the control of rent and the recovery of possession of rented property in certain cases and to provide for related matters.

A lease agreement for use of real estate property or business premises must be in writing. An agreement for the lease or rental of a real estate asset in Ghana should include terms such as the duration of the lease, rent payments, and various covenants that outline the rights and obligations of both the landlord and tenant.

There are three main types of covenants in lease agreements: express, implied, and usual. Express covenants are explicitly agreed upon by the parties, while implied covenants are inferred based on custom, court decisions, or statutory provisions. The court may also impose usual covenants, such as the obligation to pay rent and taxes, maintain the property, allow the landlord to inspect, and grant the tenant peaceful possession. Failure to comply with any of these covenants can lead to legal consequences.

If a lease of an asset is legally ended by either the landlord or tenant, the landlord must notify the Land Registrar in writing to cancel the lease registration. The Land Registrar will then cancel the registration if they are satisfied with the reasons given. Additionally, the landlord must inform the tenant about this application. If the Land Registrar notices that a lease asset has ended legally, they will make a note of it in the land register and inform both the landlord and tenant.

Administrative permits applicable to construction or restructuring of assets

The construction of real estate property in Ghana is governed at the local government level by the Metropolitan, Municipal or District Assembly depending on the jurisdiction within which the construction is to take place.

In general, there are three main types of permits required for building real estate in Ghana: a development permit, a building/construction permit and an environmental permit depending on the impact of the construction.

A development permit authorizes a person to carry out development in accordance with the conditions specified in the permit. It includes a building permit as well and is usually required where large tracts of land undergo extensive real estate development for the development of whole towns or communities. A development permit will address matters relating to zoning, planning standards and structural conditions of the proposed development. Where a development proposal deviates from the established land-use regulations outlined in the approved planning scheme for a particular area, a change of land-use permit is required.

A building/construction permit is the written permission by a local government authority which sets out conditions for the construction of a building or a structure or the execution of works on a proposed building. As part of the documents required in an application for a building/ construction permit, a report from the Environmental Protection Agency (EPA) is required. The EPA essentially grants an environmental permit based on their assessment of the proposed construction/ reconstruction.

In Ghana, the construction of all structures must conform to the National Building Code of 2018 developed by the Ghana Standards Authority.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

There is currently no consolidated law or regulation that governs ESG in Ghana. However, the Environmental Protection Agency Act 1994 (Act 490) makes provisions regarding compliance with environmental laws that are applicable to the real estate industry.

The Environmental Protection Agency is mandated to monitor the activities of both companies and individuals to ensure compliance and set rules for air and water quality, waste management, and emissions.

The real estate industry in Ghana has seen an emerging trend of best practices in relation to ESG-related guidelines. These include:

- Mandatory ESG reporting
- Green certified building standards
- Edge Certification
- Energy saving standards
- Water conservation measures

Direct taxes applicable to sales

Income tax

Depending on whether the transaction is being carried out by individual or legal entities, different taxes apply. Resident individuals are subject to personal income tax at graduated rates up to 35% but can opt to pay a flat rate tax at 25% on capital gains. If the seller is a company in Ghana, income tax will apply on capital gains at the applicable corporate tax rate.

A withholding tax of 3% or 10% also applies on the gross amount paid depending on whether the seller is a Ghana resident person or a non-resident person respectively.

Stamp duty

Stamp duty is payable on documents related to real estate transactions. The Stamp Duty Act 2005 (Act 689) imposes specific rates of duty on real depending on the value of the transaction and term of agreement. It also makes provision for rates applicable to mortgages. The stamp duty is generally an expense that buyers and sellers need to factor into their financial planning of real estate.

Property rate

Property owners in Ghana are required to pay property rate which is levied by the local, municipal, or metropolitan assembly. The rates are administrative levies that are imposed based on the category and value of the property.

Latest developments in Ghana, and areas to focus on in the future:

- Urbanization and increased demand for affordable housing: Ghana's major cities, especially Accra and Tema, are growing rapidly, leading to a surge in demand for affordable housing. As people move to these cities for work, the demand for homes has skyrocketed has and driven up property prices in desirable areas.
- The rise of gated communities: Gated communities have gained significant popularity among middle- and upper-class residents in Ghana. These developments, which offer a range of amenities including security, recreational facilities, and communal spaces, are particularly attractive to families and expatriates seeking a secure and comfortable living environment.
- Growing interest in eco-friendly and sustainable homes: As environmental consciousness grows, Ghanaian homebuyers are increasingly seeking eco-friendly and sustainable housing options. In response to this rising demand, developers are incorporating green building practices, energy-efficient designs, and sustainable materials into their new projects.

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Real Estate Law In Greece

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Vicky is the head of the real estate and NPLs practice group. For more than 15 years, Vicky has advised domestic and foreign investors and international funds on a wide range of transactions. Such transactions include acquisitions, disposals, leases of portfolios and individual assets, other real estate investments, property management, construction, and development. As an attorney specializing in environmental and construction law, Vicky has been involved in numerous landmark real estate transactions. She leverages her expertise in relevant regulatory matters to support clients in successfully concluding and implementing these transactions. She also has significant experience in the creation of in rem securities, the restructuring of collaterals, the due diligence of real estate portfolios, and in general, the representation of clients before courts.

Overview of the Greek Legal System

General introduction to main laws that govern acquisition of assets in Greece – real estate rights

Applicable legal framework

The acquisition of assets, particularly real estate, in Greece is governed by a comprehensive legal framework that ensures transparency, legal certainty, and protection of property rights. Article 17§1 of the Constitution of Greece recognizes the right to property as a fundamental right safeguarded by the state, but also imposes certain restrictions on it. Key aspects of the applicable legal framework include inter alia the registration of real estate transactions in the Hellenic Cadastre (and/or the Land Registry as per the analysis below) and adherence to zoning laws and building regulations. Depending on the complexity, structure, and private or public nature of the involved parties, different regulations shall be considered applicable.

In light of the above, the primary laws regulating such transactions include inter alia (i) the Greek Civil Code (Section Three thereof, under the title Property Law), i.e., the principal law governing property rights, encompassing ownership, contracts, and related legal actions. It regulates all aspects of property transactions, including sales, donations and inheritance; (ii) the Hellenic Code of Civil Procedure under which specific real estate matters (such as auctions or disputes related to property ownership and use) are also regulated; (iii) the Hellenic Cadastre legal framework, including Laws 2308/1995 and 2664/1998, as amended and in force. It shall be noted that currently new laws are adopted in order to enhance the acceleration of the procedures for the Greek Cadastre/Land Registry's completion; (iv) Law 3741/1929, which governs horizontal ownership; (v) legal framework governing real estate owned by the Greek Orthodox Church and the orthodox monasteries in Greece; and (vi) tax legislation, real estate transactions are subject to specific tax laws and obligations whereas annual property taxes also apply, and compliance with tax regulations is integral to lawful property ownership and transfer.

It shall be noted that although real estate is governed by statutory law in Greece, established case law of the Supreme Court, Civil Courts, and Council of State is taken into account as judicial precedent and may have led to several general legal consequences.

Rights in rem

The art. 973 of the Greek Civil Code establishes a numerus clausus of rights in rem. These rights are: (i) ownership (full ownership, bare ownership, and usufruct, co-ownership); (ii) servitude (real or personal); and (iii) mortgage and pre-notice of mortgage. Briefly:

- Ownership (GCC art. 999 et seq.): the fullest, all-encompassing real estate right which consists in using the property in any legal manner.
- Servitudes (GCC art. 1118 et seq.): the rights attached either to another estate (predial servitudes) or a person (personal servitudes) which consist in enjoying one or more benefits from the substance of someone else's property (e.g., a right of way). Usufruct, the right to fully use and derive profit from someone else's property without altering its substance, is the most representative case of personal servitude, specially regulated in the Greek Civil Code (art. 1142 et seq.).
- Mortgage (GCC art. 1257 et seq.), the right of a creditor to collect their claim with priority from the value of someone else's real estate property after foreclosure proceedings. It is the most traditional example of a security interest.

Apart from the rights in rem mentioned above Law 3986/2011 introduced the "right over surface", a limited duration right (up to 99 years) associated with the use, control, and ownership of the surface of a property. This law is commonly used for public land development projects, enabling private investment while keeping land ownership with the state. Finally, apart from real estate rights, powers of usage and possession of real estate property may come in the form of contractual rights, such as the rights deriving from a lease agreement.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Usual acquisition structures

Real estate asset acquisition in Greece is structured either via (i) asset deal transaction (i.e., direct real estate asset purchase); or (ii) share deal transaction (acquisition of real estate entities - PropCos). The decision-making process takes, in which it is advisable to receive legal assistance, into account many parameters including inter alia business model of each investor, tax treatment and investment incentives under the applicable legal framework.

The framework of asset deal transactions is set out by the Greek Civil Code, while the framework of share deal transactions is set out by the Greek Law 4601/2019, in conjunction with the respective law governing each type of target/company (e.g., Law 4548/2018 for a Société Anonyme, which is the most common type of company in Greece, equivalent to a limited company under common law).

Other real estate rights under Greek law, including the lease of a property, usufruct, adverse possession, etc., are mainly regulated by the Greek Civil Code. However, more specific rules may apply based on the type of transaction.

Specific restrictions

Greece encourages foreign real estate investment, primarily through programs like the so-called Golden Visa. However, restrictions exist in certain strategic or border areas due to national security concerns. Hence, non-EU residents need the prior approval of the competent authorities before proceeding to real estate transactions involving properties in such areas (art. 26 L. 1892/1990). Additionally, restrictions and special permits may apply due to environmental reasons or to certain areas of the country, such as private islands, industrial areas,

Real estate registry system

Pursuant to Greek Civil Code art. 1198, registration of the relevant legal acts in public records is a precondition for the valid establishment, abolishment, and transfer of in rem rights on real estate properties. Currently, in Greece, there are two systems concerning land registration: Cadastre (Laws 2308/1995 and 2664/1998), and local Land Registry Offices (Greek Civil Code, Regulatory Decree 19/23 July 1941, Royal Decree 533/1963). Upon completion of the cadastral survey of all regions in Greece, the system of "Operative Cadastre" will replace Land Registries.

Despite the large number of Land Registries and Cadaster Offices in Greece, the rules and requirements are quite unified. However, there are several deadlines that need to be monitored closely since local particularities are identified. The competent Land Registry or Cadaster Office issue certificates of ownership. Besides these, a lawyer has the competency to certify the ownership in this context, after performing due diligence to the relevant registries. Electronic registration of deeds to the competent Cadastre Offices have been recently possible, however electronic services are limited in case of Land Registries.

Notary role in the real estate transactions

In Greece, a notary plays a crucial role in real estate transactions. It is highlighted that under the applicable legal framework, notarial deeds and not private agreements shall be signed when a right over a property is to be transferred. To this end, notaries ensure the legality of the process and safeguard the parties' rights. It is clarified that the sale and transfer notarial deeds that have not been duly registered to the competent Land Registry

and/or Cadaster do not entail legal consequences in terms of the transfer of the property.

Currently, a new digital service "Digital Real Estate Transfer File" unifies and simplifies the procedures for the registration of real estate transactions, which are subject to a cadastral office, speeding up both the process of gathering key documents by the notary public and the registration of the notarial deed. The Digital Real Estate Transfer File aims to significantly reduce the previously time-consuming bureaucratic process, as it reduces the number of documents required. Furthermore, the security of transactions is enhanced, as during the transaction the Property Code Number (KAEK) is "locked" to avoid further transfer or encumbrance of the property in favor of third parties.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

In real estate transactions in Greece, the seller's legal responsibilities are governed primarily by the Greek Civil Code and most of them can be contractually limited and or extended upon particular agreements between counterparties. The seller in the notarial deed of a transfer represents several factual statements about the property (for example, "the seller is the sole owner of the property and has the legal right to sell it," "the property is free from third party claims," "the property complies with all building regulations and zoning laws" etc.) and at the same time guarantees certain conditions about the property (for example the property is free from hidden/material defects that could diminish its value or usability, the property has all the necessary legal permits, etc.). These warranties do not substitute the buyer's due diligence obligation but may support a compensation claim under certain circumstances.

In this context, it shall be highlighted concerning the status of the property that one of the most notable and recent legal innovations in Greece's real estate sector is the introduction of the Electronic Property ID (Ηλεκτρονική Ταυτότητα Κτιρίου), which aims at facilitating property transfers and providing a comprehensive record for each building and/or property mainly from a technical perspective.

The Electronic Property ID is a digital file that contains comprehensive information about a property, including inter alia: building permits and zoning information, layouts, and details about any legalization of initially arbitrary constructions, Energy Performance Certificates, and inspection reports for compliance with building and land-use regulations.

The issuance of a valid Electronic Property ID is mandatory for all property transfers in Greece, and the appointed notary for the transaction will request it from the seller(s).

Mortgages and other usual guarantees adopted in financing assets

In Greece, real estate financing typically involves several forms of guarantees, with mortgages being the most common. Key types of guarantees and security mechanisms are mentioned below, still, the assessment of the applicable security shall be assessed "in concreto" based on the particularities of the investment:

- Mortgage: Legal charge over immovable property granted as a security for a loan.
- Pre-notation of mortgage: Provisional mortgage that allows a lender to claim priority over a property without establishing a full mortgage.
- Pledge of shares in real estate companies: In cases where real estate is owned by a company, lenders may take a pledge over the shares of the company as collateral.
- Guarantees: Personal guarantees, i.e., making one personally liable for the loan if the primary owner defaults, and bank guarantees.
- Assignments of rents or future income: Lenders may take security over future income streams generated by the property.
- Real estate leasing: The asset is leased to the borrower, who has the option to purchase the property at the end of the lease term.
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Lease of assets and lease of business

A lease of assets in Greece involves an agreement (private agreement or notarial deed) where the owner (lessor) allows another party (lessee) to use an asset for a specified period or indefinite time in exchange for rent. Greek lease agreements are primarily governed by the Greek Civil Code and other regulations based on their nature, e.g., leases of residentials are also subject to Law 1703/1987, as amended and in force, whereas leases of commercial properties are subject to Presidential Decree 34/1995, as amended by Laws 3853/2010 and 4242/2014. It is noted that particular long-term leases may be registered in the competent Land Registry and or Cadastre. The applicable laws set the minimum content of the lease agreements' key terms. Still, the parties can agree upon additional or different terms from the ones set by the relevant regime with some exceptions.

Administrative permits applicable to construction or restructuring of assets

The administrative permits required for construction or restructuring of assets are subject to local laws, primarily under the urban planning legislation, the General (New) Building Regulation and other relevant regulations. The key permits and approvals typically required are:

- Building permit: Required for new buildings, major renovations, and extensions of existing buildings;
- Small-scale building permit: Required for interior refurbishments that do not affect the structure, small extensions, repairs, or upgrades to building facades;
- Approval of architectural design: Required for projects in areas of special architectural or historical value;
- Environmental permit: Required for large construction projects, industrial buildings and projects near natural habitats, protected areas, or environmentally sensitive regions;
- Zoning permit: Required for projects that involve changes in land use;
- Demolition permit: Required for full or partial demolition of buildings;
- Fire safety permit: Required to ensure that a building meets fire safety standards;
- Approval from archaeological authorities: Required for projects near archaeological sites or in historically significant areas;
- Electricity, water, and sewerage connection permits; and
- Energy Efficiency Certificate: Required for new constructions, major renovations and sale or rental properties.

Following the above, it shall be noted that the permit process in Greece, even though many steps and or processes have been digitized (e.g., e-adeies), remains complex involving multiple agencies depending on the scope and location of the project.

Environmental and energy – ESG rules and status of implementation

The integration of environmental, social, and governance (ESG) criteria into real estate assets and deals in Greece has gained significant momentum, driven by EU regulations, local legal framework, and market demands for sustainability. ESG considerations influence the viability of real estate projects and impact valuation, risk management, and access to capital. Compliance with these rules is essential for aligning with legal obligations and long-term market trends; hence, ongoing monitoring of new policies and legislative acts that will be gradually adopted and implemented is necessary.

Energy efficiency and sustainability are key considerations when examining a real estate transaction in Greece since buildings are required to have valid Energy Performance Certificates (EPCs), and non-compliant properties face penalties and restrictions on transfer and in some cases even leases. Furthermore, investors are also focusing on properties with sustainable features such as energy-efficient systems, green building certifications (e.g., LEED, BREEAM), and climate-resilient infrastructure. Such features are increasingly important due to the direct and indirect incentives and restrictions set by the applicable regime (indicatively L. 4936/2022, New (General) Buildings Regulation etc.). It is highlighted that Greece has also aligned its spatial planning regulations with the EU regime on energy efficiency and sustainability. Investors who prioritize green building practices, renewable energy

integration, and energy-efficient designs can benefit from financial incentives and increased property values.

Particular attention is required to ensure that applicable environmental licensing requirements are met, especially during the operation of projects and/or activities that may negatively impact the environment. Projects and activities subject to environmental licensing are classified into two categories, A and B, according to their environmental impact. This classification is laid down in the previously mentioned ministerial decisions. The type of environmental permit depends on the category. For projects with a significant impact classified in Category A of the above decisions, an Environmental Terms Approval Decision (ETAD) is required. Subjection to Standard Environmental Commitments is required for projects with only local and non-significant impact classified in Category B of the above decisions.

Moreover, particular attention is required concerning forestry restrictions and forest maps. In this context, it shall be examined whether part or the entirety of the asset to be purchased is located within a forest area, as special provisions apply for those areas, and special certificates must be obtained and appended to the notarial transfer deed in case of a private forest. Furthermore, applicable legislation does not allow alteration of the forested nature of forest lands, and thus, the construction of buildings is prohibited unless exceptionally permitted under specific rules. Note that there is an ongoing process for registering all forests in Greece. A similar situation applies to beachfront real estate properties and their distance from the beach.

Furthermore, social aspects are also considered key criteria for real estate transactions since, under legislative initiatives, the state aims to promote affordable housing and projects promoting health, safety, and social well-being. Lastly, ESG due diligence is advisable even in the early stages of a project's negotiations. In addition, corporate sustainability reporting under the EU regime, which must be adopted by all EU members, makes it mandatory for certain companies to formally report their ESG performance. This disclosure is crucial for all stakeholders increasingly seeking transparency in ESG metrics.

Direct taxes applicable to sales

The applicable tax regime depends on the acquisition structure adopted (e.g., asset or share deal) and the particularities of the transaction in general; hence, it is advisable to proceed to a preliminary tax assessment of the different scenarios, even during the early negotiation stages, to compare the tax impact of each scenario.

In general, it shall be noted that upon purchase, a standard asset deal is subject to real estate transfer tax (RETT) levied at a rate of 3% on the higher of the objective value and the agreed-upon transfer value. Additionally, a municipality surcharge equivalent to 3% of the RETT amount also applies, thus leading to an effective transfer tax rate of 3.09%. RETT is borne by the buyer(s) and should be paid as a lump sum amount before signing the sale and transfer notarial deed. Tax exemptions or reductions may apply if several criteria are met (e.g., REICs are exempt from real estate transfer tax on the purchase of real estate (3.09% on the property's value)).

Under the Greek VAT Code, the acquisition of real estate, taking place for the first time after its construction, is subject to value added tax (VAT) at a standard rate of 24%, provided that all the conditions set by law are met. By exception, until 31 December 2024, the imposition of VAT on the transfer of new buildings may be suspended subject to the filing of an application by the respective constructor. In such cases, the relevant real estate sales will be subject to RETT. The applicable tax regime is expected to be supplemented by the end of 2024.

New asset classes and emerging opportunities in Greece

The Greek real estate market has experienced significant growth over the past decade, influenced by the country's economic recovery, foreign investment, and of course the tourism sector. Although severely impacted by the global economic crisis more than 10 years ago, since 2018 the market has been recovering and has since presenting steady growth throughout the different real estate sectors. Prices especially for prime office, retail, and logistics properties in the two main urban cities, Athens and Thessaloniki, have increased significantly in the past five years.
Greece's tourism sector, which is one of the largest in Europe, significantly affects the real estate market. Properties in tourist hotspots are in high demand offering strong returns on investment. Lately, also demand for residential properties especially in Athens, Thessaloniki, and touristic areas is strong, achieving high prices. The national real estate market still offers attractive returns in comparison to other European countries as almost all sectors are experiencing capital appreciation, while yield levels exceed established and emerging European markets.

By Christos Kosmas, Partner and Real Estate Leader for Deloitte Greece.

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Real Estate Law in Honduras

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Overview of the Honduran Legal System

General introduction to the main laws that govern the acquisition of assets in Honduras – real estate rights

Main provisions governing the acquisition of assets in Honduras are set forth in the following legal texts: (i) Constitution of the Republic of Honduras; (ii) Civil Code; (iii) Property Law and Bylaws; and (vi) security liens law.

Ownership rights on real estate can be obtained through the following: (i) transfer agreements; (ii) inheritance; (iii) donation; (iv) legal/judicial mandate; (v) prescription of rights; and (vi) accession.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Acquisition of real estate or ownership must be authorized or granted by a public notary through a public deed. The public deed is the equivalent to the ownership title.

In the case of transfer agreements, acquisition or ownership can be obtained through: (i) sale/purchase agreements; (ii) transfer agreements; (iii) exchange; or (iv) mortgage, etc.

In the case of inheritance, acquisition of real estate may be obtained by a will or succession rights. In this case, a new public deed in the name of the successors is not required. With a court ruling or a notary resolution granting the succession, the ownership right is acquired, and it is considered the ownership title.

Also, property or ownership can be acquired by means of the following: (i) donation; (ii) legal or judicial mandate or concession; (iii) accession; and (iv) prescription of rights.

In the case of donation, the property title is proven by the public deed granted/authorized by a notary. However, in the case of legal or judicial mandates, accession or prescription of rights, an official court ruling, or resolution will be required to prove ownership or property title.

Generally, in order to acquire ownership rights on real estate, it is advisable to consult a lawyer specialized in this field, and the following must be carried out: (i) grant the public deed or obtain a court ruling or notary resolution; (ii) pay applicable taxes and official fees to the tax authorities and the registry; (iii) request the property registry with the Property Institute; and (iv) obtain Property Registry Certificate.

Non-residents may acquire real estate in Honduras, whether it is directly (personally) or indirectly (through a Honduran-incorporated legal entity). Exceptions and/or limitations exist only for properties in border or beach areas.

Real estate registry system

The Property Institute supervises all property registrations in Honduras. In the case of real estate, ownership must be registered with the Real Estate Property Registry. Also, encumbrances, liens and mortgages must be registered.

The Property Institute has a digitalized/electronic system where a complete registry of all property ownership is held, and it is of public access. That is to say that property ownership is public information.

Every property will be assigned by the system a registry number, which will include every registry annotation. It is required that all transactions involving the registry of ownership or property pay official fees and rates.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

The seller is responsible to deliver the property in good faith and disclosing any defects and is liable to clear the property of any defects.

In case of any inconvenience regarding the property, which was either not disclosed or unknown, the seller is liable and is required to: (i) guarantee the legal and peaceful possession of the property; and (ii) remedy the hidden vices or defects that may appear.

Mortgages and other usual guarantees adopted in financing assets

Mortgages are collateral securities or liens which require a main loan or financing contract. In other words, they are sub-contracts or secondary agreements to the loan or financing contract.

Real estate may be mortgaged, as well as other property securities or encumbrances, which must be granted by means of a public deed authorized by a notary public and registered with the Property Institute.

The ownership of a property cannot be transferred if a mortgage annotation is registered to the property registry. Therefore, a mortgaged property can only be transferred if: (i) the mortgage is cancelled; or (ii) the lender or creditor of the loan issue a waiver authorizing the sale. The lender or loan creditor must issue a waiver, which should include the authorization to transfer the property, the loan and thus the mortgage.

The cancelation of the mortgage must be granted by the lender or loan creditor before a public notary and registered with the Property Institute.

Lease of assets and lease of business

The Tenancy Law and the Civil Code regulates matters regarding property leases intended for residential or commercial purposes.

The Government, Justice, and Decentralization Ministry, through the Tenancy Administration Department, supervises matters regarding property leases. The Tenancy Administration Department is the responsible authority for managing the control of the database of properties that are leased out.

As per provisions included in the Tenancy Law, property owners are required to register all lease agreements with the Tenancy Administration Department.

The leasing of other non-real estate assets is not required to be registered and is not administered or supervised by a regulatory authority. Therefore, asset leases may be entered into privately, as provided by law.

Administrative permits applicable to construction or restructuring of assets

Property development in Honduras is supervised and regulated by the Municipal Authority of each municipality. Regulations vary in each jurisdiction, such as specific procedures and documents required for permitting.

Nevertheless, all construction works and sites require a building permit issued by the Municipal Authority. Cost of the construction permit is 1% of the construction price.

Commencing with the construction work without the permit triggers legal implications such as: (i) the construction work suspension; (ii) the labeling of the construction site as unauthorized for construction; and (iii) a fine, etc. The fine can be imposed for up to 200% of the construction cost.

Approval of the construction permit commonly takes between 15 days to a month.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

The environmental license in Honduras is the permit that authorizes the construction and operation of projects with environmental impacts. Projects that require environmental licenses are the following: (i) for superficial water concession; (ii) underwater use; (iii) dumping permits; (iv) forest use; and (v) others.

If the construction site is in a protected forest area, a special permit is required to be issued by the Forest Conservation Institute.

Also, at a municipal level, the authorities regulate, for each jurisdiction, the specific requirements regarding environmental permits pursuant to the location's particularities (such as forests, rivers, beaches).

Direct taxes applicable to sales

Direct taxes applicable to the sale is capital gains tax and property transfer tax. Capital gains tax will be paid by the seller at a rate of 10% of the transaction value or the market value, whichever is higher. Sellers, for the property ownership transfer, are required to report and pay transfer tax. The transfer tax is paid at a 1.5% rate of the value of the transaction.

Latest developments in Honduras, and areas to focus on in the future:

- Honduras has been experiencing high growth in the real estate sector, both in terms of residential and commercial property. At the moment, there are many ongoing development projects for new tower buildings that will provide both commercial and residential spaces. Acquisition power for housing and housing demand has increased in urban areas and in suburbs of the capital city and other major cities such as San Pedro Sula and La Ceiba. Therefore, all new housing projects attract retail and commercial expansion and consequently the demand for commercial property.
- The ongoing development of infrastructure projects in terms of highways, public transport and road infrastructure is providing access to a vast land and property opportunity. Land areas that were inaccessible a few years ago are being developed and urbanization has increased. Consequently, villages have developed into towns cities and trade has expanded throughout Honduras.
- There is an increase in real estate development projects for the creation of new industrial parks; construction of hotels and long and short-term rentals of apartments and condominiums in tourist areas such as Islas de la Bahia, Trujillo, Bahia de Tela and La Ceiba.

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Real Estate Law in Hungary

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Overview of the Hungarian Legal System

General introduction to the main laws that govern the acquisition of assets in Hungary – real estate rights

The general rules on the acquisition of assets in Hungary are set out in Act V of 2013 on the Civil Code. The acquisition of real estate is regulated by several specific laws and government decrees, depending on whether the acquirer is a foreign or domestic person, a natural or legal person, and on the type of real estate.

The most important specific laws are:

- Act CXLI of 1997 on the Real Estate Register (from 15 January 2025: Act C of 2021 on the Real Estate Register);
- Decree 109/1999 (XII. 29.) FVM on the implementation of Act CXLI of 1997 on the Real Estate Register;
- Act CXXIX of 2007 on the protection of agricultural land;
- Act CXXII of 2013 on the transfer of agriculture and forestry land; and
- Government Decree No. 251/2014 (X.2.) on the acquisition of real estate by foreigners other than agricultural and forestry land.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Companies can acquire real property if it is provided by an investor as an in-kind contribution, or if it is purchased by the company. Companies that own real properties in Hungary are generally allowed to make unrestricted use of their real property: they can sell it, utilize it (e.g., rent it out) take out loans secured on it (e.g., mortgage it), or sell the rights associated with it.

The acquisition of real property (with the exception of land used for agricultural or forestry purposes) by foreign individuals or legal entities is subject to a permit granted by the Budapest or county government office, based on the location of the real property. No permit is needed if the acquisition occurs through inheritance/succession. Special prohibitions apply to the acquisition of agricultural lands by foreign nationals (see below).

A permit is granted by the competent government agency if the acquisition of the real property does not constitute an injury to local government or other public interests, or if the foreign person wishes to live permanently and to pursue economic activity in Hungary for which the acquisition of real property is required, and the acquisition of real property does not constitute an injury to public interests. If the permit is denied, the decision can be appealed before the court.

Acquisition of agricultural land

The acquisition of agricultural land by foreign nationals is highly regulated and several restrictions are applicable. Hungarian private persons as well as private persons of the European Economic Area (EEA) can acquire agricultural land. However, legal persons are not allowed to own agricultural land, except for the Hungarian state, the municipalities, the church, and mortgage institutions under circumstances set by the law.

Both Hungarian and EEA private nationals are required to fulfill several strict conditions to acquire agricultural land. The owner of such property must be a registered farmer in Hungary, with a specific agricultural or forestry qualification, or have been continuously residing and

performing farming, forestry, or ancillary activities in Hungary for at least three years. The acquiring person must also undertake to cultivate the land autonomously for at least five years. The area of such land is also limited.

FDI rules

During the state of emergency introduced by the Hungarian government with respect to the COVID-19 pandemic, new rules were implemented for the purpose of monitoring foreign investments in Hungarian companies (FDI Act). The FDI Act imposes a notification obligation on foreign investors as a precondition to their planned investment in certain strategic sectors in Hungary which includes real estate-related activities. The FDI Act requires foreign investors to file a notification with the ministry and to obtain an acknowledgement of such notification by the ministry as a pre-condition to their investment into a strategic company, or in certain cases, strategic assets, in Hungary. A foreign investor can be (i) a company or organization domiciled in, or a citizen of, a state outside of the European Union (EU), the EEA or Switzerland, or (ii) a company or organization whose majority owner is domiciled in, or a citizen of, a state outside of the EU, the EEA or Switzerland.

Real estate registry system

All real properties located in Hungary are registered in the centrally organized land registry system. The land registry system separately maintains local land registers for each village, town, and for the Budapest districts.

The land registry is responsible for registering, maintaining, and updating the physical and legal data of all Hungarian real properties, including their basic physical characteristics, their cadastral maps, the rights, and obligations as well as the relevant legal facts related to the properties. All real properties are given a so-called "topographical lot number," by which they are registered in the land registry system.

Important principles of the land registry include the principle that it is open to the public (i.e., public access) and that it authentically proves the accuracy of the registered information/rights/facts (i.e., public credibility), and as a result, it protects the rights of a good faith buyer who purchased the real property based on the information registered in the land registry. The main data kept by the land registry on the so-called "property sheets" for all real properties is accessible to anyone in a paper-based or digital format.

Certain rights, including the acquisition of ownership through sale and purchase, easement rights, as well as mortgages, require registration in the land registry to become legally effective.

The new act on the land registry

On 15 June 2021, the Hungarian parliament adopted the new land registry act, which will introduce comprehensive changes in the Hungarian land registry system. Most provisions of the new land registry act are scheduled to enter into force on 15 January 2025.

The main goal of the new legislation is to upgrade the land registry to an electronic database and fully digitalize the land registration procedures. Based on the new act, the current paper-based procedure will be replaced by an electronic/online procedure.

Notary role in the real estate transactions

The public notary usually participates in transactions if the transaction is financed through bank loans. It is common practice in the market for the project financier to have the loan agreement, the mortgage agreement, and other security agreements incorporated in the notarial deed form. This ensures the enforceability of any potential claims by the financing bank.

In Hungary, the public notary might also participate in a transaction by drafting and countersigning the real estate sale and purchase agreement itself. Nevertheless, it is preferable that this task is undertaken by an attorney-at-law.

The public notary is generally involved with lease agreements by issuing eviction deeds. The eviction deed is a declaration of the tenant incorporated into the notarial deed by the public notary, in which the tenant declares that in case of the termination of the lease agreement, they

will move out of the premises. As the eviction deed is in notarial form, it can be directly enforced, i.e., any potential possession protection procedures by the tenant can be avoided.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

The contractual representations and warranties depend on the type of real estate to be purchased and the specific circumstances of such real estate. Common examples are as follows:

Status and authority of the seller

The seller has the authority and power to enter into an agreement and perform the arising obligations.

Status of the property

- The property is in the lawful and exclusive ownership of the seller, and there are no lawsuits, encumbrances, options, claims, or any other third party property rights that are unknown to the purchaser;
- There are no rights, obligations, facts, or pending applications for registration that are not duly recorded on the land registry sheet; and
- Whether the properties comply with the applicable regulations (including building and environmental permits).

Legal responsibility of the seller

The seller must indemnify the purchaser against any loss, liability, claim, or damage which arises from the breach of any of the seller's representations and warranties.

Mortgages and other usual guarantees adopted in financing assets

It is a standard market practice that the purchaser of the property enters into a credit facility agreement with one or more creditors for the financing of a project. For the security of the loan, the purchaser may establish a mortgage (usually with a prohibition of alienation and encumbrance) on the property once the title to the property has been transferred to the purchaser.

The law prescribes the registration of mortgages in the land registry.

The project financier may, in addition to mortgaging the real estate, also pledge other rights and claims as additional security for the financing. Typical mortgages include mortgages on shares in businesses and mortgages on movable property. While a mortgage on real estate is registered in the land registry, a mortgage on a business share is registered in the Company Registry, and other liens are registered in the Registry of Credit Securities.

Lease of assets and lease of business

Apart from certain mandatory legal regulations, the principle of freedom of contract is applicable to leases of real properties, particularly if the contracting parties are business associations and the subject of the lease is other than living premises.

The lease agreements of real property must be in writing. Hungarian language is not a requirement for such agreements. The law does not prescribe the registration of leases in the land registry.

Lease agreements are concluded for a definite or an indefinite period. Unless otherwise agreed, lease agreements with a definite term can only be terminated prior to the expiry of such term for a reason set out in the laws or in the agreement. Lease agreements with an indefinite term can be terminated by notifying the other party in advance, in accordance with the relevant notice period specified in the given lease agreement.

Lease agreements generally require the provision of security by the lessee, ranging from a three- to six-month amount of rent, depending on the real property's function and the parties' agreement. The security is generally provided in the form of a cash deposit, bank guarantee, mother company, or a third party guarantee undertaking.

Lease agreements do not terminate automatically if the ownership of the real property subject to the lease is transferred. In such a case, the purchaser automatically

becomes the lessor of the lease under the same conditions as set forth in the lease agreement and may not terminate such an agreement except if the lessee provided false information to the purchaser in respect of the existence or the material terms of the lease.

Administrative permits applicable to construction or restructuring of assets

In addition to general legal regulations, construction activity must conform to the local zoning plans of local municipalities.

Construction activity may be carried out depending on the type of building, either upon the completion of the permitting procedure by the competent construction authority, or upon the notification of the competent construction authority. Government offices serve as general construction authorities. However, other state offices also act as construction authorities with regards to real properties subject to special regulations, such as buildings under cultural protection. During the permitting procedure, other authorities such as the competent fire department as "specialized authorities" are also involved.

If a building permit is required for the construction activity, then the construction activity might be carried out only upon a final and binding building permit. The building permit is valid for four years from the date of becoming final and binding, or for six years from the start of the construction activity, provided that the building becomes suitable for occupancy permit within such six years.

Any subsequent extension or alteration of a building is subject to a building permit in general, but in certain cases specified by law, certain construction works may be carried out without a building permit.

The occupancy permit is issued if the building conforms to building regulations and to the prescriptions of the building permit and is suitable for proper and safe use. If a building does not conform to regulations and the building permit, but the defects do not impede proper and safe use, the construction authority prescribes additional work to be carried out for the given building.

Environmental and energy – environmental, social, and corporate governance (ESG) rules and status of implementation

Energy efficiency certificate

The owners of certain real properties are obliged to have an energy efficiency certificate prepared should they wish to sell or lease the real property. The identification number of the certificate is a mandatory part of real estate sale and purchase agreements, as well as of lease agreements in Hungary. The energy efficiency certificate is a private document that details the characteristics of the energy consumption of the property and gives recommendations to improve the energy efficiency.

ESG rules

Real estate developers or funds can issue green bonds to the market. As per the Hungarian National Bank's (MNB) guidelines, the issuer must create its own framework with the company's sustainability goals and KPIs. For the framework, a second-party opinion (SPO) has to be issued as assurance that the bond framework is aligned with accepted market principles (e.g., the Green Bond Principles or the Green Loan Principles) and that the proceeds of the bond or loan, as set out in the framework, are aligned with market practices and expectations from the investment community. With the company on the stock exchange–even if it is an individual or a regulated real estate investment company (local REIT)–it is obligated to do its annual sustainability report as a non-financial reporting tool.

Real Estate Law in Indonesia

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Overview of the Indonesian Legal System

General introduction to main laws governing assets acquisition in Indonesia – real estate rights

Law No. 5 of 1960 on Basic Agrarian Act (Law 5/1960) establishes the framework of land law in Indonesia and serves as the implementation of the principal of Indonesia's 1945 Constitution. Law 5/1960 regulates the basic principles and provisions of Agrarian: rights to land, water, and space and land registration, and criminal provisions. Other relevant regulations governing land or real estate in Indonesia include:

- Law No. 4 of 1996 on Security Right on Land and Objects Related to Land (Law 4/1996);
- Government Regulation No. 24 of 1997 on Land Registration (GR 24/1997), as partially revoked by GR 18/2021;
- Law No. 6 of 2023 on Enactment of Government Regulations in lieu of Law Number 2 of 2022 on Job Creation into Law, also known as Omnibus Law (Omnibus Law);
- Government Regulation No. 18 of 2021on Right to Manage, Land Rights, Flat Units, and Land Registration (GR 18/2021);
- Government Regulation No. 38 of 1963 on the Appointment of Legal Entities Allowed to Have Right of Ownerships on Land (GR 38/1963);
- Government Regulation No. 20 of 2021on Control of Derelict Area and Land (GR 20/2021);
- Government Regulation No. 21 of 2021on Spatial Planning Implementation (GR 21/2021);
- Government Regulation No. 64 of 2021on Land Bank Agency (GR 64/2021); and
- Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Office No. 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights (Permen ATR/BPN 18/2021).

Under Indonesian law, the state, as the sovereign authority over all land within the territory of the Republic of Indonesia, has the power to grant and revoke land rights that have been conferred to the citizens.

There are several recognized rights over land (land title), including:

Right of ownership (Hak Milik – HM)

The right of ownership may only be obtained by Indonesian citizens, and special legal entities appointed by the government. This means that such property rights cannot be obtained by foreign nationals and legal entities, whether established in or outside Indonesia, except for certain legal entities under the conditions regulated in GR 38/1963. This right has no time limitation but can be annulled or revoked if: (i) the land reverts to the state; (ii) the owner voluntarily transfers it; (iii) the land is left fallow; and (iv) the land is demolished.

Right to cultivate (Hak Guna Usaha – HGU)

This right allows the cultivation of land that is directly controlled by the state for a specific period. It can be obtained by Indonesian citizens and legal entities established under Indonesian law for a maximum period of 25 years, with the possibility of extension and renewal upon expiry.

For certain enterprises that require a longer term, this right may be granted for up to 35 years. The period may be

extended for a maximum of 25 years, depending on the request of the rights holder, and considering the situation of their enterprise.

Right to build (Hak Guna Bangunan – HGB)

The right to build can be obtained by Indonesian citizens and legal entities established under Indonesian law for a maximum of 30 years. This right can also be extended and renewed upon expiry for a further period of no more than 20 years.

Right to use (Hak Pakai – HP)

The right to use can be obtained by Indonesian citizens, legal entities established under Indonesian law (including foreign investment companies), government departments, regional governments, religious/social organizations, foreigners residing in Indonesia, as well as foreign legal entities and/or representatives of a foreign country and/or international agency that have representatives in Indonesia, for certain periods of time or as long as the land is utilized for a specific purpose and for free, against payment, or against service in any form. This period of time can be extended and renewed upon expiry.

Right of ownership over condominium units (Hak Milik Atas Satuan Rumah Susun – HMSRS)

HMSRS adheres to the horizontal separation principle which means that an HMSRS is an ownership over the condominium unit of a personal nature that is distinct from the common right over the common sections, common objects, and common land. The common rights associated with these areas will be calculated based on the proportional value (nilai perbandingan proporsional) and will be noted on the HMSRS certificate. HMSRS can be obtained by Indonesian citizens, legal entities established under Indonesian law, foreigners residing in Indonesia, and foreign legal entities and/or representatives of a foreign country and/or international agency that have representatives in Indonesia.

In addition to the above, unregistered land is commonly found in Indonesia and is referred to as "tanah adat" or "customary land." To evaluate the title of any unregistered land, a physical inspection of the land along with meetings with the village head, district, regent, and mayor is necessary to ascertain the applicable unregistered land rights. This typically involves reviewing any documentary evidence of land rights, such as proof of land tax payment (girik) and village records. Villages may hold collective rights over the land (known as tanah bengkok or tanah wakaf).

To address the issue of unused, unutilized, and uncultivated land and areas, Omnibus Law stipulates that any rights or concession on any land/area that are not utilized within two years of their issuance will be revoked by the government and returned to the state.

Furthermore, GR 20/2021 was enacted to serve as the implementation of Law 11 of 2020 on Job Creation (which was revoked by Omnibus Law). This regulation aims to enhance land usage effectiveness to boost Indonesia's national economy (for a detailed explanation, please see https://www2.deloitte.com/content/dam/Deloitte/id/Documents/l egal/id-legal-client-alert-government-regulation-no.20-of-2021.pdf).

Furthermore, although Indonesian law through the Indonesian Civil Code (ICC) previously acknowledged a vertical boundary principle (verticale accessie beginsel), which means that the land and all objects attached to it are an inseparable unit (this law always attaches the building to the land on which it stands). Law 5/1960 acknowledges the horizontal separation principle (horizontale scheiding beginsel). This principle separates the land from the buildings, structures, or plants on it. Therefore, it is possible to find two land titles for a single parcel of land, (e.g., right to build and right of ownership).

Land Bank Agency

GR 64/2021 was also enacted to serve as the implementation of Law 11 of 2020 on Job Creation (which was revoked by Omnibus Law). The Land Bank was established as an Indonesian legal entity and granted special authority to ensure the availability for economic justice purposes, including public interest, social interest, national development interest, economic equity, etc. The land bank is headquartered in the capital city and may have representative offices across various regions in Indonesia.

GR 64/2021 grants the Land Bank various functions, including planning, land acquisition (perolehan tanah), land procurement (pengadaan tanah), land management (pengelolaan tanah), land utilization (pemanfaatan tanah), and land distribution (pendistribusian tanah). In performing these functions, the Land Bank shall (among others duties) conduct long-term, medium-term, and annual planning, acquire land through the government stipulation and from other parties, procure land for public interest developments or directly, cooperate with third party on land utilization (kerja sama pemanfaatan), and distribute land through land provision and allocation activities.

Land managed by the Land Bank shall be granted rights over land in the form of right to cultivate, right to build, and right to use. The Land Bank may transfer and/or utilize portions such rights over land to third parties by way of agreement.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

The acquisition of real estate transactions in Indonesia are usually completed by:

- Sale and purchase;
- Exchange (tukar menukar) through an exchange agreement between the acquired asset and another object belonging to the party making the acquisition;
- Grants (hibah) in the form of land and/or buildings, which must be done through a written deed made by the land deed official;
- Income to the company (inbreng–pemasukan dalam perusahaan), defined as transactions that include non-cash assets, such as land from shareholders to be used as company capital; or
- Other legal acts for transfer of rights.

Prior to acquiring a certain piece of land, a person/company must investigate the title of the land, the willingness of the relevant land right holder(s) to sell the land, and the feasibility of obtaining the necessary licenses related to the target land. The transfer of land rights can be carried out by sale and purchase, exchange, grants, auctions, inheritance, transfer of rights due to merger or acquisition, and other rights transfers.

Foreign nationals or legal entities cannot own land in Indonesia under Law 5/1960. However, since the issuance of Law No. 1 of 1967 on Foreign Investment (revoked by Law No. 25 of 2007 jo. Omnibus Law), foreign direct investment (Penanaman Modal Asing–PMA) is governed and as a result, foreigners can have land in Indonesia through a PMA company. In relation to business use, under the Omnibus Law jo. GR 21/2021, in order for a foreign investment company to acquire its target land, it needs to secure approval on the conformity of the business location with the relevant Detailed Spatial Plan (Rencana Detail Tata Ruang–RDTR) through the Online Single Submission (OSS) Institution, and is required to fulfill the suitability of spatial utilization activities (kesesuaian kegiatan pemanfaatan ruang) requirements; which include:

- Location coordinates;
- The need for land area for space utilization activities;
- Land tenure information;
- Business type information;
- Number of plans relating to the building; and
- Floor area plan of the building.

The transfer of land rights must be registered with the national land agency by enclosing a deed made by an authorized land official as a valid proof. The creation of such a deed is made between the contracting parties before an authorized land official and witnessed by at least two witnesses who are qualified to act as witnesses in such legal proceedings.Following a recent change, a foreigner can now hold a HMSRS over a condominium that is built on land under the right to use or right to build or right to manage over a state land, or right of ownership. However, in such a case, the common right over the common land will not be calculated. Apart from the most essential restriction on land ownership in Indonesia regarding the type of entities allowed to hold certain rights, Indonesian land law also limits ownership of foreigners' housing by:

- Minimum price;
- Land area;
- The number of land plots or flat units; and
- For residence and residential purposes.

The land plots area limit in Indonesia depends on the use of the land. Based on Permen ATR/BPN 18/2021, the land plots area limit for the residential house is one plot of 2,000 square meters of land per person/family at most. However, in certain circumstances, if the foreign nationals have a positive economic and social impact, they may own a residential house with more than one plot of land or a land area of more than 2,000 square meters with the permission of the Indonesian Minister of Agrarian Affairs and Spatial Planning/Head of National Land Office.

Digital transformation in land administration has highlighted the transparency of the land ownership system. In this respect, in an effort to address the overlapping issues of land ownership, and to combat the "land mafia"-related problems, the Minister of Agrarian Affairs and Spatial Planning/Head of National Land Office issued guidelines for checking electronic certificates and issuing land registration certificates.

The guideline sets out technical guidelines for all of the land and spatial planning information services provided by the ministry. These guidelines have changed the landscape of the land management system in Indonesia, from which the public will benefit from the quality of the land and spatial planning management services enhanced through digitalization. The public can now secure land and spatial planning information through an electronic information service. This service encompasses certificate checking, the issuance of land registration certificates (Surat Keterangan Pendaftaran Tanah-SKPT), and information on land-value zones, coordinate points, data package information for global navigation satellite systems/continuously operating reference systems, land ownership histories, land histories, and spatial planning.

For a detailed explanation, see: https://www2.deloitte.com/content/dam/Deloitte/id/Documents/legal/id-legal-client-alert-electronic-regime-jun2022.pdf

Real estate registry system

Overview on the registration of title

Law 5/1960 adopted the registration of title system. In Indonesia, land registration has to be a continuous, sustainable, and regular series of activities conducted by the government of Indonesia, including collection, processing, bookkeeping, and presenting and maintaining physical data and juridical data, in the form of maps and lists, on the plots of land and condominium units, including the provision of a certificate of title to the existing land rights and the ownership rights over the condominium units and certain rights encumbered therein.

The object of land registration includes:

- The plots of land owned by the right of ownership (hak milik), the right to use (hak guna usaha), the right to build (hak guna bangunan), and the right to use (hak pakai);
- Land with right to manage (hak pengelolaan);
- Waqf land;
- Right of ownership over condominium units;
- Mortgage right; and
- State land.

Land registration is completed through:

- Collection and processing of physical data;
- Verification of their rights and bookkeeping;
- Issuance of a certificate;
- Presentation of physical data and juridical data; and
- Storage of public registers and documents.

In the current regime, land registration can also be done electronically, the result of which must be in the form of data, electronic information, and/or electronic documents.

Negative publication system with a positive tendency

In practice, Indonesia uses two models of land registration:

- Initiative of the government of Indonesia, which will bear the cost for land registration and select the areas for the land certification; and

- Land registration at the initiative of the landowner, the cost of which will be paid by the landowner through the local National Land Office.
- These two models of land registration will result in a land certificate comprising the land book (juridical data) and the measurement document (physical data).

Notary role in the real estate transactions

Based on the Indonesian Law on Notary Profession, a notary has the authority to authenticate all deeds (including deeds related to land affairs), agreements, and stipulations required by law and regulations and/or desired by the person concerned to be stated in an authentic deed, to guarantee certainty of the deed preparation date, to keep the deed, to provide access to the full deed, copy, or excerpt from the deed, all to the extent that the preparation of such a deed is not assigned to or exempted from another official or another person stipulated by law.

However, Indonesian law mandates that land rights must be transferred through a deed made by a Land Deed Official (Pejabat Pembuat Akta Tanah–PPAT), not a notary. PPAT is a public official authorized to make authentic deeds on certain legal acts on the land rights or rights of ownership over condominium units, who usually graduated with a master's level degree in notarial education with a PPAT specific education program. The creation of land rights and rights to ownership of condominium units through sale and purchase, exchange, grant, income in company, and other legal transfer rights, except the transfer of rights through auction, can only be registered if evidenced by deeds made by PPAT authorized in accordance with applicable laws and regulations. Whereas, under certain circumstances, as stipulated by the Minister of Agrarian Affairs and Spatial Planning/Head of National Land Office, the Head of the Land Office may register the transfer of rights to the plot of land among Indonesian citizens as evidenced by a deed not made by the PPAT, unless the truth is considered sufficient to register the transfer of the related rights.

In relation to the above, a notary is authorized to make deeds of supporting documents on real estate transactions, i.e., conditional sale and purchase agreements, statements of representations and warranties, but the deeds to transfer land rights must be done with a deed made by PPAT.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

A seller in a real estate transaction can be an individual or a company. To sell assets, there are obligations that must be fulfilled by the individual seller or director who represents the company. Under Law No. 1 of 1974 on Marriage, a spouse who has no prenuptial/postnuptial agreement to separate the assets on their marriage must obtain approval from their spouse to release or transfer their property rights (e.g., selling assets). A limited liability company, however, must comply with the provisions in its articles of association to sell its assets. If the sale/guarantee of the asset is above 50% of the company's net worth, the director must seek approval from the general meeting of shareholders based on Law No. 40 of 2007 on Limited Liability Companies (as amended by Omnibus Law).

There is no law or regulation which stipulates the specific legal responsibilities of the seller in real estate transactions. However, in the deeds made by PPAT, it is mandatory for the seller to represent and warrant that the land is legally and validly owned by the seller and is not disputed and/or encumbered with certain rights.

Notwithstanding the aforementioned, we are able to rely on the general provision of seller responsibility postulated within ICC. Based on the ICC, the seller has two basic obligations: (i) to deliver the assets sold; and (ii) to safeguard them.

The ICC further elaborates the obligation of safeguarding the object into: (i) the safe and peaceful ownership of the assets sold; and (ii) the security against any hidden defects in the assets, or those hidden defects which may cause cancellation of the sale.

Hidden defects, even those which are not known to the seller, will become the responsibility of the seller. In principle, there is an obligation for the seller to guarantee that the object of the transaction is able to be used for normal objectives under the agreement. However, the law

also provides that the seller and buyer can regulate the extent of the seller's responsibilities or even release the seller from any responsibility.

In practice, the seller and the buyer can formulate the representations and warranties, as well as undertakings, from the seller in relation to the sale of the land in a written agreement. As such, it is highly recommended that both the seller and buyer obtain express and written agreement regarding the extent of their obligations and responsibilities. In this regard, it is always advisable to seek the assistance of a lawyer specialized in the field

In Indonesia, generally, the representations and warranties in the written agreement regarding the sale of land cover that:

- The land is legally and validly owned by the seller and is not disputed and/or encumbered with certain rights;
- The seller has not hidden any facts and has disclosed all the information regarding the land;
- The seller has the authority to sell the land and has obtained the necessary approvals to perform the sale of the land; and
- There is no option agreement or similar arrangement that has been made by the seller with a third party to sell the land.

Mortgages and other usual guarantees adopted in financing assets

The sole guarantee or security of real estate in Indonesia is a mortgage (hak tanggungan) which is regulated under Law 4/1996. The security interest under a mortgage will normally cover the immovable and fixtures over the encumbered land automatically (whether these buildings or fixtures exist on the date of the mortgage, provided that such a mortgage is governed by the deed made by the land deed officials).

A mortgage may be established over the land with the following title: (i) right of ownership; (ii) right to cultivate; (iii) right to build; and (iv) right to use (subject to a requirement that the relevant right to use is transferable).

PPAT will submit the application for the registration of a mortgage to the relevant National Land Office (Badan Pertanahan Nasional). In addition, Law 4/1996 stipulates the reconveyance (known as roya), which is a write-off or the removal of the mortgage from the land book of the mortgage due to the void of such a mortgage. The mortgage will be void if:

- The debt secured by the mortgage is void (debt settlement);
- The holder of the mortgage releases the mortgage;
- The mortgage is released pursuant to the stipulation of ranking by the Head of District Court (penetapan peringkat oleh Ketua Pengadilan Negeri); or
- The land title secured by the mortgage is void.

In respect to such a debt settlement, the reconveyance of a mortgage can be done with a note by the relevant creditor that the mortgage is void since the debt secured by the mortgage has been settled, or a written statement from the creditor stating the same information/clarification. In addition, Law 4/1996 enables the partial reconveyance (roya parsial) in which the mortgage is removed for certain parts of the mortgage objects, hence the mortgage only applies to the remaining party of the mortgage object as the security for the remaining debt which has not been settled.

Reconveyance can also be conducted in the event of a transfer of mortgage from the existing creditor to a new creditor (due to the transfer of the secured loan). Upon conducting reconveyance, PPAT will conduct a re-registration process of such transferred mortgage by submitting the required underlying documents for the transfer (i.e., underlying financing agreement evidencing the loan transfer, original land certificate, as well as other documentation that may be required from the relevant National Land Office). The registration of the transfer will be conducted by the National Land Office after receiving the application from PPAT by recording it in the land book of land mortgage (buku tanah hak tanggungan) and copying the same information to the land mortgage certificate as well as to the land title certificate.

In addition to the above, Law No. 42 of 1999 on Fiduciary Security stipulates that buildings on land which is owned by other party that cannot be secured with mortgage based on Law 4/1996 may be used as the fiduciary security object. This approach is an implementation of the horizontal separation principle (asas pemisahan horizontal)

under Law 5/1960, where this principle allows for the separation of ownership between landowners and building owners. Thus, a fiduciary security can be used to secure a building, while the land can still be secured through land mortgage.

Lease of assets

Specific regulations regarding the lease of assets are stipulated in Law 5/1960 which regulates the right of lease of buildings. The right of lease of buildings is a type of lease that can be completed by Indonesian citizens, foreigners domiciled in Indonesia, legal entities established under Indonesian law, and/or foreign legal entities that have representatives in Indonesia. The right of lease of buildings can only occur on land with a right of ownership title. The bearer of the right of lease of buildings is entitled to build buildings on the land by paying a certain sum of money as rent for the land. The payment of the rent can be made (i) either on a one-off basis or on a certain-interval basis, and (ii) either before or after the use of such land. The lease agreement should not contain elements of extortion.

Notwithstanding the aforementioned, the mutual arrangement between the lessor and lessee will be based on a contract subject to the ICC. At the outset, the ICC accommodates the basic principle of freedom of contract (agreement) between the contracting parties (i.e., lessor and lessee), provided that the agreement fulfil the general conditions regulated under Article 1320 ICC, namely the subjective requirements (i.e., consent and capability of contracting parties to enter into the contract/agreement) and objective requirements (i.e., certain (specific) allowable object(s) and lawful purposes). When the conditions mentioned above are fulfilled, the mutual arrangement of rights and obligations between the lessor and lessee is complete and valid.

Generally, the provisions under the lease agreement consist of the lease period as well as its option for extension, fees as well as its term of payment, repair and insurance, termination, etc. The provisions under a lease agreement are generally freely negotiable and as such, specific provisions under a lease agreement are subject to the contractual agreement between the lessor and the lessee.

Administrative permits applicable to construction or restructuring of assets

The Indonesian government issued a series of implementing regulations on 2 February 2021, following the enactment of Law 11/2020 (now Omnibus Law). Omnibus Law amends 76 laws across a wide range of business sectors, including the construction business, and the implementing regulations thereof consist of 45 government regulations and four presidential regulations.

On the licensing regime, the Indonesian government enacted Government Regulation Number 5 of 2021on Risk-Based Licensing (GR 5/2021), which requires all business actors to fulfill risk-based licensing requirements under the OSS system.

The development and the marketing of real estate are mainly led by the developer, who as the user of construction services may appoint a contractor or construction company for the construction of such real estate through an Engineering Procurement Construction (EPC) agreement. A construction company (Badan Usaha Jasa Konstruksi-BUJK) may be established with foreign shareholders and is referred to as a foreign construction company (Badan Usaha Jasa Konstruksi Penanaman Modal Asing-BUJK PMA). As for the main licensing requirements, prior to providing construction services in Indonesia, a BUJK PMA must first obtain a Foreign Investment Business License (Izin Usaha Penanaman Modal Asing-PMA License) from the Indonesian Ministry of Public Works and Housing.

Following the provisions of risk-based licensing under GR 5/2021, the BUJK PMA must also obtain a Business Identification Number (Nomor Induk Berusaha-NIB) and a Standard Certificate (Sertifikat Standar), of which the Standard Certificate for the construction activities comprises:

- Construction Business Entity Certificate (Sertifikat Badan Usaha Konstruksi or SBU-K);
- Construction Work Competency Certificate (Sertifikat Kompetensi Kerja Konstruksi or SKK-K); and
- Relevant license relating to the actual activities, e.g., construction services business license which may further be divided into several categories (including actual/physical construction license, construction consultant license and/or planning and supervision for

construction license) based on the Law 2 of 2017 on Construction Services (as amended by Omnibus Law).

Incidentally, regardless of the presence of BUJK or BUJK PMA, construction can also be done through individuals, especially for low-rise buildings (i.e., houses). In addition, the Indonesian government enacted Government Regulation Number 16 of 2021 on the Implementing Regulation to Law Number 28 of 2002 on Buildings (GR 16/2021), which establishes a set of detailed guidelines for the construction of buildings and replaces several frameworks on licensing, specifically related to buildings (i.e., Building Construction Permit (Izin Mendirikan Bangunan). As of the enactment of GR 16/2021, it is mandatory to secure Building Approval (Persetujuan Bangunan Gedung-PBG), of which the PBG is the required license to construct, alter, expand, shrink and/or maintain buildings and its facilities. To obtain the PBG, the applicant must undergo a planning consultation process through the Management Information System for Buildings (Sistem Informasi Manajemen Bangunan Gedung) along with the applicant's data, building data, and technical plan document.

Further, Omnibus Law has revoked Staatsblad of 1926 No. 226 jo. Staatsblad of 1940 No. 450 on Nuisance Law (Hinderordonnantie), thus, any business entity that engages in the construction of buildings is no longer required to obtain a nuisance permit (izin gangguan). Previously, the Indonesian Ministry of Internal Affairs (MoIA) issued MoIA Regulation No. 19 of 2017, which revoked the obligation to obtain a nuisance permit as stipulated under MoIA Regulation No. 27 of 2009 on the Guidelines for the Stipulation of Regional Nuisance Permits as amended by MoIA Regulation No. 22 of 2016.

Environmental and energy – ESG rules and status of implementation

Indonesia's environmental law requires business activities with an environmental impact to complete an environmental impact assessment, known as AMDAL (Analisa Mengenai Dampak Lingkungan). AMDAL is composed of Term of Reference Forms (Formulir Kerangka Acuan–Formulir KA), Environmental Impact Statement (Analisis Dampak Lingkungan–Andal) and Environmental Management Plan, and Environmental Monitoring Plan (Rencana Pengelolaan Lingkungan Hidup dan Rencana Pemantauan Lingkungan Hidup–RKL/RPL). The submitted Formulir KA, Andal and RKL/RPL are assessed by the Environmental Feasibility Test Team in relation to the administrative and substantive matters.

The Indonesian Minister of Environment and Forestry established categories of business activities that require an AMDAL. Business activities that do not require an AMDAL may require either documentation of Environmental Management Efforts and Environmental Monitoring Efforts, (Upaya Pengelolaan Lingkungan Hidup dan Upaya Pemantauan Lingkungan Hidup–UKL/UPL), or delivery of a Letter of Undertaking of Environmental Management and Monitoring (Surat Pernyataan Kesanggupan Pengelolaan dan Pemantauan Lingkungan Hidup–SPPL).

Under the Omnibus Law, the environmental permit has been replaced by environmental approval (persetujuan lingkungan). Depending on the types of business activities, the environmental approval serves as an environmental feasibility decision (if granted based on AMDAL) or a statement of environmental management capability (if granted based on UKL-UPL).

The Indonesian government also commits to managing the climate change crisis as reflected in the Presidential Regulation No. 98 of 2021 on the Implementation of Economic Carbon Value to Achieve National Contribution Target and Greenhouse Gas Emission Control in the National Development (PR 98/2021) and commits to lowering greenhouse gas emissions by 29% and up to 41% by 2030. In certain regions, a permit to dump liquid waste into certain water resources is subject to a user fee, collected by the local government. Furthermore, through Governor Regulation No. 93 of 2021 on the Groundwater Exclusion Zone, DKI Jakarta prohibits the use of fresh groundwater in certain areas from 1 August 2023 (excluding for dewatering).

The Indonesian Ministry of Environment and Forestry, alongside the Indonesian Ministry of Public Works and Public Housing, issued regulations to set the standard of a legal framework on green buildings in Indonesia. A building certified as a green building (Bangunan Gedung Hijau–BGH) could be given incentives by the local government, such as:

- Relief on PBG retribution and/or service;
- Compensation in the form of floor area ratio;
- Technical support and/or expertise in the form of technical advice and/or green building expert service assistance on a pilot period;
- Awards in the form of certificates, plaques, and/or tokens of appreciation; and/or
- Other incentives in the form of publications and/or promotions.

Direct taxes applicable to sales

There are several taxes applied in property acquisition in Indonesia:

Land and building tax (Pajak Bumi dan Bangunan-PBB)

The PBB rate is calculated by multiplying the tax rate with the sale value of the tax object (Nilai Jual Objek Pajak–NJOP) that has been deducted by non-taxable NJOP (in DKI Jakarta and under DKI Jakarta Regional Government Regulation No. 1 of 2024 on Regional Tax and Retribution, non-taxable NJOP is IDR60 million/USD3,781.93*). In DKI Jakarta, PBB-P2 (Pajak Bumi Bangunan Perdesaan dan Perkotaan) is set at 0.5% of NJOP.

Duty on the acquisition of land and building rights (Bea Perolehan Hak atas Tanah dan Bangunan-BPHTB)

The duty on the acquisition of land and building rights is imposed on the buyer at 5% of the transaction value, which has been deducted from the non-taxable tax object acquisition value (Nilai Perolehan Objek Pajak Tidak Kena Pajak-NPOPTKP, in which in DKI Jakarta, the NPOPTKP is IDR 250 million/US$15,758*).

Income tax (Pajak Penghasilan-PPh)

Income tax is imposed on the seller and is set at 2.5% of the transaction value. However, the income tax for transfers of simple houses and/or simple condominiums conducted by taxpayers engaged in a property development business is set at 1%.

Value added tax (Pajak Pertambahan Nilai-PPN)

PPN on property sales only applies to primary properties, which are residential properties sold directly to the end-customers by the developers. PPN is imposed on the end-customer and is set at 11% of the transaction value.

Sales tax on luxury goods (Pajak Penjualan atas Barang Mewah-PPnBM)

PPnBM is imposed on the end-customer who acquires property that meets the luxury criteria from the developer. PPnBM is set at 20% of the transaction value.

*According to the 10 December 2024 exchange rate

Real Estate Law in Italy

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He is also an adjunct professor at Luiss Business School and author of two books on real estate "Le acquisizioni di immobili e società immobiliari" published in 2009, and "Il Diritto Immobiliare" published in 2019. Emiliano also has experience as an in-house counsel in the legal department of a large US bank, and at the United Nations in New York.

Since 2022, Emiliano Russo has been selected as "Italian Certified Consultant" of the Italian – United Arab Emirates Chamber of Commerce in Dubai, as well as been awarded "Lawyer of the year – Fund Formation – 2024" by Legalcommunity.

Overview of the Italian Legal System

General introduction to main laws that govern acquisition of assets in Italy - real estate rights

The Italian legislator has improved significantly–the legal rules applicable to the acquisition of real estate assets (the assets), following the rationale that the sale of an asset is not only a private transaction between seller and buyer, but it also constitutes an opportunity to check of the legal compliance of the asset with public laws.

For this reason, while the Italian Civil Code remains the main source of law for the protection of the private interests of the parties (e.g., the right to damages in case of defects of the asset sold), new laws have been approved to ensure legal compliance of the asset with public interests and to impose the utmost transparency. The main laws, which aim to impose the delivery of documents or information in the real estate contracts of sale are:

- Testo Unico Edilizia n° 380/2001 which requires the seller to disclose to the buyer – in the notarial deed of sale – all Urbanistic Authorizations obtained for the construction of the asset; this so-called Urban Declaration (Dichiarazione Urbanistica) is aimed at informing the buyer on the urban status of the asset sold;
- Legislative Decree n° 122/2010 which requires the seller to provide the buyer with the Cadastral Compliance Certificate (Attestato di Conformità Catastale), i.e., a declaration confirming the compliance between the physical status of the asset and its cadastral description at the Catasto, for tax purposes;
- Legislative Decree n° 195/2005 introduces the compulsory delivery by the seller to the buyer of the Certificate of Energy Consumption (Attestato di Prestazione Energetica), in order to increase transparency on the actual energy consumption of the asset;
- Law 4 August 2006 n° 248 mandates the disclosure of (i) the registration number of the real estate agent – if any – involved in the transaction (to prevent the abusive exercise of this profession), and (ii) the bank references of all the payments made to the seller, for anti-money laundering purposes;
- Legislative Decree 20 June 2005 n° 122 regulates the entire process of sale by a construction company to private consumer, of an asset "under construction", in order to protect the non- professional buyer; and
- Legislative Decree 22 January 2004 n° 42 (Codice dei beni culturali e del paesaggio) grants the government the right of pre-emption for the sale of an asset qualified a "cultural asset".

The main estate rights over an asset regulated by the Italian Civil Code, are the following:

- Right of ownership (Diritto di Proprietà), which grants to the owner (proprietario) the full and exclusive rights to use, to construct, transform or restructure, and to dispose totally or partially, at any title, of the asset; in all these cases, the owner may exercise its "full and exclusive" right of ownership, "within the restrictions and obligations deriving from the legal system"; these restrictions and obligations are those introduced by the special laws mentioned above, such as planning and urban rules, cadastral regulations, or others, such as distance, prohibition against causing damages to third parties, etc. (art. 832 of Italian Civil Code (ICC));
- Right of surface (Diritto di Superficie, i.e., "right to build over"), in which the owner (proprietario concedente) grants a third party (proprietario superficiario) the right to construct, to maintain and to become the owner of a building built on land owned by the proprietario concedente; this right has the business purpose to

ease construction of a new building without imposing the costs for the acquisition of the land; this right is also adopted when an energy company intends to build its own facility on a third party's asset and use it as energy provider;

- Right of usufructs (Diritto di Usufrutto), which grants to the beneficiary the right to use and to draw fruits, without limits, from an asset, but with the obligation to respect the intended use of the asset (art. 981 ICC);
- Right to plant over (Diritto di Enfiteusi), which grants the beneficiary (enfiteuta) the right to plant and use a plot of land, with the obligation to improve the land and to pay rent to the landowner (art. 957 of the ICC); this right has the purpose of promoting the productivity of agricultural lands;
- Right of easement (Diritto di Servitù), which grants to the owner of an asset (fondo dominante - dominant estate), the right to impose – over a confined land or asset (fondo servente - serving land) – obligations or burdens (such as passage, water drainage, passage of electrical conduits), necessary for the complete use of the dominant estate.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Real estate transactions between professional investors are usually structured as an asset deal, share deal or, for more sophisticated transactions, as a fund deal.

Asset deal

In asset deals, the acquisition structure is divided in three phases, each with different types of legal documents, form, content, and legal effects.

Phase 1 – Proposal of Purchase

The first phase comprises the Proposal of Purchase (Proposta di Acquisto), prepared by lawyers, containing all the essential elements of the prospective transaction: a concise description of the asset, the range of price and modes of payment, conditions precedent of the acquisition (due diligence, board approvals, bank financing), timing of closing and exclusivity; in case of violation by either party of its obligations to be negotiated in good faith (i.e., obligation of transparency vis-à-vis the counterparty and obligation of confidentiality vis-à-vis third parties) during the negotiation, the relevant party may be held liable for damages.

Phase 2 – Preliminary Agreement

If the seller accepts the Proposal of Purchase from the buyer, the parties sign a preliminary Sale and Purchase Agreement (Contratto Preliminare di Compravendita), drafted by lawyers, which regulates, in detail, all the terms and conditions of the prospective sale, already mentioned concisely in the Proposal of Purchase (urban and cadastral description of the asset, agreed price and final modalities of payment, etc.); as well as the structure of contractual representations and warranties released by the seller in favor of the buyer. It is advisable that the Preliminary Agreement be signed before an Italian notary who will register the Preliminary Agreement with the Real Estate Registry (formerly called Conservatoria): this process of "Trascrizione" of the preliminary agreement with Conservatoria guarantees – to the accepted buyer – priority to purchase the asset with respect to (i) any registration of subsequent preliminary agreements fraudulently executed by the seller with new buyers or (ii) against easements or seizures registered by third parties against the sellers, after the Trascrizione of the Preliminary Agreement.

Phase 3 – Notarial Deed of Sale

The final contract of sale is a notarial deed, prepared by the notary (usually chosen and paid by the buyer); the notarial deed of sale - negotiated and reviewed by the parties and their lawyers - contains not only the final asset of interest agreed by the parties of the Preliminary Agreement, but also compulsory clauses imposed by the special laws mentioned above, since they are compulsory requirements for a valid legal transfer of the asset, such as the Urban Declaration (Dichiarazione Urbanística), the Cadastral Compliance Certificate (Attestato di Conformità Catastale) and the Certificate of Energy Consumption (Attestato di Prestazione Energetica).

Share deal

For a share deal, after the preliminary exchange of the Proposal of Purchase, the acquisition structure is divided in two phases:

- Execution of a Share Purchase Agreement (or a Quota Purchase Agreement, depending on the type of financial instrument of the target), in the form of a private contract, where the parties agree on all the terms and conditions of the transaction: price, mode of payment, conditions precedents, representations and warranties; this Share Purchase agreements is usually subject to condition precedents (condizioni suspensive); and
- Execution of the transfer – in notarial form - which results in the endorsement and delivery of the shares to the seller, in case of "società per azioni" (or signing of the notarial deed of sale of the quota, in case of "società a responsabilità limitata"), upon payment of the price.

In a share deal, since the ordinary legal rules set forth by the Italian Civil code for the sale of goods apply exclusively to legal defects over the shares or quotas (and do not cover automatically the assets and liabilities nor the business of the target), the buyer's lawyers must pay close attention to negotiate contractual representations and warranties to protect the buyer against defects referred to the assets owned by the target.

Fund deal

If the transaction involves the acquisition of portfolios of assets or several assets in different countries, with professional investors involved, it is advisable to consider the structuring of a real estate fund, which offers high transparency and tax efficiency.

Transactions with foreign parties

Concerning cross-border transactions involving a foreigner (i.e., a non-Italian citizen), the foreign party is entitled to buy assets in Italy if (i) they are a European Citizen, (ii) they have a "Permesso di Soggiorno", an administrative document released by the police, or (iii) their home country permits Italian buyers to purchase assets on the same terms and conditions (Condition of Reciprocity under international laws).

Real estate registry system

The real estate registry system in Italy is composed of two registries, "Conservatoria dei Registri immobiliari" with civil effects and "Catasto" with tax effects:

- Conservatoria dei Registri immobiliari is a real estate registry with civil purposes, as it renders any real estate transaction of rights over immovable assets legally public and known to third parties, in order to guarantee undisputed acquisition and to prevent "double sales" by the seller to multiple buyers: the first buyer who registers the acquisition with Conservatoria, prevails legally; and
- Catasto is a real estate registry with tax purpose; it contains a full mapping of the Italian real estate assets in order to determine the tax regime and the relevant levy on each asset.

Notary role in the real estate transactions

The notary is the public official entitled to:

- Ascertain – before closing – the legal title of ownership of the seller and the absence of burdens over the immovable asset, and check that the notarial deed is duly accompanied by all legal declarations and documents; necessary for a valid transfer: Urban Declaration, Certificate of Cadastral Compliance, Certificate of Energy Consumption;
- Notarize – during closing – the signatures of the parties and date of execution of the deed of transfer; and
- Register – following closing – the notarial deed of transfer with Conservatoria and with Catasto.

Only one notary is required per single transaction in Italy (not one notary for each party, like in other countries).

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

For an asset deal, the Italian Civil Code sets forth specific protections in favor of the buyer:

- Against legal defects, such as (i) eviction, i.e., claims by a third party purporting to be the owner of the asset transferred or (ii) presence of legal burdens over the asset in favor of third parties, unknown to the buyer. In these cases, the buyer has the right, between signing and closing, to suspend the transaction as a precautionary measure and, after closing, the right to damages; and
- Against material defects of the asset (Vizi occulti, such as the right of the buyer to (i) terminate the agreement and the right to damages or, alternatively, to the termination of the sale agreement, as well as (ii) the right to a reduction in the price.

In addition to the legal protections mentioned above, the parties usually negotiate contractual representations and warranties in order to guarantee certain areas of business not covered by legal protections, such as (i) conformity between actual use and authorized use of the asset, pursuant to administrative law (in particular, for assets destinated to high street retail or hotels), (ii) the absence of hazardous material, (iii) the absence of illegal occupation, and (iv) the absence of unpaid taxes. While legal protection set forth by the Italian Civil Code have a one-year statute of limitations period, the contractual representation and warranties may have longer periods, depending on the agreement of the parties.

Mortgages and other usual guarantees adopted in financing assets

When purchasing an asset, the buyer releases in favor of the financing bank a set of guarantees which usually include (i) the "Ipoteca", first degree mortgage over the asset, granting the beneficiary the right to expropriate an asset owned by the debtor, (ii) assignment of the rents, and (iii) assignment of the indemnifications under the insurance policy. If the asset is "under construction," the bank will also require the assignment of any down payments (Caparra Confirmatoria or Acconto) paid by the prospective buyers to the seller, during the construction phase.

Lease of assets (Contratto di Locazione) and lease of business (Contratto di affitto d'azienda)

The Italian Law 392/78 contains two sets of rules for commercial lease agreements:

- Rules for the so-called "Grandi Locazioni," applicable when the rent above €250,000 (US$263,990*) per year, provided that the parties expressly agree to adopt "Grandi Locazioni" discipline; and
- Rules for the so-called "Locazioni Ordinarie," applicable when the rent is equal to or below €250,000 (US$263,990*) per year.

In case of Locazioni Ordinarie (rent equal to or below €250,000/US$263,990*), Law 392/78 provides the following mandatory rules, all in favor of the tenant (therefore, in case of violation of these mandatory rules, the relevant clause shall be replaced by the relevant rule set for by Law 392/78, or the entire agreement may be declared null and void):

- Minimum duration of the lease: six years plus six years for commercial leases and nine years plus nine years for hotel leases;
- Right of withdrawal for just cause, exclusively in favor of the tenant;
- The base rent – as freely agreed by the parties – may be adjusted exclusively based on 75% of Index Istat (ISTAT - indice dei prezzi al consumo per le famiglie di operai ed impiegati): this implies that, for the Locazioni Ordinarie, the "step up rent" may be subject to risk of invalidity, if the relevant clause is not correctly drafted;
- For the lease agreements of an asset intended for commercial businesses open to the public (i.e., including hotels), the right of pre-emption in favor of the tenant for the new lease of the asset, if the landlord – after expiration of the precedent lease – intends to lease it to a new tenant, and the right of pre-emption in favor of the tenant for the purchase of the asset, if the landlord intends to sell it to third parties; and
- For the same lease agreement of assets intended for commercial businesses open to the public, in case of

termination upon the initiative of the landlord, the tenant is entitled to an indemnification for loss of goodwill (indennità per perdita d'avviamento); the indemnification is equal to 18 months of the latest rent for commercial leases and 21 months of the latest rent for hotel leases.

While – as indicated above – the Locazioni Ordinarie provides mandatory rules, imposed directly by the Law 392/78 in favor of the tenant, conversely, in case of the Grandi Locazioni, the parties may freely negotiate all the terms and conditions of the agreement: the rational of the rules of Grandi Locazioni is that, since the tenant is able to pay a rent above €250,000 (US$263,990*) , they are presumably considered professional entrepreneurs and therefore, both the tenant and the landlord have similar negotiating powers, so that they are able to protect themselves autonomously, without need for the legislative protection of the tenant as imposed by the Law 392/78 for Locazioni Ordinarie.

Hotel lease agreement

The Italian market of the hotellerie has increased - in the last years - the presence of international brands strongly specialized and exclusively focused on the management of the hotel business (azienda). The international contracts usually adopted for these purposes are: (i) the Franchising Agreement, regulated by Italian Law 129/2004, whereby the franchisor (i.e., international brand) grants to the franchisee (i.e., the owner or the tenant of the hotel) the right to manage the hotel in accordance with the brands' standards, policies and requirements and under the specific brands and signs (insegna) owned by the international brand (marchio); or, alternatively, (ii) the Hotel Management Agreement, regulated by international standard practices, whereby the Hotel Manager (i.e., international brand) manages directly the hotel, on behalf of the owner or the tenant, in accordance with the brands' standards, policies, and requirements and under the specific brands and signs (insegna) owned by the international brand (marchio).

Administrative permits applicable to construction or restructuring of assets

The Italian legislator has recently simplified and deregulated the process of authorization of construction and restructuring of the asset significantly. Testo Unico Edilizia d.P.R. n. 380/2001 currently provides the following alternative regimes:

- "Permesso di costruire" is a formal authorization released by the municipality for a new construction or major restructuring of existing assets;
- SCIA (segnalazione certificata inizio attività) is a unilateral notification sent by the owner to the municipality, in case of extraordinary maintenance or light restructuring (or, alternatively CILA Comunicazione Inizio Lavori Asseverata, when the works do not concern structural parts of the asset): SCILA or CILA must be duly accompanied by a formal report of a technician confirming that the works are consistent with the planning documents, as well as national and local laws. Once the notification is sent to the municipality, the works can start immediately. In any case, the municipality has the full right to verify that the works are consistent with the notification and with public laws; and
- Edilizia libera: there is no need for any authorization or notice for ordinary maintenance and the instalment of energy (e.g., solar panels), heating equipment, light or temporary constructions, or similar activities.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

The Italian real estate market is becoming increasingly sensitive regarding recent criteria of ESG issues. The main Italian funds' asset managers are starting to include indicators of ESG criteria in their acquisition process of new assets with sellers, in the periodical reports sent to their investors, in the lease agreements with their tenant (especially in the hotel sector), and in the property management agreement with the property management companies. Some real estate companies have also started a process of "labelling" their assets adhering to ESG criteria, in terms of energy saving or environmental compliance. Hotel operators – to comply with the "social" criteria – are starting to increase their dialogue with municipalities, public associations, or nonprofit organizations located close to the hotel, to adapt the use of the hotel to public service and public activities to the benefit of the community.

Direct taxes applicable to sales

The tax regime applicable to the acquisition of an asset varies significantly depending on the acquisition structure adopted: (i) asset deal (in this case it also depends on the type of asset and the nature of the seller (private or professional), (ii) share deal, or (iii) fund deal. For this reason, in the initial phases of negotiation, it is advisable to obtain a preliminary tax analysis of the different scenarios to compare the tax impact of each structure.

*According to the 10 December 2024 exchange rate

Overview of the main asset classes in Italy

- The real estate market in Italy is substantially stable compared to the market situation in 2023. This stability has positioned the Italian market as one of the unexpected leaders in Europe, particularly when considering the German and, to some extent, the French markets, which are still grappling with a soft landing.
- Deep diving into the different asset classes, we can say that the logistics segment remains robust, attracting a relevant amount of capital despite a slight repricing in values and a lower rate of rental growth.
- Data centers are currently among the most sought-after assets, but opportunities (in particular good opportunities) are scarce and oversubscribed. While similar to logistics in their classification as real estate infrastructure, data centers are more specialized and less fungible.
- Investor interest in shopping centers is resurging, driven by their demonstrated resilience and renewed profitability. Not all shopping centers will survive the evolution of consumer behavior and e-commerce penetration; but the good ones will remain good source of income for a long time.
- A similar polarization is evident in the office sector. While flexible work arrangements are increasingly common, the return of workers to offices, some full-time, is driving investor interest in modern, sustainable spaces. This trend reinforces the expectation that offices will remain a dominant segment within commercial real estate. Yields for this asset class remain attractive, currently in the range of 4-5% gross.
- The residential sector is exactly as it was last year: investment in the build-to-rent segment remains very limited (and quite unbalanced towards the rising demand in large cities), whereas the build-to-sell segment continues to perform well. The expectation of decreasing interest rates is likely to fuel demand for mortgages, further bolstering the build-to-sell market. Milan stands out within Italy, demonstrating significantly stronger performance than other cities.
- Student housing is still in great demand, but profitability varies significantly by location. The rise of short-term tourist rentals is a contributing factor, as it competes with traditional student accommodation.
- In summary, the Italian real estate market demonstrates broad stability across segments, with no indication of a significant shift in trajectory over the next 12-18 months.

By **Aldo Mazzocco,** CEO and General Manager of Generali Real Estate

Real Estate Law in Japan

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Overview of the Japanese Legal System

General introduction to the main laws that govern the acquisition of assets in Japan – real estate rights

Transfer of the title to a property is governed by the Civil Code. In addition, the Real Estate Registration Law applies to the conclusion of the title transfer.

Under the Civil Code, the title to the property may be legally transferred/conveyed by simply expressing the intent to transfer it. No formality is required (for example, no written sale and purchase agreement is required.). In addition, no instrument (separate from the contract) is required to transfer/convey title to the property (for example, no title deed is required to affect the conveyancing).

However, to assert such a transfer of title against a third party, confirmation is required under the Civil Code.

In case of real estate, registration is the way to confirm the title transfer. Such a registration is governed by the Real Estate Registration Law. More details about the registration are outlined below.

Under the Civil Code, the land and the building on it are regarded as separate real estate and independent from each other (while in some other countries such as the US, the building on the land is deemed as an "improvement" of the land and accordingly, the building is not regarded as the subject of ownership interest separate from the land). If the buyer wants to acquire the land and the building(s) on it, the sale and purchase agreement should specify that both the title to the land and the building(s) will be transferred to the buyer.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

An outright sale and purchase agreement of real estate between the seller and buyer is usually used.

However, for commercial property, the real estate is occasionally put in a trust, and the beneficial interest representing such real estate is traded to save on registration tax as well as the real estate acquisition tax.

It is rare to use escrow in closing the transaction and hard to find an escrow agent or title insurance company.

While it is not legally required, a real estate broker is often used to find the property (for the buyer or lessee), a potential buyer (for the seller), or a potential lessee (for owner). Real estate brokers are legally regulated under the Real Estate Brokerage Act and must be licensed.

Japanese real estate brokers are unique in that they are allowed to represent both the seller and the buyer in the same transaction. The real estate broker may be paid fees by both the seller and the buyer. The maximum fee that a licensed real estate broker can charge is restricted under the act.

Notary role in the real estate transactions

As discussed in the first section above, no formality is required to affect the title transfer/conveyancing. Accordingly, involvement of a notary is not required, for contracts or for registration.

Real estate registry system

The Japanese real estate registration system is governed by the Real Estate Registration Act.

Under this Act, the registration book is prepared for each piece of the real estate – as the land and the buildings on it are separate real estate, a book of registration is prepared for the land and building.

In case of land, the registration book is prepared for each parcel of the land. A parcel can be divided and merged with other parcel(s) and such a division and merger will be reflected in the front page of the book.

Conversely, for the building, the registration book is prepared for each building. Ancillary buildings (such as barns) are included in the book of the main building.

Each registration book is divided into two sections: one is the ownership section, and the other is the encumbrance section. The chain of title can be searched in the ownership section. In the encumbrance section, searches can be made on the mortgage, pledge, lease, superficies, easement, lien, judicial attachment, or other kind of encumbrance on the property. Anyone can access the registration book for a small fee. Title insurance is not common in the Japanese market. The registration book is usually in a digital format.

To file the registration documents, the filer must submit the documents/information showing the intent to transfer the title. The sale and purchase agreement is usually used for this purpose, but the filer can prepare separate documents strictly for filing purposes.

In practice, a judicial scrivener is often retained for filing purposes. The judicial scrivener must have a license to engage in this business under the Judicial Scriveners Act.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

Under the default rule of the Civil Code, the seller of real estate owes warranties of non-conformity of transferred right to the terms of the contract. Under this warranty, the buyer may request to cure the unconformity, a reduction of price, indemnity for loss, and cancellation. If the real estate delivered by the seller does not conform to the terms of the contract with respect to the kind or quality, and the buyer fails to notify the seller of such non-conformity within one year from the time when the buyer becomes aware of it, the buyer may not exercise such a warranty, provided, however, that this does not apply if the seller knew or did not know due to gross negligence the non-conformity at the time of the delivery.

There is a statutory exception for this default rule under the Act on Promotion of Quality Control of Residence. Under this act, for newly built residences, the seller owes a warranty to cure and to reduce the price for 10 years from the delivery in respect of the substantial, structure-bearing part of the residence.

In commercial transactions, it is often seen that the seller does not owe any warranty (in other words, the sale is on an as-is basis) to eliminate the statutory warranty. In general, such an agreement is legal, valid, and biding on parties, but there are two major statutory exceptions for this.

The first is that even if the contract sets forth that the seller does not owe a statutory warranty, the seller is still liable for (i) the target real estate's non-conformity to the terms of the contract that the seller is aware of but failed to tell the buyer, and (ii) any encumbrance that the seller has granted or created.

The second is that the seller – if a real estate broker – is still liable under the statutory warranty for at least two years, regardless of the language in the contract to the effect that the seller does not owe the statutory warranty.

If the seller insists on an as-is basis transaction, due diligence of the property is recommended. For this purpose, if a real estate broker is retained, the real estate broker is legally required to prepare a document explaining substantial matters on the target real estate. This document usually describes the concerns the buyer should have.

Mortgages and other usual guarantees adopted in financing assets

If all or part of the purchase price of real estate is financed by a bank, the bank usually requires a mortgage on the real estate. Banks usually require full recourse on their loans. Thus, in theory, all assets of the borrower/buyer will be subject to the attachment by the bank. If the borrower's credit is not sufficient, the bank may also require a guarantee from other parties, such as the parent company.

For commercial property, the bank may accept the limited recourse loan that can be enforced on the limited assets relevant to the real estate to be purchased (e.g., lease contracts of the real estate, insurance payment on the real estate, bank account into which the rent will be paid by the lessee). However, in case of limited recourse loans, the monitoring by the bank will be more stringent than full recourse loans, such as monitoring of financial tests (e.g., LTV test, DSCR test) and the periodical submission of an appraisal report.

As discussed in the above sections, unless the mortgage is registered in the encumbrance section of the registration book of the relevant real estate, such a mortgage cannot be asserted against third parties.

In addition, since the land and the buildings on it are regarded as separate real estate, the mortgage should be created on both the land and the building (and registered in each of the registration books).

Lease of assets and lease of business

For leased real estate, the rights of the lessee are well protected by the Act on Land and Building Leases in addition to the Civil Code.

For land leases, the Act is applicable if the purpose of the lease is to own buildings on it, not for temporary use.

Under this Act, the minimum period for the lease is 30 years, and at the expiration of the lease term, the contract is renewed at the request of the lessee for another 10 years (in case of the first renewal, 20 years) as long as the building is standing. The lessor may refuse the renewal if they have justifiable cause, such as the need to use the land themselves. However, the court will seldom grant such a justifiable cause.

The leasehold on land cannot be asserted against third parties unless it is registered in the registration book (encumbrance section) of the relevant land. However, under this Act, such a registration is deemed to be made if the lessee owns the building on it and such ownership is registered in the registration book of the building on the land.

In addition, when the leasehold on the land is terminated, the lessee may request to buy the building from the lessor at the market price under such Act. In other words, the lessee has put option of the building.

In this Act, a fixed-term land lease (not less than 50 years but not subject to renewal) and the land lease for owing commercial property (not less than 30 years but less than 50 years and not subject to both renewal and putting an option on the building) are stipulated as well. If the intended lease falls within these types of leases, the provisions of this Act should be investigated.

As for the building lease, the Act is applicable if the purpose of the lease is not temporary.

Under this Act, there is no minimum period of lease; however, at the expiration of the lease term, the contract is renewed with the same terms and conditions. The lessor may refuse the renewal if they have justifiable cause, such as the need to use the building. However, the court will seldom grant such a justifiable cause.

The leasehold on a building cannot be asserted against third parties unless it is registered in the registration book (encumbrance section) of the relevant building. However, under this Act, such a registration is deemed made if the lessee occupies the building.

In addition, when the leasehold on the building is terminated, the lessee may request from the lessor to purchase the fixtures on such a building at the market price under the Act. In other words, the lessee has put an option on the fixtures.

In this Act, a fixed-term building lease (i.e., building lease without renewal) is also stipulated. Since this is unfavorable to the lessee, the contract must be notarized.

Administrative permits applicable to construction or restructuring of assets

The main permit for construction is the building certification under the Building Standard Act. Through this certification, compliance with various legislations such as the City Planning Law, is checked. The application for this certification is usually filed by specialists such as a construction company or an architect on behalf of the owner.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

The main relevant laws are the Soil Contamination Countermeasures Act (under this act, the owner is responsible for cleaning the contaminated soil), the Act on Special Measures Concerning Promotion of Appropriate Treatment of Polychlorinated Biphenyl Waste (under this act, the holder of polychlorinated biphenyl waste must report to the government and properly dispose of it), and the Industrial Safety and Health Act (only provisions relevant to asbestos), the Landscape Law, and local regulations relating to the environment.

Compliance with these laws is often provided as representations and warranties in the sale and purchase agreement, and the seller must indemnify the buyer for the losses incurred by its breach. In addition, if the purchase price of real estate is financed by a bank, the bank usually requires the same representations and warranties as the buyer/borrower.

In commercial property transactions, a service provider for environmental due diligence is often retained, and satisfaction of the buyer to the environmental due diligence report is one of the conditions precedent to closing. In some cases, an engineering report on the building may include some of the environmental issues (such as asbestos), and in some transactions, the engineering report satisfies such a contract requirement.

The study of environmental research consists of two phases. Phase one is only documentary and phase two includes an onsite study.

Direct taxes applicable to sales

The main taxes for real estate transactions are: (i) capital gains tax (both national and local) for the seller; (ii) real estate acquisition tax for the buyer; (iii) registration tax (in respect of the registration of ownership or mortgage) for the buyer; (iv) stamp duty on the sale and purchase agreement of real estate for both the seller and buyer (stamp duty will be also imposed on the loan agreement to finance the purchase price, usually borne by buyer/borrower); and (v) consumption tax on the building for the buyer.

Latest developments in Japan, and areas to focus on in the future:

- Amendment to the Civil Code to oblige people to register the title transfer on inheritance became effective from 1 April 2024.
- Before this amendment, the title transfer on inheritance has not been sometimes registered in timely manner especially on the land in countryside. According to the government in 2023 about 26% of the Japanese land has not been property registered. This caused problem when the developer tries to acquire lands in countryside because they could not know who they should contact for negotiation.
- After the amendment it is expected that this problem will be resolved.

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Real Estate Law in Kosovo

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Overview of the Kosovan Legal System

General introduction to the main laws that govern the acquisition of assets in Kosovo – real estate rights

Laws governing matters of acquisition of assets in Kosovo include:

- Law No. 03/L-154 on Property and Other Real Rights;
- Law No. 08/L-013 on Property Rights of Foreign Citizens in the Republic of Kosovo;
- Law No. 06/L-010 on Notary;
- Law No. 04/L-013 on Cadaster;
- Law No. 04/L-077 on Obligational Relationships; and
- Law No. 2002/4 on Mortgages.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

For real estate transactions, the contract for the acquisition of the structure, after being negotiated preferably with the assistance of a lawyer, must be concluded in writing before the public notary, and the ownership title must be registered with the Register of Real Property Rights, administered by the Cadaster Agency of Kosovo.

Furthermore, for the transaction of an immovable property to be valid, the approval from the seller's spouse is required if the property transacted is under joint ownership.
In terms of the restrictions, the transaction cannot be completed if the spouse of the titleholder does not provide approval for the sale.

Additionally, under Article 32 of the Law on Prevention of Money Laundry and Combating Financing Terrorism, it is an obligation for parties that if the purchase price of the immovable property exceeds €10,000* (US$10,559.6*); payment must be made through bank transfer.

In relation to the acquisition of property by foreign persons, based on Article 4 of the Law on Property Rights of Foreign Citizens in the Republic of Kosovo, foreign natural and legal persons have the right to be holders of property rights in the territory of the Republic of Kosovo, based on the principle of reciprocity and the requirements specified by this law or international agreement.

Under Article 5 of the present law, reciprocity exists when a citizen of the Republic of Kosovo or a legal person with a presence in Kosovo can acquire the right to immovable property in a foreign country under the same conditions as the foreign citizen can acquire the right to immovable property in the Republic of Kosovo.

As per the restrictions for acquisition of property by foreign persons, Article 7 of the Law on Property Rights of Foreign Citizens in the Republic of Kosovo states that a foreign person does not have a right to acquire public properties, such as:

- Natural resources;
- Public goods for general use;
- Agricultural land in public ownership;
- Forests and forestry lands in public ownership;
- Movable or immovable public property announced as cultural heritage of special significance;
- Immovable property which is located within the radius of one kilometer from the state border;
- Immovable property which is in an area where the interest and security of the state are protected, and to

which, by a separate law, foreign citizen cannot have an ownership right; and

- Immovable property in public ownership which, based on the applicable laws, cannot be transferred to private ownership of Kosovan citizens.

Other than the above, a foreign natural person can acquire ownership rights over agricultural properties, forests, and forestry lands with an area of up to 5,000 square meters only if the agreement relates to residential buildings located in that area.

Notary role in the real estate transactions

Under Article 40 of the Law on Public Notary, for the transactions related to the acquisition of real property rights to be valid, it is a compulsory requirement to be concluded by notarial deed before the public notary.

The public notary is obliged to create the notary deed in accordance with the compulsory form and it must identify the parties to the transaction, real property that is being transacted, verify the will of parties, and notify them of the content and effects of their agreement. Moreover, the public notary is obliged to notify the buyer of the existence of securities and encumbrances over the immovable property being transacted.

Real estate registry system

In Kosovo, the Real Property Rights Register is organized and managed by the Kosovo Cadastral Agency, which is responsible for registering real property rights. The Kosovo Cadastral Agency was established as an executive agency within the ambits of the government of Kosovo's Ministry of Environment and Spatial Planning.

The Kosovo Cadastral Agency is the responsible authority for cadastral activities at the state level and is responsible for the guidelines for cadastral activities. It is also responsible for supervising the municipal cadastral offices which are established under the ambits of each municipality. The municipal cadastral offices are responsible for the functionality of the cadaster, including registration of real property rights in the jurisdiction of cadastral zones where the property transacted is located. Along with registration of ownership titles, the validity of other real rights, including pre-emption rights, mortgages, servitudes, and usufruct are conditional on their registration with the cadaster.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

Based on the provisions of the Law on Obligational Relationships, the seller is liable for both legal and material defects in the real estate transaction and must protect the buyer from any defects.

Pursuant to Article 491, paragraph 1 of the Law on Obligational Relationships, the seller is liable for any claim by a third person over the real estate that excludes, reduces, or restricts the buyer from using and owning such a property, if the buyer did not consent to taking the real estate encumbered with any right in favor of any third party.

In case of any third party claim, including a registered or any unregistered claims over the sold property, the buyer is entitled to terminate the contract or to request a reduction in price proportionate to the obstacles created as a consequence of the legal defects.

Moreover, the seller is liable for latent and patent defects of the item. Such liabilities may be subject to contractual limitations, meaning that the seller may limit the liability towards the buyer in relation to defects of the item.

In relation to the building contract, a buyer also has a recourse against the architect and/or the construction contractor for any major defects affecting the structure of the building (defects concerning the solidity of building) for a term of 10 years, generally starting at provisional acceptance.

Mortgages and other usual guarantees adopted in financing assets

According to Article 172 of the Law on Property and other Real Rights, a mortgage means the creation of an interest

in immovable property by an agreement or by law, which gives the mortgage lender the right to initiate foreclosure proceedings for such immovable property for the purpose of satisfying the sufficiently identifiable obligation that is secured by the mortgage and has fallen due.

The mortgage is created by an agreement between the owner of immovable property unit and the mortgage lender and by registering it at the Real Rights Registry (cadastral office in the municipality).

Pursuant to Article 174(1) of the Law on Property and other Real Rights, the mortgage agreement must be concluded in writing before the public notary in the form of a notary deed. The law provides for the mandatory elements of a mortgage agreement.

Similarly, as with a pledge agreement, the right of priority can be established in a mortgage by registering it with the Immovable Property Registry.

The Property Law provides that in the case of default of a debtor or any other breach of contract, the mortgage creditor acquires the right to sell the immovable property encumbered by a mortgage based on the Law on Execution Procedure.

Moreover, the Property Law recognizes that the commercial mortgage, also known as the "trade association mortgage," can be enforced by extra-judicial means, i.e., without the initiation of enforceable procedure before a private enforcement agent. The mortgage qualifies as a trade association mortgage if: (i) the owner of the immovable property unit is a merchant or a business enterprise; and (ii) the mortgage creditor is a financial institution.

The trade association mortgage can be subject to foreclosure with consent of the owner of the encumbered property as expressed in the corresponding power of attorney.

The official tariff for mortgage registration varies from €20 to €400 (US$21.1192 to US$422.384*), depending on the value of the loan secured with the mortgage.

Lease of assets and lease of business

Kosovan legislation recognizes two types of leases: (i) general lease; and (ii) lease of agricultural land.

The general lease is governed by the provisions of the Law on Obligational Relationships, and the lease of agricultural land is governed by the provisions of the Law No. 03/L-026 "On Agricultural Land".

Kosovan legislation does not include specific provisions for business leases, meaning that the general rules governing lease agreements apply also to the business lease.

The validity of a lease under the general lease agreement is not conditioned by formality, meaning that the lease agreement is not required to be concluded in a certain form, in written or before the public notary, unless the parties to the lease agreement agree on a specific form of lease agreement and its amendments.

Contrary to the general lease agreement, the lease of agricultural land is based on provisions of the Law on Agricultural Land, which must be concluded in writing and must be registered with cadastral municipality office.

Administrative permits applicable to construction or restructuring of assets

In terms of permits for the construction or restructuring of assets, the Law on Construction stipulates that a construction permit is required for:

- New constructions (including, prefabrication);
- Reconstruction of existing construction works;
- Demolition of existing construction works;
- Repair of construction works, if a substantial change is made to the construction works in comparison to its condition prior to the event of damage to the construction works caused by natural disasters, wars, and similar events; and
- Interventions on facades and structure (repair) of an existing building.

Moreover, the construction permit must be obtained with an environmental permit, which is issued by municipalities or by the Ministry of Environment and Spatial Planning.

For projects that are required to undergo an environmental impact assessment, the competent authority for issuing the environmental permit is the Ministry of Environment and Spatial Planning. Additionally, the environmental permit is a mandatory requirement for the commencement of works for the holder of a construction permit.

Furthermore, construction objects that require construction permits before their use or commencement of works also need a certificate of occupancy.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

The construction permit is conditional on obtaining an environmental permit which is issued by the relevant municipality or the Ministry of Environment and Spatial Planning. If the construction project requires an environmental impact assessment, the competent authority for issuing the environmental permit is the Ministry of Spatial Planning.

In relation to energy, a certificate of occupancy for new buildings is conditional on meeting energy efficiency and saving measures as determined by the construction code.

Direct taxes applicable to sales

As the notary deeds for transactional work is mandatory, the tariffs of public notary for compiling notary deeds are determined based on the value of the transaction, such as:

- From €0.01 to €2,500 – €15 (US$15.83 for transactions of US$0.01 to US$2,639.9)
- From €2,501 to €5,000 – €20 (US$21.11 for transactions of US$2,640.95 to US$5,279.8)
- From €5,001 to €10,000 – €30 (US$31.67 for transactions of US$5,280.85 to US$10,559.6)
- From €10,001 to €20,000 – €40 (US$42.23 for transactions of US$10,560.65 to US$21,119.2)
- From €20,001 to €40,000 – €50 (US$52.79 for transactions of US$21,120.25 to US$42,238.4)
- From €60,001 to €80,000 – €70 (US$73.91 for transactions of US$63,358.65 to US$84,476.8)
- From €80,001 to €100,000 – €80 (US$84.4768 for transactions of US$84,477.9 to US$105,596)
- (€1 = US$1.05596*)

For notarial documents exceeding €100,000 (US$105,596*), the fee increases by €15 (US$15.8394*) for every €20,000 (US$21,119.2*), however it cannot exceed a value of €800 (US$844.768*).

Moreover, the applicable official tariffs for the registration of acquisition of real estate is €30 (US$31.6788).

*According to the 10 December 2024 exchange rate

Latest developments in Kosovo, and areas to focus on in the future:

- According to our 2024 Deloitte M&A study, development and leasing activity in the logistics sector accelerated in the first half of 2024, demonstrating continuous positive market sentiment in the industrial sector. A strong demand has emerged for modern industrial properties, including warehouses, logistics centers, and plots suitable for industrial utilization.
- Our most recent Deloitte Property Index shows that residential rental fees in Kosovo have surpassed the pre-COVID-19 level.
- A general overriding trend across the real estate market is the heightened focus on ESG transformation, with major players seeking clarity and universally set standards to meet the requirements of the capital market and the regulators.

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Real Estate Law in Latvia

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Jānis is partner within the tax department of Deloitte Latvia, his main expertise lies in both local, and cross-border tax restructuring and business model transformation.

With more than 20 years of experience within Deloitte, Jānis has gained considerable knowledge in relation to tax matters across various industries and developed tax solutions for a number of Latvian and multinational companies. His main area of expertise in the tax field is international tax planning, structuring of transactions and value added tax. His scope of assignments carried out includes but is not limited to tax consulting, tax reviews and litigation.

In addition to the client work, he is actively participating in working groups dealing with the tax policy and tax law change. Jānis has been a member of Latvian Tax Consultants Association since 2003.

Overview of the Latvian Legal System

General introduction to the main laws that govern the acquisition of assets in Latvia – real estate rights

The main legislative acts governing real estate transactions in Latvia are:

- Civil Law – general provisions of real estate ownership and lease;
- Law "On Residential Properties" – provisions of the ownership of apartment property;
- Land Register Law – provisions of the Land Register and real estate ownership;
- Law "On Recording of Real Estate in the Land Registers" – provisions of recording the ownership of real estate;
- Law "On Land Privatization in Rural Areas" – provisions of land privatization in rural areas;
- Residential Tenancy Law – provisions of lease of residential property;
- Law "On Real Estate Tax" – provisions of the taxation of real estate properties; and
- Construction Law – provisions of construction processes, including obtaining permits and ensuring compliance with regulations.

General types of rights on real estate use include:

- Ownership (īpašumtiesības) – the right to enjoy and dispose of the property, fully and exclusively, allowing the owner to use, lease, sell, or transfer the property, subject to legal limitations;
- Joint ownership (kopīpašuma tiesības) – ownership rights belonging to several persons in respect of one and the same undivided property as not as shares divided in reality but as undivided shares, so that only the substance of the rights is divided;
- Pre-emption rights (pirmpirkuma tiesības) – the right of a party (often a co-owner in joint ownership cases) to purchase property before it is offered to others, ensuring that certain parties have the first opportunity to acquire the property if it is sold;
- Easement/servitude (servitūts) – the right to use property owned by a different owner for a specific aim, based on encumbrance burdening the third-party property for a specific purpose, such as a right of way or access to utilities;
- Lease (nomnieka/īrnieka tiesības) – the right to use and enjoy a third party's property based on mutual agreement for specific aim(s) in exchange of payment. This can apply to both residential and commercial properties. In Latvia, the legal framework differs depending on the main use of the real estate (residential or commercial use); and
- Superficies rights (apbūves tiesības) – the right to build and use a structure on another person's land for a specified period. This right is usually granted for long-term development projects.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Rural land ownership

Latvian and other European Union (EU) and European Economic Area (EEA) member state citizens, as well as citizens of the Swiss Confederation, OECD countries' citizens (since 18 July 2024, when amendments to the Law "On Privatisation of Rural Land" came into force) and the registered legal entities therein, which have been registered as a taxable person in the Republic of Latvia may hold rights of real estate ownership at the territory of

Latvia. Some ownership restrictions may apply depending on location of the real estate, such as:

- Land in the border zone of the state;
- 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 (specific requirements are mentioned in the section "Agricultural land ownership"); and
- Land in the mineral deposits of national significance.

The same restrictions apply to third country citizens.

Agricultural land ownership

A natural or legal person may acquire ownership of up to 2,000 hectares of agricultural land.

Natural persons from EU and EEA member states are no longer required to obtain a document proving knowledge of the national language if a legal entity registered in the European Union wishes to purchase land.

The Municipal Commission shall reject the application of the natural person acquiring the agricultural land for other reasons if all the provisions of the Law "On Land Privatisation in Rural Areas" have not been fulfilled, such as:

- The natural person is registered as a performer of economic activity in Latvia;
- Land will continue to be used for agricultural activity within one to three years (depending on current use); and
- No tax debt exceeding €150 (US$158.394*) has been registered either in Latvia or the acquirer's domicile.

If a landowner sells their agricultural land, the Latvian Land Fund (Latvijas Zemes fonds/ALTUM) have the right of first refusal. In such cases, it is necessary not only to obtain the municipality's permission to purchase agricultural land, but also a refusal from the Latvian Land Fund to grant the right of first refusal.

Municipalities' right of first refusal

Before the property rights are registered or changed in the Land Register through alienation of the real estate, the purchase contract or its copy should be submitted to the local municipality, its authorized institution or official, which after reviewing the purchase agreement or copy of it should issue a written statement. The right of first refusal typically applies to strategically important properties, such as those located in planned development areas, properties needed for infrastructure projects, and parcels situated in protected zones. The statement should contain a waiver or consent to use the right of first refusal.

There are not any ownership structures in which ownership of the land diverges from the rights to build. However, there can be restrictions to the rights to build depending on where the owned land is located. For example, if the land is in the protection zone of coastal dunes of the Baltic Sea and the Gulf of Riga, there may be certain construction limitations.

Notary role in the real estate transactions

The signatures of private individuals on requests for corroboration (nostiprinājuma lūgums) to be submitted shall be certified by a notary or signed by both parties using EU qualified electronical signature*. The notary fee for this service is €70-€90 (US$73.9172-US$95.0364*). Both the representative(s) of a legal entity as well as a natural person need to submit documentation establishing legal basis when issuing a request for corroboration. Unlike the corroboration request, the purchase agreement of the real estate does not have to be authorized by a notary public.

* A qualified electronic signature is an electronic signature that is compliant with EU Regulation No 910/2014 (eIDAS Regulation) for electronic transactions within the internal European market.

Real estate registry system

In Latvia, there are two different property registers:

- Land Register (Zemesgrāmata); and
- Cadaster Register (Kadastrs).

Real estate ownership registry is called the Land Register (Zemesgrāmata). The Land Register has separate departments for each administrative territory of the territory of operation of the district (city) court (if the administrative territory includes the territorial division units of a municipality, the Land Registers are established for each territorial division unit).

The State Land Service of the Republic of Latvia is responsible for real estate address assignment and defining real estate cadastral value.

Real estate is recorded in the Land Register based on the documentation verifying the legal acquisition of the real estate. Only a person registered in the Land Register is recognized as the owner of the real estate.

Until registration in the Land Register, acquirers of real estate do not hold any rights against third parties, they may not use any of the rights associated with ownership, and they must recognize acts pertaining to such real estate by the person who is indicated as the owner of such property pursuant to the Land Register.

However, such a buyer has the right to not only request compensation for all acts done in bad faith by the existing owner of the real estate, but also to request that the latter oversees all necessary steps to register the change of ownership rights within the Land Register.

After the transaction is made, the new owner can turn to the Land Register with a notarized corroboration request providing the legal basis of such change in ownership.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

In real estate transactions, the seller can only be a registered owner or authorized representative of the registered owner of the real estate. Information on property, including not only rights of ownership but also property easements and encumbrances, is publicly available and potential buyers can verify who the registered owner is themselves via the Land Register website by requesting an extract for a small fee. Parties, preferably with the assistance of legal counsel, may agree on certain provisions of representations and warranties in the purchase agreement, such as:

- Payment of all utilities before the transaction date;
- Payment of all real estate tax duties before the transaction date;
- Responsibility of the seller to inform the buyer of any mortgages or encumbrances of the real estate (although such information is included in publicly available Land Register extracts); and
- Obligation for a seller to obtain the necessary permits if the property is encumbered, such as imposed mortgage; a ban on expropriation is in force.

Legal responsibility of the buyer in real estate transactions–contractual representations and warranties

In real estate transactions in Latvia, the buyer has specific legal responsibilities, particularly regarding contractual representations and warranties. These responsibilities are designed to ensure that the buyer performs due diligence and adheres to the agreed-upon terms in the contract:

- Research the property and make sure it is registered in the land registry, that the seller is the owner of all buildings, and that the property is free from encumbrances, and identify the factors or encumbrances that reduce the cadastral value of the property;
- If the land plot is built-up, make sure with the Construction Board (Būvvalde) that it is not an arbitrary construction (it has been approved in accordance with the procedure established by the regulatory enactments and the construction has been carried out in accordance with the construction project;
- Make sure that the seller does not need to obtain the consent of a third party, the seller has a power of attorney issued by a notary public and registered in the Register of Powers of Attorney (optional) and the person with the right of first refusal has decided not to exercise his/her right; and
- After the purchase of the real estate to register the change of ownership in the Land Register.

Mortgages and other usual guarantees adopted in financing assets

Common procedures for a mortgage constitution

According to the Latvian Civil Law, a mortgage gives a creditor property rights regarding pledged real estate only after its registration in the Land Register. A mortgage may be established by a court decision or a legal transaction. A mortgage should be registered in the Land Register. For the registration of the mortgage in the Land Register to be in effect, the following is required:

- It must be registered with the appropriate authority (the registration of a mortgage may only be made at the Land Register office in whose administrative area the real estate is located.);
- It must be registered in due time (for example, insolvency of the owner of the real estate has not been intervened);
- Registration of a mortgage in the Land Register is only allowed after the consent of the mortgagor (a request for corroboration by the public notary is required, signed by both parties — pledger and pledgee); and
- A mortgage can only be for a specific value and with respect to specific real estate, which is owned by a mortgagor.
- The following documentation needs to be submitted to the
  Land Register:
- Request for corroboration;
- Loan (credit) agreement;
- Mortgage agreement;
- Consent of a pledger's spouse stating the property of a spouse is separate (in case of matrimonial property);
- Consent of a third party (if the prohibition in favor of a third party is registered in the Land Register); receipt of payment of the stationery fee in amount of €14.23 (US$15.0263*);
- Receipt of payment of the state fee for the registration of property rights (State fee amount specified in section "Stamp duty"); and Power of Attorney (if the documents have been signed by the Power of Attorney).

Creditor protection

According to the Latvian Civil Law, property alienation by a debtor of a real estate to a third person does not alter the rights of mortgage creditors, and any such disposals can only be done while maintaining its pledge rights to the expropriated real estate.

A pledge right (mortgage) remains in force until the creditor is completely satisfied.

Lease of assets and lease of business

Applicable laws

- Cabinet of Ministers Regulation No. 735 "Regulatory provisions on the lease of the property of public person";
- Residential Tenancy Law; and
- Law "On Residential properties".

Types

There are no specific types of leases for business premises.

Typical provisions

Latvian Civil Law regulates the procedure for concluding lease agreements. The object of the lease agreement is a non-residential premise (office space, warehouse, etc.), although, in practice, apartments are leased as non-residential premises as well. However, when the premises are being leased for residential purposes, the specialized Residential Tenancy Law applies.

Lease agreements should be concluded in writing. Lease agreements must stipulate the amount of the rent, as well as additional services provided (public utilities, security, and telecommunications) and payment deadlines. The law does not prohibit the parties from agreeing on an advance lease payment and/or bail.

It is recommended to include provisions in the lease agreement stating the conditions under which rent is increased or reduced.

In accordance with the Residential Tenancy Law that came in force on 1 May 2021, residential rent agreements can only be concluded for a fixed period of time. If a lease agreement is concluded for premises conducting

commercial activity, the lease agreement can also be concluded for an indefinite period.

Lease of land

If the land under a property is owned by a different owner or is jointly owned with several owners (for example, land under an apartment building), then the owner(s) of the building must pay an annual fee of 4% of the Cadastral value of the land (likumiskā lietošanas maksa), but not less than €50 (US$52.798*) in a year, if not agreed otherwise.

Administrative permits applicable to construction or restructuring of assets

Obtaining of construction permit

To begin construction works, it is mandatory to obtain a construction permit. Submission of the documents necessary to obtain a residence permit is carried out electronically via the Construction Information System (Būvniecības informācijas sistēma (BIS)). It should be noted that an issued (approved) construction permit does not mean that construction works can be initiated right away. Construction works can be started after fulfillment of the conditions set within the permit and there are no third party claims initiated. For objects of national interest, the process from receiving the permit until starting the actual construction works is faster, considering that third parties' claims cannot delay kicking off any construction activity.

Prolonging of construction permit

If the construction works are not completed on time and there is a need to continue the construction works after the period specified in the construction permit or the total duration of the construction works specified by law, it is necessary to apply to the building authority with a request to extend the period of validity of the construction permit.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

According to the Latvian Law "On Pollution", the owner or a user of a property has a duty to notify the possible successors in interest or duties in respect of the polluted or potentially polluted sites in the relevant property or territory in use, and its vicinity.

Energy efficiency qualifications

The Latvian Law "On the Energy Performance of Buildings", which complies with the Energy Performance of Buildings Directive (EPBD), regulates the minimum requirements for the energy performance of buildings. The purpose of this law is to promote rational use of energy resources, improving the energy performance of buildings, as well as to inform society about the energy consumption of the buildings.

The law provides for cases when the energy certification of buildings is required, the requirements for heating and air conditioning systems, and regulates the rights of potential tenants of the buildings or the buyer the right to meet the requirements of the building energy performance.

The law imposes obligations and responsibilities of building owners for energy certification of buildings and the provisions of the minimum energy performance requirements in buildings.

Emerging energy trends

Due to geopolitical tensions in the area and green incentives within the European Union, initiatives for renewable and clean energy development projects are highly regarded with the aim of promoting the development of renewable energy projects, stimulating energy efficiency, and a more active citizen involvement in energy production.

Recent legal framework amendment projects include the opportunity to develop wind power stations in rural areas by financially rewarding the municipalities in which the projects are being developed, as well as in forests, to increase renewable energy sources and reach energy independence.

Other initiatives include the introduction of energy communities (energokopienas) by which renewable electricity is shared within a community. For example, if a multi-apartment building has solar panels installed on the roof, it may be possible to share the electricity produced in this building without additional network costs and without applying the requirements for electricity trade (registration of economic activity, taxes, etc.).

Direct taxes applicable to sales

Real estate tax regime for non-residents

Non-residents companies

Using real estate located in Latvia for economic activities (such as rent or lease) will trigger permanent establishment registration requirements for the non-resident company. Thus, any profits generated from the real estate will be subject to Latvian 20% corporate income tax (CIT, with 25% effective rate).

A non-resident company's income from the sale of the real estate located in Latvia will be subject to a 3% withholding tax (WHT) on the transaction value if the real estate is sold to a registered Latvian performer of commercial activities (e.g. Latvian companies, permanent establishments, etc.). Hence, the Latvian company withholds the 3% WTH from the sale value and pays it to the tax authorities (in the name of the non-resident).

Alternatively, the non-resident may choose to apply an alternative tax regime (instead of the 3% WHT) and apply 20% CIT on the capital gains from the sale of the real estate.

Non-residents natural persons

If the non-resident natural person intends to use the real estate located in Latvia for economic activities (such as rent or lease), the person may register with the tax authorities as a taxpayer - conducting commercial activities, and income from the real estate will be subject to progressive personal income tax (PIT) rates:

- 20% tax rate for annual income up to €20,004 (US$21,123.4*);
- 23% tax rate for annual income above €20,004 (US$21,123.4*); and
- 31% tax rate for annual income above €78,100 (US$82,470.5*).

If the natural person is registered as conducting commercial activities, the person is also liable to make social security contribution payments. If the monthly income does not exceed €700 (US$739.172*), the person is liable to make a 10% social security contribution payment. If the monthly income does exceed €700 (US$739.172*), the person is liable to make full social contribution payments and additional contributions to a pension fund.

A non-resident natural person has a right not to register as the performer of commercial activities, by notifying the tax authority about the non-registered commercial activity, and income from the real estate will be subject to 10% PIT. However, under this regime, the person does not have a right to reduce the income by any expenses incurred. By applying this PIT regime, no social security contribution payments are due.

For non-resident natural persons, income from the sale of real estate will be subject to 20% capital gains tax (certain exemptions are available). If the person is registered as the performer of commercial activities, income from the sale of real estate will be subject to the progressive PIT rates stated above and social security contribution.

Stamp duty

Real estate transactions are subject to stamp duty (on the value of the real estate) for registering the ownership rights with the State Land Registry (maximum is capped at €50,000 (US$52,798*):

- 2% of the amount specified in the property purchase agreement or the cadastral value of the property, whichever is higher upon the sale of real estate if sold to a legal person or;
- 1.5% of the amount specified in the property purchase agreement or the cadastral value of the property, whichever is higher upon the sale of real estate if sold to a natural person or;
- 3% of the amount specified in the property purchase agreement or the cadastral value of the property, whichever is higher upon gift transfer or;
- 1% of the amount specified in the property purchase agreement or the cadastral value of the property, whichever is higher upon capital contribution; and
- A fee of €30 (US$31.6788*) for the registration of real estate in the Land register for the opening of a new land register section (nodalījums).

Real estate transactions are not subject to any other tax (for example transfer tax).

Indirect tax application

A registered taxpayer may be required to apply value added tax (VAT) to the sale of real estate in certain cases. VAT must be applied to the sale of unused real estate and building land.

Therefore, to determine whether a sale is subject to VAT, it is necessary to determine whether the real estate is to be regarded as unused or used real estate or whether the land has the status of building land.

Unused real estate is:

- A newly built building or structure (also stationary equipment installed therein), or a part thereof, if it is not used after being accepted for service, and a land parcel or a part of a land parcel related thereto;
- A newly built building or structure (also stationary equipment installed therein), or a part thereof, if such is used and sold for the first time within one year after being accepted for service, and a land parcel or a part of a land parcel related thereto;
- A building or structure, or a part thereof, if after renewal, rebuilding or restoration works have been completed it is not being used, and a land parcel or a part of a land parcel related thereto;
- A building or structure, or a part thereof, if after renewal, rebuilding or restoration works have been completed it is being used and sold for the first time within one year after being accepted for service, and a land parcel or a part of a land parcel related thereto;
- An object of uncompleted construction or a part thereof - a building or structure, or a part thereof, if such building or structure has not been accepted for service, and a land parcel or a part of a land parcel related thereto; and
- A building or structure, or a part thereof, if such building or structure is being renewed, rebuilt, or restored, but it has not been accepted for service yet, and a land parcel or a part of a land parcel related thereto.

Used real estate is one that does not fit any of the abovementioned criteria. For sales of used real estate, the VAT application can be chosen by the seller (i.e., they have the option to tax the real estate or not). Taxpayers who choose to apply VAT to sales of real estate generally do so to keep VAT deductions rights on their previously incurred expenses relating to the real estate.

Building land is a plot of land regarding which a construction permit for building thereon or for the construction of engineering communications therein, or for the construction of roads, streets or engineering communications input scheme intended for it has been issued after 31 December 2009. A plot of land is not deemed building land if the construction permit for construction works has been issued:

- Before or on 31 December 2009 and has been extended or re-registered after 31 December 2009; and
- After 31 December 2009, but the purpose for the use of the plot of land has been changed and does not provide for building thereon.

The application of VAT must also be noted for renting or leasing transaction.

VAT does not apply to the rent of residential real estate if property is rented to a natural person. This does not apply to short-term accommodation services such as hotels, motels, guest houses, lodgings, and other tourist accommodations

VAT is applicable to the leasing of real estate if it is leased to a legal entity or the property cannot be considered as residential (i.e., they are commercial spaces such as offices, warehouses, etc.). This applies to all types of leasing except the 4% Cadastral value fee (likumiskā lietošanas maksa) which is considered as VAT exempt.

For VAT payers deducting VAT on purchases of real estate or incurring construction expenses for renewals, rebuilding, and restorations - there is a 10-year VAT adjustment period in which the VAT payer must disclose its activities with the real estate to the tax authorities and adjust their VAT deduction rights accordingly.

*According to the 10 December 2024 exchange rate

Real Estate Law in Luxembourg

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Overview of the Luxembourgish Legal System

General introduction to the main laws that govern the acquisition of assets in Luxembourg – real estate rights

The acquisition of assets in Luxembourg is mainly governed by the Civil Code, and by the principle of freedom of contract. However, there are specific laws that supplement these general provisions on certain points.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

In Luxembourg, real estate may be acquired via direct transaction or by the way of corporate structures. The way chosen will depend on the project and ambition of the parties.

Furthermore, there are no particular restrictions in real estate acquisitions. Accordingly, foreign investors and companies can freely hold directly and/or indirectly real estate assets located in Luxembourg.

Real estate registry system

The real estate registry system is delimited by the amended Law of 25 September 1905 on registration of rights in immovable property.

In Luxembourg, the real estate registration system uses various legal and administrative mechanisms to guarantee the security of real estate transactions and the transparency of ownership, notably with:

- The active role of the Registration and State Lands Authority (Administration de l'enregistrement des domaines);
- The Mortgage Registry (Bureau des hypothèques) which registers all transfer of ownership, rights and interests, leases concluded for a period exceeding nine years, mortgages, easements, and encumbrances on the estate. It is managed by the Registration and State Lands Authority; and
- The Land Register (cadastre) which provides information about the current owner, the description, the exact situation, and surface of the property. It is directed by the Cadastral and Topographical Administration (Administration du Cadastre et de la Topographie) which is the national public supplier for cadastral and topographical/cartographical data.

A new bill entitled bill 8330B on the organization of the Land Registry and Topography Administration has been submitted to the Chamber of Deputies on 17 October 2023 (the Bill).

The aim of this Bill is to improve the efficiency of the management of cadastral and topographical information.

Thus, if the Bill is adopted, it will lead to the creation of a national register of buildings and housing (Registre national des bâtiments et logements) which will gather information on properties throughout the Grand Duchy of Luxembourg.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

Representations and warranties in real estate transactions

Representation and warranty clauses are important elements of any purchase or sale contract. Indeed, these clauses protect the parties involved. They also help to limit risks and clarify the extent of liability of the seller in the event of problems arising after the completion of the transaction. It is advisable, therefore, to obtain legal assistance in the drafting and negotiation of the contract.

General legal responsibility of the seller in front of the buyer

To avoid any unpleasant surprises after the purchase, the seller must clearly and fully explain to the buyer what she/he is committing to. Any obscure or ambiguous agreement is interpreted against the seller (Art. 1602 Civil Code). Therefore, the seller must demonstrate, for example that:

- She/he has obtained all required authorizations;
- There is no easement, mortgage, encumbrances, lien, or charge on the real estate; and
- There is no claim in relation to the real estate.

The seller must also inform the notary about easements that are known to exist and is liable if these are not mentioned in the notarial deed. The notary must also carry out mandatory searches that are included in the notarial deed prior to registration.

Breach of contract

According to Article 1184 of the Civil Code, the party towards whom the undertaking has not been fulfilled has the choice either to compel the other party to perform its obligations under the agreement (if this is possible), or to request the cancellation of the sale and the award of damages.

Environment liability

According to the amended Law of 20 April 2009 relating to environment liability, where there is an imminent threat of environment damage, the new owner must take the necessary preventative measures. If damage occurs, the owner must undertake remedial measures in order to restore the environment to its baseline condition.

However, the owner does not have to bear the cost of preventive or remedial action where the following conditions apply:

- She/he demonstrates that the damage or threat results from a third party's behavior despite security measures undertaken; and
- She/he demonstrates that it was not at fault or negligent under some conditions.

Consequently, the owner is liable for environmental damage even if it occurred before he bought or occupied the land, unless he can demonstrate that all necessary measures to avoid damage/threat resulting from third party behavior were taken and he was not at fault or negligent under the conditions set forth by the law.

Where there is fraud, latent defects and/or representations and warranties provisions, the owner can bring an action against the seller.

Breach of representations and warranties

The seller remains contractually liable for breach of representations and warranties covered in the sale agreement.

Typical representations and warranties for transactions in different assets class

The sale agreement must include representations and warranties on the part of the seller in order to cover any liability (particularly related to the environment, tax issues, legal issues etc.) occurring after completion of the sale.

Unless otherwise specified, the seller shall be requested to provide a legal warranty to the buyer for the following items:

Peaceful possession of the property sold (Art. 1625 Civil Code).

The seller shall refrain from disturbing the buyer in possession of the property sold.

That there are no latent defects of the property, or defects that render the property useless.

This warranty applies when defects render the property unfit for the use for which it was intended or when these defects impair this use to such extent that the buyer would not have purchased it or would have paid a lower price for it, had he known.

N.B: Additional seller warranties regarding the sale of property to be built (Art. 1601-1 to 1601-14 Civil Code): In this sort of sale, where the buyer makes payments in instalments to the seller according to the progress of the construction (and then before final completion), the seller must give a first demand bank guarantee covering the completion of the construction and the repayment of advances in the event of non-completion.

In relation to existing leases

Generally, representation and warranties relate to the validity of the lease, the compliance with legal and regulatory requirements (i.e., environmental legislation, operating permits), the absence of defects and the absence of litigation.

Also, typical covenants made by the seller relate to usage and alterations of the property are as follows:

- No changes to the property prior to closing;
- No execution of new leases or subletting without the prior consent of the purchaser;
- Maintenance of the asset in good condition and undertaking repairs and replacement;
- Keeping appropriate insurance;
- Maintenance of property management agreements; and
- Rent adjustments.

Environment

Sale agreements generally include representations and warranties given by the seller concerning possible pollution of the property, as well as indemnification clauses and clauses regarding clean-up or decontamination costs.

Mortgages and other usual guarantees adopted in financing assets

Common procedures for a mortgage constitution

Lenders usually require that a mortgage is recorded on the real estate or that a personal guarantee is provided by a third-party guarantor, either under the form of a first demand guarantee or under the form of an ancillary liability (cautionnement).

The mortgage is established in writing and must be registered in the Mortgage Registry. Luxembourg law recognizes three types of mortgages (i.e., legal, judicial, and contractual mortgages). The contractual mortgage must be in the form of a notarial deed.

Other guarantees

In addition, potential claims are secured by account pledge agreements, receivables pledge agreements or share pledge agreements (Law of 5 August 2005 on financial collateral arrangements, as amended). The privilege granted shall only remain on the pledged collateral if the possession of such collateral has been and has remained or shall be deemed to have remained transferred to the creditor or to the agreed-upon third party custodian.

Pledge agreements may be evidenced among the parties and against third parties, in writing or by any other legally equivalent manner as determined by article 109 of the Luxembourg Commercial Code.

How is the lender protected on a creditor execution?

The lender is quite protected in Luxembourg against the insolvency of the debtor by the amended Law of 5 April 1993 on the financial sector and the amended Law of 5

April 2000 on collateral arrangements which both offer many ways to the lender to recoup his investments (for instance, priority ranking, claw-back protection, appropriation, and sale of collateral, etc.).

Besides, registration of the mortgage grants the real estate lender the right to an effective payment over the proceeds of the sale of the real estate by priority to the subsequent registration. When the debtor fails to meet its financial obligations, the lender can terminate the loan and require immediate reimbursement. The possible enforcement actions depend on the securities that have been granted.

Lease of assets and lease of business

In Luxembourg, there are common law rules and special law rules that apply to leases.

Common law rules

Residential leases (or other leases which are not subject to special provisions) are governing by the articles 1708 to 1762-2 of the Civil Code.

These dispositions of the Civil Code set out the rules applicable to all type of lease contracts, including:

- The obligations of the lessee and the lessor;
- The rent payments terms;
- The duration of the lease contract; and
- The termination of the lease contract.

It is important to understand that the rules of common law will only apply when the lease concerned is not governed by specific legislations.

Specific law rules

Residential leases

Residential leases are governed by the amended law of 21 September 2006 on leases which regulates relations between landlords and tenants for this type of lease.

This specific legislation includes provision on rent setting, rental charges, rental guarantees, and procedures in the event of a dispute.

Commercial leases

Commercial and business leases are also governed by specific rules that sometimes differ from those set out in common law, particularly as regards the duration of the contract, renewal rights and termination.

Even though, the Civil Code generally contains common law provisions, it can also contain special provisions. At this effect, some provisions governing commercial leases are set out in Title VIII, Chapter 2, Section III, Special rules for commercial leases of Civil Code at articles 1762-3 to 1762-13 Civil Code.

Residential leases reform effective as of 1 August 2024

On 1 August 2024, Luxembourg has welcomed a new lease reform which was quiet focus on residential lease.

This reform has modified several provisions of the amended Law of 21 September 2006 on residential leases. The main changes are as follows[9]:

- All residential leases must be drawn up in writing, on pain of nullity;
- The maximum amount of the rental guarantee two months' rent, compared with three months' rent in the past;
- The luxury housing notion is abolished; and
- Implementation of regulations for apartment-sharing.

9 Loi du 23 juillet 2024 portant modification :

1° de la loi modifiee du 21 septembre 2006 sur le bail a usage d'habitation et modifiant certaines dispositions du Code civil ; et

2° de l'article 1714 du Code civil.

Even, this new lease reform does not directly concern the commercial leases, it is interesting to notice that it will probably influence the real estate market in general. Indeed, as it improves transparency and formalizes rental contracts (such as mandatory written contracts for instance) and set-up stricter regulations for residential leases, some investors may turn to commercial properties, including offices, as an alternative.

Typical provisions

Length of term

The parties are free to determine it and are in practice concluded for a 3-6-9-year period. A longer term obliges the parties to conclude the lease contract before notary.

If a determined duration is provided, the lease ceases at its expiry date without any requirement of prior notice (Art. 1737 Civil Code). However, if at the expiry date the landlord lets the tenant in possession of the premises without protest, the lease contract is tacitly renewed (Art. 1738 Civil Code).

Rent and taxes

The law does not impose any threshold, it is fixed by mutual agreement. Concerning the taxes, in some situations, rent will be taxed while in other cases, they will be exempt.

Luxembourg personal income tax for rental income

In general, the taxpayer who leases a property (such as house, apartment or building land) is subject to tax obligations. Indeed, he is subject to personal income tax at progressive rates depending on his total income.

Luxembourg corporate tax for rental income

As the physical person, the company which leases property can be subject to tax obligations. Currently, the standard corporate tax rate in Luxembourg is around 24.94% (a combined rate of both corporate income tax and municipal business tax)

Value added tax

In principle, rent is exempted from value added tax (VAT). Nonetheless, it is possible to opt for the application of the VAT to rental income and therefore waive the VAT exemption normally provided for.

Besides, in certain cases, VAT may be applicable to the rental of real estate, particularly in the following situations:

- Temporary accommodation for persons;
- Leasing of sites adapted for temporary parking of vehicles;
- Leasing of operating facilities or leasing of safety deposit boxes; and
- Leasing of holiday camps/campsites (etc.).

Remedies for non-payment of rent and breach for other covenants including forfeiture

Frequently, leases contain “defeasance clauses” (clauses résolutoires) qualifying certain breaches as gross misconduct justifying early termination of the lease and if applicable, a claim for damages.

Breaking rights

In case of a fixed-term contract, if concrete termination events have been stipulated (clause résolutoire), the contract can be terminated prior to such term.

Subletting, use and insurance

Lease agreement may be sublet or assigned by the tenant unless it contains a prohibition of such thing. The tenant must use the premises with due diligence (en bon père de famille Art. 1728 Civil Code).

By virtue of law, the tenant does not need to conclude any particular insurance but, in general, the lease contract contains provisions specifying which insurance the tenant need to contract.

Administrative permits applicable to construction or restructuring of assets

Firstly, any real estate acquisition (such as immovable property) must respect the general town planning scheme, the particular planning scheme and the regulations governing buildings, public road, and sites.

According to the amended Law of 19 July 2004 on communal and urban development, the destination and use of land (i.e., commercial, residential, industrial) is fixed in a general town planning scheme (Plan d'aménagement general) drawn up by each municipality and approved by the Ministry for Internal Affairs.

The general town planning scheme aims to ensure the judicious distribution and implementation of human activities in the various zones it defines in order to guarantee the sustainable development of the municipality.

Besides, the particular planning scheme (Plan d'aménagement particulier) aims to execute the general town planning scheme. Indeed, it precisely regulates the constructions to be built on each part of the general town planning scheme.

With the same goal, the Administration for Organisation of the Territory (Département de l'Aménagement du Territoire) regulates zoning and urban development according to the Grand-Ducal Decree of 27 July 2009 and the Law of 30 July 2013 on the organization of the territory.

The main role of this Luxembourg administration is to define and implement a strategy that combines socio-economic development with the protection of resources and the environment. Besides, a new strategy has been defined through the new Master Land Use Planning Program (nouveau Programme directeur d'aménagement du territoire (PDAT)) adopted by the government on 21 June 2023. This PDAT is focused on the future territorial development of the country between 2035 and 2050.

Then, if the buyer of a real estate asset wants to carry out construction, demolition, or restricting work, he must obtain what is commonly called a building permit (Permis de construction*)*. This building permit application must be submitted to the mayor of municipality concerned. The following works are subject to the authorization of the mayor of municipality throughout the commune:

- Any types of construction;
- The transformation of a building;
- Any change in the purpose of a building (i.e., conversion of a commercial property into a residential one);
- The demolition of any construction;
- Any work involving excavation and backfilling; and
- Any optical device set up for advertising purposes, whatever the subject of the advertising or the location of the device, with the exception of advertising that produces its effects exclusively inside buildings.

The building permit may be applied for by any natural or legal person.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

The real estate market is highly impacted with laws and regulations protecting the environment.

Indeed, Luxembourg has several laws for protecting the environment such as the amended Law of 20 April 2009 on environmental liability with regard to the prevention and repair of environmental damage, or even, the amended Law of 19 January 2004 concerning the protection of nature and natural resources.

Furthermore, as the Luxembourg is a member state of the European Union, it has transposed several European regulations aiming to protect the environment notably:

- Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (recast);
- Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC; and

- Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

Besides, a bill aiming to transpose the directive called "Corporate Sustainability Reporting Directive (CSRD)" has been submitted to the Chamber of Deputies (Chambre des députés) on 29 March 2024.

Regarding the goal of the CSRD, it set out several rules relating to environmental standards such as energy efficiency and sustainable building practices. Indeed, if the CSRD is transposed into Luxembourg internal law, the Luxembourg companies will be required to report on the environmental impact of their activities.

Thus, the introduction of such measures would enable the construction of more green buildings and reduce considerably the pollution caused by the real estate market.

However, the bill is still under the process of adoption and the Conseil d'Etat issued its opinion very recently, on 12 July 2024.

Direct taxes applicable to sales

In Luxembourg, there are many direct taxes applicable to real estate sales, notably:

- Income tax on rental income;
- Municipal business tax;
- Net wealth tax for companies;
- Wealth tax for individuals;
- Property tax;
- Capital gains tax; and
- Registration duty.

Taxation of seller and buyer

However, in the view of a real estate sale, two taxes must be taken into account notably, capital gains tax (vendor taxation) and registration duty (buyer taxation).

Vendor taxation

Upon the sale of real estate assets (for instance, real estate, shares, and other types of investment), the seller is subject to the capital gains tax due to the realization of an added value.

This tax is calculated on the difference between the original price of the asset and the purchase price. The calculation of this tax can also depend on the length of time the asset has been held (especially shares).

Buyer taxation

Upon the acquisition of real estate assets, the buyer is subject to registration and transcription duties.

This tax amounts 7% and is made up of a basic rate of 6% and a surcharge of 1% for the transcription duty. However, certain exemptions or rate reductions may apply if the property is transferred within the family or as part of a first-time home purchase.

Latest developments in Luxembourg, and areas to focus on in the future:

- Adoption of a new reform on residential leases.
- Future creation of a national register of buildings and housing (Registre national des bâtiments et logements) which will collect information on properties throughout the Grand Duchy of Luxembourg.
- The arrival of new environmental protection provisions with the future transposition of the European Directive CSRD into Luxembourg internal law.

By **François Lerusse**, Partner, Deloitte Legal Luxembourg

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Overview of the Malaysian Legal System

General introduction to the main laws that govern the acquisition of assets in Malaysia – real estate rights

General

In Malaysia, land matters are within the jurisdiction of the respective states of the country. The National Land Code (Revised 2020) (NLC) is the key governing legislation relating to the land matters, which includes:

- Land tenure;
- Registration of land title;
- Transfer of land;
- Creation of leases, charges, and easements over land; and
- Amalgamation and subdivision of land.

The NLC, however, is only applicable to the Peninsular Malaysia and the Federal Territory of Labuan; land matters in the state of Sarawak and Sabah are governed under the Sarawak Land Code (Chapter 81) and the Sabah Land Ordinance (Cap. 68) respectively.

Freehold and leasehold lands

According to Section 40 of the NLC, all lands within the territories of the relevant state are solely vested in the state authority. The state authority is empowered under the NLC to alienate any state land vested in it to any party either:

- For a term not exceeding 99 years, such land is commonly referred to as "leasehold land"; and
- In perpetuity, such land is commonly referred to as "freehold land".

The key difference between a leasehold land and a freehold land is that upon the expiry of a leasehold land, the ownership of such land will revert back to the relevant state authority unless the tenure is extended in accordance with the NLC at the sole discretion of the state authority.

Further, a leasehold land typically has certain conditions attached to it which restrict any transfer, creation of charges or granting of lease unless the prior written consent of the state authority is obtained.

Express conditions and restrictions-in-interest

According to Section 120 of the NLC, the state authority may impose certain express conditions or restrictions-in-interest which are attached to a land alienated by it.

Express conditions generally refer to certain conditions which prescribe the manner for which an alienated land is permitted to be used. Restrictions-in-interest, on the other hand, generally refer to the restrictions on dealings in respect of the alienated land – for example, a typical restriction-in-interest may require the prior approval of the state authority to be obtained before the proprietor of the land is entitled to transfer, create a charge, or grant a lease over the land.

If a proprietor commits a breach of the express conditions or restrictions-in-interest attached to the land, the land may be subject to forfeiture in which case, the ownership of the land shall revert to, and be vested in, the state authority.

Category of land use

A land alienated by the state authority is also subject to certain categories of land use, namely "agriculture", "building" and "industry".

If a land is used or occupied in a manner which is inconsistent with the relevant category of land use attached to it, the land may also be subject to forfeiture in which case, the ownership of the land shall revert to, and be vested in, the state authority.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Key acquisition structure to purchase land

In Malaysia, a prospective purchaser, with the appropriate assistance of legal counsel, may acquire real property either via:

- The acquisition of shares of the company which is the registered proprietor of the land; or
- The direct acquisition of the land from the registered proprietor.

If the prospective purchaser opts to directly acquire the land from the registered proprietor, this would be akin to an asset purchase pursuant to which the prospective purchaser will become the new registered proprietor of the land.

State authority's approval under the NLC

Pursuant to Section 433B of the NLC, the acquisition of real property by a non-citizen or foreign company is subject to the prior written approval of the state authority being obtained. Such approval may be subject to the payment of levy, terms and conditions imposed by the state authority.

The term "non-citizen" is defined under the NLC as a natural person who is not a citizen of Malaysia.

On the other hand, the term "foreign company" is defined as:

- A foreign company as defined in the CA 2016; or
- A company incorporated under CA 2016 with 50% or more of its voting shares held by a non-citizen or by a foreign company referred to in paragraph (i) or both; or
- A company incorporated under CA 2016 with 50% or more of its voting shares held by a company referred to in paragraph (ii), or by a company referred to in paragraph (ii) together with a non-citizen or a foreign company referred to in paragraph (i).

Section 2 of the CA 2016 generally defines "foreign company" as a company or other body incorporated outside Malaysia.

EPU approval

The Economic Planning Unit (EPU) has issued the Guideline on the Acquisition of Properties (EPU Guideline), which is in effective from 1 March 2014.

Save for the residential units, the prior written approval of EPU (EPU approval) is required for the following acquisitions:

- Direct acquisition of property valued at MYR 20 million (US$4,517,580*) and above, resulting in the dilution of the ownership of property held by Bumiputera interest and/or government agency; and
- Indirect acquisition of property by other than Bumiputera interest through the acquisition of shares, resulting in a change of control of the company owned by Bumiputera interest and/or government agency, having property more than 50% of its total assets, and the said property is valued at more than MYR 20 million (US$4,517,580 *).

The term "Bumiputera" is defined in the EPU Guideline as Malay and aborigine in the Peninsular Malaysia, and the native in the States of Sabah and Sarawak, in accordance with the Federal Constitution.

The abovementioned EPU approval in respect of the foreigners are subject to the certain conditions, such as:

- The purchaser entity must have at least 30% Bumiputera interest shareholding; and
- The paid-up capital of local company owned by foreign interest to have at least MYR 250,000 (US$56,469.8*) paid-up capital.

Nonetheless, the EPU approval is exempted in certain acquisitions such as acquisition of industrial land by

manufacturing company, and acquisition of residential units under the "Malaysia My Second Home" program.

*According to the 10 December 2024 exchange rate

Real estate registry system

Malaysia has adopted the Torrens system in respect of the ownership and dealings of land, which is effectively a system of title by registration.

Under the NLC, every register document of title duly registered shall be conclusive evidence:

- That title to the land described therein is vested in the person for the time being named therein as proprietor; and
- Of the express conditions, restrictions-in-interest and other provisions for which the land is subjected to for the time being held by that person.

Save for certain interests (such as a tenancy exempt from registration), all dealings (including a transfer or the creation of lease and charge) under the NLC must be duly registered and endorsed on the title document of the land with a proper instrument of dealing.

The concept of indefeasibility of title and interest is protected under Section 340 of the NLC pursuant to which the title or interest of any registered land proprietor or in whose name any lease, charge or easement is for the time being registered shall be indefeasible and cannot be challenged or disputed by any third party. Such title or interest, however, would be defeasible in limited scenarios, such as in the case of fraud, misrepresentation, forgery, insufficient or void instrument or unlawful acquisition.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

Legal responsibility of the seller in real estate transactions

In real estate transactions in Malaysia, the seller should deliver to the purchaser certain documents which are required for the registration of the purchaser as the new proprietor of the land, such as:

- A duly executed memorandum of transfer (Form 14A) as prescribed under the NLC as the instrument of transfer of such land to the purchaser;
- The original issue document of title of such land; and
- Payment receipts to evidence that all outgoings relating to the land (such as quit rent and rate of assessment) had been duly paid.

In the event the land is subject to a charge, the seller should also procure the discharge of such charge prior to the transfer of the land.

Further, if there are restrictions-in-interest attached to the land, which prescribes that the prior written approval of the state authority is required for the transfer or sale of the land, it is the seller's responsibility to apply for and obtain such approval.

To the extent that the there is a subsisting lease or tenancy created over the land, the sale or transfer of land to the purchaser will also be subject to such lease or tenancy. In this case, the seller is obliged to execute the relevant deeds of novation to novate and transfer such lease or tenancy to the purchaser (as the incoming lessor or landlord).

The seller is also responsible to pay any real property gains tax (RPGT) that may be payable under the Real Property Gains Tax Act 1976 (RPGT Act) arising from the disposal of a chargeable asset, such as real property.

Contractual representations and warranties

Customary representations and warranties provided by the seller in a land sale and purchase agreement (SPA) include the following:

- The seller is the registered and beneficial owner of the real property and has the capacity and power to execute, deliver and perform the terms and conditions under the SPA;
- Except for the encumbrances disclosed by the seller, there are no encumbrances (including lease, tenancy, charge, claim by a third party) affecting the real property;

- The seller is not in breach and has not committed any breach of the category of land use and any express or implied condition stipulated in the issue document of title; and
- The real property is not subject to or affected by any land acquisition or surrendering by any authorities.

Mortgages and other usual guarantees adopted in financing assets

In Malaysia, the most common form of security taken in relation to real property is the creation of charge over such real property. The creation of charge requires a proper instrument of dealing, which is the Form 16A as prescribed under the NLC. The creation of charge must also be perfected by registering the same with the relevant land office such that the creation of charge is endorsed on the issue document of title of the land. The creation of charge will take effect upon registration under the NLC.

A registered chargee is typically entitled to the custody of the issue document of title, and the prior written consent of the chargee is required if the proprietor intends to sell the land. In the event of a breach by the proprietor (as chargor) of its obligation under financing agreements, the remedies available to the chargee under the NLC include the sale of the land and right to possession of the land by the chargee.

Lease of assets and lease of business

Under the NLC, the renting of real property for a term exceeding three years is known as "lease", while the renting of real property for a term not exceeding three years is known as "tenancy".

Lease

A lease may be granted by a proprietor of any alienated land for a term exceeding three years. According to the NLC, the maximum term for a lease is as follows:

- 99 years for the whole of the land; and
- 30 years for part of the land.

The creation of a lease over land requires a proper instrument of dealing, which is the Form 15A as prescribed under the NLC. The creation of lease must also be perfected by registering the same with the relevant land office such that the creation of lease is endorsed on the issue document of title of the land.

Tenancy

A tenancy may be granted by a proprietor of any alienated land for a term not exceeding three years.

A tenancy is exempted from registration under the NLC and may be so granted either by word of mouth or by a written instrument in any form whatsoever. Nonetheless, any parties claiming to be entitled to the benefit of a tenancy may apply to the land office for the endorsement of their claim on the register document of title to the land, for the purpose of protecting their rights thereunder against subsequent dealings on affected land.

Administrative permits applicable to construction or restructuring of assets

The main legislations which are applicable to the development and construction of buildings in the Peninsular Malaysia are the:

- Town and Country Planning Act 1976; and
- Street, Drainage and Building Act 1974.

Planning permission

The Town and Country Planning Act 1976 (TCPA) provides that no person shall use or permit to be used any land or building otherwise than in conformity with the local plan. The TCPA also provides that planning permission issued by the local planning authority is required to commence, undertake, or carry out any development.

Generally, a planning permission ensures that the proposed development complies with local zoning requirements and land use policies. An application for planning permission in respect of a development must be accompanied by the development proposal report documents, building plans, and fees as may be prescribed.

A planning permission shall, unless extended, lapse 12 months after the date of the grant thereof if the

development had not commenced in the manner specified in the planning permission within that timeframe.

Building plan approval

In addition to the planning permission required under the TCPA, the Street, Drainage and Building Act 1974 (SDBA) states that no person shall erect any building without the prior written permission of the local authority.

Hence, a developer is also required to obtain the approval of the local authority in respect of the building plans for the development. The building plan approval ensures that the proposed building plans meet safety and structural requirements and standards of the local government. An application for building plan approvals in respect of a proposed development typically requires the submission of detailed drawings of site plans, key plans, floor plans, sections, and elevations.

Certificate of Completion and Compliance/ Certificate of Fitness for Occupation

The SDBA also requires that, upon the completion of the construction of a building, a Certificate of Completion and Compliance (CCC), previously known as the Certificate of Fitness for Occupation (CF), be issued in respect of the building which certifies that a particular building has been constructed in accordance with the approved building plans and applicable laws.

Any person who occupies, or permits to be occupied, any building without a CCC is liable on conviction to a fine not exceeding MYR 250,000 (US$56,469.8*) or to imprisonment for a term not exceeding 10 years or both.

*According to the 10 December 2024 exchange rate

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

The Department of Environment (DOE) which is under the purview of the Ministry of Natural Resources and Environmental Sustainability is the main governmental authority which oversees and implements environmental laws in Malaysia.

The Environmental Quality Act 1974, together with its subsidiary legislations, (EQA) is the key legislation enacted to provide a framework to prevent or minimize pollution on the environment and to promote sustainable development.

Owners or occupiers of land are required to ensure that all activities carried out on such land is in compliance with the restrictions and requirements prescribed under the EQA. For instance, the EQA prescribes that certain activities cannot be carried out unless it is done by a person licensed under the EQA or unless the prior written consent of DOE is obtained. Such restricted activities include the discharge of a hazardous substances, pollutants or wastes into the atmosphere, inland waters, or any surface of land. Further, the EQA also prescribes certain requirements and guidelines on the storage and disposal of scheduled wastes.

The EQA further empowers the minister to prescribe any activity which may have significant environment impact as a "prescribed activity", in which case, it is mandatory for an environment impact assessment (EIA) report to be submitted to the director general for approval. Such EIA report must be conducted by a qualified person (who is registered with the DOE) and shall contain an assessment of the impact such activity will have or is likely to have on the environment and the proposed measures that shall be undertaken to prevent, reduce or control the adverse impact on the environment.

Direct taxes applicable to sales

Real property gains tax

As mentioned in the foregoing paragraphs, real property gains tax (RPGT) is charged on gains arising from disposal of chargeable asset, such as real property. The obligation to pay RPGT falls on the disposer, which is the seller, in the year of assessment where the disposal transaction takes place. The disposal is taxable on gain accrued on the disposal of chargeable asset situated in Malaysia.

The RPGT rates are based on the categories of disposer and holding period of the chargeable asset. The date of disposal is generally taken as the date of the written agreement of the disposal, i.e., the date of the relevant

land sale and purchase agreement. However, in the case where the land sale and purchase agreement is conditional upon the prior written approval of the governmental or state authority being obtained, then the date of disposal will be that when such condition is satisfied.

The RPGT rates provided in the Real Property Gains Tax Act 1976 are as follows:

Disposal	RPGT rates		
	Individuals[1]	Companies[2]	Individuals[3]/ Companies[3]
Within 3 years	30%	30%	30%
In the 4th year	20%	20%	30%
In the 5th year	15%	15%	30%
In the 6th year and above	0%	10%	10%

Note 1: Individuals who are Malaysian citizens and permanent residents

Note 2: Companies which are incorporated in Malaysia or a trustee of a trust

Note 3: Individuals who are non-citizens and non-permanent residents or companies which are not incorporated in Malaysia

Although the obligation to pay RPGT is imposed on the seller, where the purchase consideration consists wholly or partly of cash, the purchaser is also required to withhold a portion of the purchase price to be directly remitted to the Director General of Inland Revenue Board within 60 days from the date of disposal. Such amount to be withheld by the purchaser is equivalent to the lower of (i) the entire cash consideration; or (ii) the relevant rates as set out below:

RPGT rates		
Individuals[4] / Companies[4]	Companies[5] – and the disposal is made within 3 years of acquisition	All other cases
7%	5%	3%

Note 4: Individuals who are non-citizens and non-permanent residents, executor of estate of a deceased person who is not a citizen and not a permanent resident or companies which are not incorporated in Malaysia

Note 5: Companies which are incorporated in Malaysia or a trustee of a trust.

The purchaser is required to remit the withholding amount to the Director General of Inland Revenue Board, regardless of whether such amount was actually withheld.

Stamp duty

In respect of the transfer of real property, stamp duty is chargeable on the instrument for conveyance, which is the memorandum of transfer (Form 14A) as prescribed under the NLC.

Unless otherwise agreed between the parties, the Stamp Act 1949 (Stamp Act) prescribes that the stamp duty payable on the memorandum of transfer is to be borne by the purchaser.

According to the Stamp Act, the chargeable stamp duty rate applicable to a foreign company or a person who is not a citizen and not a permanent resident is 4% of the amount of the money value of the consideration or the market value of the property, whichever is the greater.

Other than a foreign company or a person who is not a citizen and not a permanent resident, the chargeable stamp duty rates provided in the Stamp Act 1949 is as follows:

Value	Rate on the amount of the money value of the consideration or the market value of the property, whichever is the greater
First MYR 100,000 (US$22,587.9*)	1%
Next MYR 400,000 (US$90,351.6*)	2%
Next MYR 500,000 (US$112,940*)	3%
Thereafter (above MYR 1 million (US$225,879*))	4%

*According to the 10 December 2024 exchange rate

Latest developments in Malaysia, and areas to focus on in the future:

- The demand for digital infrastructure, such as data centers, in Malaysia has been growing steadily in recent years as Malaysia continues to embrace advances in digital technology. Nonetheless, there is a need for careful balance between meeting the increased demand for the real estate development and the adherence to ESG best practices.
- The announcement of the Special Economic Zone and the ongoing development of the Johor Baru – Singapore Rapid Transit System (RTS) Link have positioned Iskandar Malaysia as a key economic development zone in the southern part of the Peninsular Malaysia. This has drawn investors, developers, and businesses seeking opportunities in a strategically positioned and well-connected region, particularly Johor being the neighboring state for Singaporeans to enter Malaysia.
- Kulim Hi-Tech Park's strategic location at the northern region of the Peninsular Malaysia and dedicated focus on high technology industries attract major technology players. It is the first fully integrated high technology park in Malaysia. It integrates green features into its real estate projects, providing a blueprint for sustainable urban development.

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Additionally, she has participated in mediation projects, advising on civil matters, and has collaborated in operations of the financial system.

Overview of the Mexican Legal System

General introduction to the main laws that govern the acquisition of assets in Mexico – real estate rights

Article 27 of the Political Constitution of the United Mexican States (PCUMS), states that "Ownership of land and water within the limits of the territory national, originally corresponds to the nation, which has had and has the right to transmit the domain of them to individuals, constituting private property". In this sense, the real estate considered as private property is governed under civil law, which is regulated by each state of the Mexican Republic as it is not reserved to the federation.

Each of the 32 Mexican states has the right to regulate civil matters in their own Civil Code (CC) with their own specific rules, limitations and formalities, but considering that all CC have the same principles as grounds and, if a figure is not fully regulated in the Civil Code of the corresponding state, and there is no express reference to any other local or federal legislation, as a general rule there will be supplementation of the Federal Civil Code (FCC).

According to this, Section III of Article 13 of the FCC states that, in real estate, the applicable law for the constitution, regime and extinction of real rights over real estate will be governed by the law of their location, even if the owners are foreigners. This, differentiating the law that might apply to the specific agreement from which the ownership arises. For example, if a purchase agreement is executed in order to transfer a property to the purchaser, the agreement can be subject to the law of any of the states that the parties decide so, however, the formalities and specific procedures to formalize the transfer of ownership will be the ones of the state in which the property is located.
On the other hand, considering that some real estate is used for specific sectors, some additional local or federal regulations might apply, as the case of environmental, health, zoning and construction, rural, urban settlement regulations, among others, depending on if the property is state-owned, deemed as "social land" or private.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

The acquisition of real estate in Mexico can be carried out by means of a purchase, donation, inheritance, or usucapion (an individual can be considered as owner by the passage of time if some conditions are met).

Each of the agreements to acquire the ownership has specific requirements, but, as general rule, they require:

- To be formalized before Mexican civil notary public; and
- To be registered before the Property Public Registry (PPR) of the state or municipality in which the real estate is located.

According to the appraisal value of the property, some local tax benefits might apply, or less formalities may be required. For example, in Mexico City in the case of real estate with an appraisal value less than 365 times the Unit of Account of Mexico City current at the time of the operation, the ownership rights can be transferred in private document granted before two witnesses and ratifying their signatures before notary public, competent judge or the PPR.

In the case of foreigners (companies or individuals) they cannot directly acquire ownership of real estate located in

the "restricted zone," as marked in Article 27 of the PCUMS. Such restricted zone covers:

- 100 kilometers from the Mexican borders; and
- 50 kilometers from the Mexican beaches.

The legal strategy for foreigners to acquire some rights over real estate in the restricted zone is the incorporation of a trust, where the trust will be the owner of the property but the foreigners that incorporate the trust and act as trustees can use such property.

On this, foreigners that intent to acquire the ownership of real estate outside the restricted zone, will have to file, before the Mexican Ministry of Foreign Affairs (MFA) a clause where they accept to waive to the protection of their country of nationality and be deemed as Mexicans in all regards to such property. In case they fail to comply this, the ownership will be lost in benefit of the Mexican nation.

The PCUMS and secondary regulation also state limitations to the acquisition of rural or rustic lands or to the acquisition of property made by religious associations, private or public charitable institutions, banks or entities that are part of the Mexican financial system.

Real estate registry system

As previously mentioned, since civil law (and thus, real estate) is local, each Mexican state will have the right to regulate specific regulations applying to their respective PPR.

However, as a general rule, such registration procedure is carried out by the notary public that notarized the public deed containing the document that create, transfers, modifies or extinguish the ownership rights, prior to the payment of the applicable duties and federal and local taxes. Nevertheless, the interested party can also request it.

In case there are any liens or encumbrances over the property right, such document must be also notarized and registered before the PPR.

It is important to consider that in Mexico, the registration before the PPR is not constitutive of rights but for the act to have effects against third parties and in order to consult the background of a property, any individual can request it if they have the applicable real folio (which is the one assigned to each property at the time of first registration).

In addition to this, depending on the state in which the real estate is located, some cadastral information might or might not be publicly available.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

As applicable to all legal acts in which the consent is required, in case of agreements or transactions that relate to the creation, regime and extinction of real rights over real estate are ruled by the principle of prohibition of "consent vices."

In this sente, civil law recognizes error, willful intent, bad faith, violence, and injury as consent vices.

If any agreement or legal act is consented and there is a consent vice the legal act or agreement in question would not have all of its elements to be considered valid, so it would be void or null, as the consent had not been legally formed and according to the specific consent vice that is alleged.

In this sense, each consent vice will have different consequences. For example, in case the error is arithmetic, the only consequence is that the rectification is allowed, without voiding the agreement whereas the willful intent, violence or bad faith will imply that legally the consent was never formed and thus, the agreement or legal act is fully void.

The criteria for determining the consequences will depend on the type of consent vice and how decisive it was for the granting of consent.

In the specific case of a purchase agreement of real estate, as there are several modalities, the consequences may differ in the event of any consent vice or misrepresentation. For example:

- Ad mesuram purchase, where the price is calculated based on the specific measurements of the property; in

case of variation to the measurements, the parties must adjust the price accordingly; and

- Ad corpus purchase, in which the price is calculated based on the property itself and not its specific characteristics; there is no right to request the rescission of the agreement if there are variations to the measurements provided at the beginning of the transaction.

In this regard, it is always preferable to seek the assistance of attorneys specialized in the field.

Mortgages and other usual guarantees adopted in financing assets

When acquiring real estate in Mexico involving a financing for such purposes, the financing institution or individual may request a mortgage, which, according to Article 2893 of FCC, is a real security incorporated over assets that are not delivered to the creditor.

The main characteristics of the mortgage are:

- It survives even if the property is transferred to a third party;
- The mortgage can only be incorporated regarding assets duly identified;
- Must be granted before notary public and registered before PPR (its creation, amend or extinction when is related to property).
- It is considered "extended" over the improvements of the mortgaged property, its attached and non-movable goods, new buildings over the mortgaged property, non-removable personal property or its natural accessories;
- Mortgages (unless convened otherwise by the parties) do not comprehend: (i) pending income in separation of the property that produces them; (ii) movable assets and decorations; (iii) easements, unless they are mortgaged together with the dominant property; and (iv) the right to receive the fruits of the usufruct granted to ascendants on the property of its descendants; among others;
- It can be constituted by the debtor or by a third party on his/her favor; and
- Mortgage over a property can only be constituted by the one with the right to dispose of it.

Even when mortgage is the standard guarantee requested when financing the acquisition of real state, there are other alternatives, such as:

- Bail;
- Promissory notes;
- Joint liability; or
- Insurance.

Lease of assets and lease of business

Regarding the lease, FCC defines it as an agreement where "the two contracting parties bind each other, one, to grant the temporary use or enjoyment of a thing, and the other, to pay a certain price for that use or enjoyment." In this sense, we must make a distinction between commercial lease and civil lease.

The civil lease is the one where both parties (lessor and lessee) are individuals, and the lease is not for lucrative purposes. On the other hand, commercial lease is the one where at least one of the parties is a company or merchant (considering that, if one of the parties is individual non-merchant, the lease can be of civil nature for such party).

In this regards, commercial lease does not have a specific regulation, thus, the rules included into the FCC are applicable, and, for civil lease, the local CC will contain the regulation that will apply.

However, as a general rule, leases have the following formalities:

- Must be granted in writing;
- The rent can be in money or any other equivalent, as long as it is certain and determined;
- In order to execute a lease, the lessor must have, at least, the rightful possession of the property (and, if applicable, the authorization of the owner);
- Any asset can be leased, except those forbidden by law or personal rights;
- In case of co-ownership, all the co-owners must agree to the lease;

- In order to sublease, the lessee requires consent or authorization from the lessor;
- Improvements made by the lessee into the property must be reimbursed by the lessor, only if the lease agreement states so or if the improvement is useful and due to fault of the lessor the agreement is rescinded;
- The lessor must carry out all the necessary or structural repairs of the property; and
- The lessee is responsible of the damages caused in the property due to his/her negligence or willful intent.

Likewise, in case the lease is intended for housing, some additional requirements or obligations may arise. For example, in housing leases, the minimum term is one year mandatory for both parties and the lessee has a pre-emptive right to acquire the property if he/she matches the purchase conditions set by a third party or to request that the lease survives such purchase if the lease is still valid.

Furthermore, as stated before, each of the CC will have specific formalities, obligations or rights arising from the lease.

In the particular case of Mexico City, due to a recently published amend to its CC, housing leases are now registrable, and the monthly rent now has a maximum yearly increase of the equivalent to the National Consumer Price Index (INPC).

Another regulated lease in the FCC is the one of rustic or agricultural properties, where, in case there is no payment term, the rent must be paid by expired semesters or where the lessee will not have the right to a reduction in rent due to sterility of the land or due to loss of fruits resulting from ordinary fortuitous cases; but only in case of loss of more than half of them, due to extraordinary fortuitous cases.

Finally, the FCC also regulates the lease of assets, where the general provisions state that to such agreements the provision that are compatible will be applicable.

In the practice, the terms and conditions of lease agreements are usually determined in accordance with the will of the parties, having as a minimal frame the rights and liabilities set forth for each party into the local CC and the formalities required in such regulation that are not waivable.

Administrative permits applicable to construction or restructuring of assets

Depending on the specific location of the property, the requirements and procedures may vary, however, the usual documentation needed to obtain a construction license are:

- Land use zoning permit;
- Feasibility report on hydraulic services;
- Declaration of environmental compliance;
- Soil mechanics study;
- Alternative rainwater collection system; and
- Neighborhood advertising.

Unless the construction is carried out in federal property, each of the states will apply their own local laws and regulations for authorizing any construction, and, according to the type of construction (housing, industrial, etc.) the requirements will vary.

Please note that, the construction license also covers the structural changes intended to any property.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

As stated in the previous section, in order to be able to obtain a construction license, the local or federal authorities require the particulars to carry out the applicable environmental studies.

This is achieved with an Environmental Impact Manifestation (EIM) and an Environmental Impact Evaluation (EIE), which are regulated under the General Law of Ecological Balance and Environmental Protection (GLEBEP), which also states the framework for the local laws on the matter.

In this sense, Section XXI of Article 3 of the GLEBEP defines a EIM as "the document through which it is made known, based on studies, the significant and potential

environmental impact that a work or activity would generate, as well as the way to avoid it or mitigate it if it is negative".

Regarding the EIE it is defined as "the procedure through which the Ministry of Environment and Natural Resources establishes the conditions to which the execution of works and activities that may cause ecological imbalance or exceed the limits and conditions established in the applicable provisions will be subject in order to protect the environment and preserve and restore ecosystems, and to avoid or minimize its negative effects on the environment".

The GLEBEP states that the EIE is mandatory when conducting the following:

- Changes in land use of forest areas, as well as in jungles and arid areas;
- Industrial parks where highly risky activities are expected to be carried out; and
- Real estate developments that affect coastal ecosystems; among others.

On this, in order to obtain such EIE the law requires the requestor to submit the EIM which must contain, at minimum, a description of the potential effects in the ecosystem that can be affected by the specific work or activity intended, as well as the mitigation measurements to reduce to the minimum such negative effects.

So, considering this general framework on ESG matters, each state has the power to issue their own local laws and regulations stating additional requirements or the timeframe of such procedures.

Direct taxes applicable to sales

The main direct taxes applicable to the sales are the income tax (IT) and the local real estate acquisition tax (REAT).

Both will depend on the particularities of the transaction (if it was carried out by individuals or companies, the appraisal value of the asset, among others). However, the IT, in the case of a real estate acquisition, can be up to 35% of the value of the real estate.

Latest developments in Mexico, and areas to focus on in the future:

- Nowadays short-term housing leases when a digital platform is used as an intermediary between the owner and the tenant are under the review of the states. The authorities are looking forward to keeping a better control over the taxation and the minimum legal term and conditions applicable to these types of services. Mexico City is in process to issue the secondary regulation that will apply to the registration of the digital platform as intermediary and other players in these transactions.
- This is also a tendency for long-term housing leases in the states with high tourism rates; in the particular case of Mexico City's authorities look forward to implementing the secondary regulations for a registry and limits to the yearly rent increase for all new and current housing leases, regardless of its civil or commercial nature.
- Such tendency arises from the high increases in the rents from the lessors due to the increase of the long stays of tourist in certain areas.
- Due to the increase of industrial investment and nearshoring, the government of the states located on the north border of Mexico, are looking forward to providing facilities to investors to carry out or open their business in their territories.
- On October 1st, 2024, there will be the change of the federal and most of the local governments, so, even if there are no specific public policies regarding real estate to be considered at this point, we can expect some amendments to the federal or local laws reflecting this transition.

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Real Estate Law in Nicaragua

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Overview of the Nicaraguan Legal System

General introduction to the main laws that govern the acquisition of assets in Nicaragua – real estate rights

In Nicaragua, ownership over real estate can be obtained through one of the following methods regulated in the Civil Code (CC): (i) transfer; (ii) inheritance; (iii) accession; and (iv) adverse possession.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Under the Nicaraguan legal framework, the creation, transfer, and modification of rights over real estate must be executed through a public deed before a notary public and must be registered with the real estate registry of the corresponding location.

Before the execution of the public deed, the notary public conducts due diligence, which includes obtaining the certificate of title issued by the real estate registry to prove ownership and the existence of taxes levied on the property or the existence of precautionary measures.

In Nicaragua, there are no restrictions on foreign citizens to acquire real estate, as they can engage in these transactions with a valid and current passport.

Real estate registry system

Confirmed title to real estate requires the execution of a public deed, the transfer of the property, and the registration with the relevant real estate registry.

The main documents that must be filed and registered with the local real estate registries are (i) public deeds that create, transfer, declare, modify, or extinguish property rights; and (ii) judicial rulings that order cessations (embargos) or any other type of preliminary injunction (medidas cautelares) on real property.

The information held in real estate registries are publicly accessible and available to any person with a legitimate interest in discovering the status of real estate and the corresponding power of attorney that proves it.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

The CC provides that the seller is obliged to certain implied warranties, such as: (i) evict and provide compensation in favor of the buyer (evicción y saneamiento); and (ii) that the property has no hidden defects (garantía por vicios redhibitorios).

Mortgages and other usual guarantees adopted in financing assets

Mortgages over real estate may secure the principal amount, accrued interest, and other related expenses owed by the debtor to the creditor.

Pursuant to Section 2722 of the CC, mortgages over real estate must be created through a notarial deed.

In order to be effective vis-à-vis third parties, mortgages must be registered with the public real estate registry of the jurisdiction where the property is located.

Lease of assets and lease of business

Lease agreements are regulated by Title XIV of the CC; the lease agreement is defined by Section 2810 CC, as a contract by which two parties are mutually obligated, one to grant the use or enjoyment of a good, or to carry out work or provide a service; and the other to pay a certain and determined price for this use, enjoyment, work, or service. The lessor or landlord is the one who gives the good on lease, and the lessee or tenant is the one who receives it.

The obligations of the lessor are:

- To deliver to the lessee the leased property with all its belongings and in a condition to serve for the agreed use, and if there was no express agreement for that for which by its very nature it was intended;
- To keep the leased property in the same condition during the lease, making all necessary repairs for this purpose;
- To not hinder or obstruct in any way the use of the leased property unless for urgent and indispensable repairs;
- To guarantee the use and peaceful enjoyment of the property for the entire duration of the contract; and
- To respond for the damages suffered by the lessee due to defects or hidden flaws in the property, prior to the lease.

The lease agreement may terminate:

- Because the term set in the contract has been fulfilled, or the purpose for which the property was leased has been satisfied;
- By express agreement;
- By nullity; or
- By resolution.

Administrative permits applicable to construction or restructuring of assets

Municipalities, and specifically their construction departments (Ventanilla Única de la Construcción-VUC, Dirección de Urbanismo), are responsible for managing construction permits within their limits. The rules for construction permits are set, in general, in the Municipal Tax Plan, but each municipality is entitled to specify detailed requirements within its urban area through a specific body.

Pursuant to the General Ordinance of Urbanism and Construction, the construction, repair, alteration, extension, and demolition of buildings, will require a permit from the relevant municipality.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

Urbanization projects, construction of hotels and hotel complexes, or any project or activity likely to cause an environmental impact, can only be executed or modified after an evaluation of its environmental impact through the presentation of an Environmental Impact Assessment (EIA).

Direct taxes applicable to sales

Inheritance/estate tax: In the transfer of assets subject to registration before a public office, the following definitive income tax withholding rates will be applied on capital income and capital gains and losses: an occasional withholding tax ranging from 1% to 7%.

Real property tax: The municipalities levy a 1% tax on the value of real estate.

Stamp duty: Stamp duty is levied on certain types of documents issued in Nicaragua or abroad that produce effects in Nicaragua. The amount varies depending on the transaction

Real Estate Law in Nigeria

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Overview of the Nigerian Legal System

General introduction to the main laws that govern the acquisition of assets in Nigeria – real estate rights

The main laws that govern the ownership of real estate in Nigeria are the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended), the Land Use Act 1978 (LUA), the Nigerian Urban and Regional Planning Act 1992, and relevant states urban and regional planning laws, the Conveyancing Act 1881, property and conveyancing laws of the various states, registration of title laws of the various states, Islamic/customary law, case law, etc.

Nigerian Constitution: The CFRN 1999, which is the highest law regulating real estate ownership, guarantees the right of every Nigerian citizen to acquire and own immovable property (including real estate) in Nigeria. Section 44 of the CFRN further prevents the compulsory acquisition of property by the government without prompt payment of compensation and guarantees the right of the owner of real estate to access a court or tribunal to determine the amount of compensation and his/her interest in the property.

Land Use Act: From 1979, LUA ended freehold land ownership in Nigeria. It heralded three major implications:

- All lands in a state (subdivision), except those vested in the federal government or its agencies, are vested in the state government to be held in trust for the people;
- The state government grants rights of occupancy to citizens subject to some conditions. The maximum title that can be granted is a lease for a maximum of 99 years; and
- Transfer of title or long leases in real estate will require the consent of the governor of the state for such transfer to be valid.

Registration of titles law: Considering that the LUA places ownership of land within the purview of the relevant states, different states in Nigeria have enacted state laws governing the registration of titles to land in their respective states. These laws require the registration of certain titles/interests in land as prima facie proof of ownership, thus reducing incidences of land disputes and fraudulent/multiple allocation of title to land.

Conveyancing Act 1881 and Property Conveyancing Law 1959: Depending on the region in the country, conveyancing is governed by either the Conveyancing Act 1881 or Property and Conveyancing Law of 1959 which deals with the sale of land in the respective states.

Case law: By virtue of the doctrine of stare decisis, the decisions of superior courts with respect to real estate matters form case law on that point in dispute. And can be relied upon as in subsequent matters.

Islamic/customary law: Also, Islamic/customary law may govern some aspects of real estate ownership in some states as it relates to rules on the inheritance of real estate, devolution of ownership, and giving of gifts.

The Nigerian Urban and Regional Planning Act of 1992 governs urban and regional planning in Nigeria and specifically vests in the federal, state, and local governments the authority to formulate policies on real estate within their respective jurisdictions. The Act empowers the state government to exercise its real estate planning activities within the National Physical Development Plan formulated by the federal government to ensure consistency in real estate development goals in Nigeria. Under the Act, local governments only have responsibility for the preparation and implementation of real estate plans on lands that are neither federal nor state lands.

Other laws that govern real estate include the received English law, land instrument registration laws of the various states, tenancy laws of the various states, etc.

Acquisition structure usually applied in real estate transactions

Assignment: The most common structure for acquisition of real estate in Nigeria is through a direct transfer (of the residue of the right of occupancy) between the owner of the real estate (assignor/seller) and the transferee (assignee/purchaser) through a deed of assignment or deed of conveyance.

Long leases: Here, the holders of right of occupancy grants a lease to the lessee for a definite period of time. This could also be for the reside of the term on the right of occupancy less one day.

Power of attorney: Here, the holder of the right of occupancy grants to another specific rights in relation to the property.

Restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Section 43 of the CFRN restricts the right to acquisition and ownership of lands in Nigeria to Nigerian citizens. This is especially as Section 1 of the LUA vests all lands in the governor of the relevant state as trustee for the people of the state. However, some states have enacted laws governing the acquisition of land by foreigners – acquisition of lands by aliens laws of the various states and the Acquisition of Land by Aliens Act of the Federal Capital Territory (FCT) of Nigeria – which provides that no foreigner can acquire and own real estate in Nigeria without the approval, in writing, of the governor of the relevant state where the land is located, or the president, where the land is located in the FCT.

The National Council of States is also empowered to regulate the acquisition of interest in land by non-Nigerians.

Note: A company incorporated in Nigeria (with foreign shareholders) is not considered an alien.

Real estate registry system

The registration of titles laws of the various states usually provides for the registration of title to land and other proprietary rights and legal interests in land with the land's registry of the relevant state. Interest in leases that are less than three years, are usually exempted from registration.

Rights in real estate that are required to be registered include a statutory or customary right of occupancy, a power of attorney to transfer an interest in real estate, any instrument of transfer of rights in real estate, succession to ownership of real estate via wills or letters of administration, encumbrances on the land such as mortgage, and compulsory acquisition or revocation of rights in real estate.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

It is the responsibility of the seller to have a clear, valid, and transferable title to the real estate to be sold to the purchaser. Where there is any defect in title or encumbrance on the property, same must be communicated to the purchaser. Notwithstanding the forgoing, it is the purchaser's duty to conduct proper due diligence on the property prior to conclusion of the transaction.

Though not a statutory obligation, it is advisable for a seller in a real estate transaction to disclose material facts relating to the property, especially where such facts may affect the decision of the purchaser. Such facts that should be disclosed include a defect in the seller's title, and any encumbrance on the property.

In addition to the above, the seller should refrain from making false or misleading representations to the purchaser as regards the seller's title or the condition of the real estate, as this could be ground for a claim for damages or even a recission of the contract by the purchaser.

Upon execution of the relevant purchase document and receipt of the consideration for the real estate, the seller has the responsibility to transfer title in the property to the purchaser. This also includes delivery of vacant possession of the property to the purchaser.

Further, the seller has the responsibility to pay any outstanding taxes, levies, and fees on the property, including capital gains tax on any chargeable gains accruing to the seller from the sale of the property.

Mortgages and other usual guarantees adopted in financing assets

Financing assets in Nigeria often requires the use of security instruments to ensure repayment of the loan amount and any applicable interest. Some common security instruments utilized in achieving this purpose include mortgages, charges, pledge, etc.

Mortgage: A mortgage is the transfer of proprietary interest in a property, usually real estate, from a borrower (mortgagor) to a lender (mortgagee) with the condition that the proprietary interest will revert to the borrower upon the full repayment of the debt. Where the mortgagor defaults in repayment of the loan amount, the mortgagee may recover the outstanding debt by selling the property. A mortgage could be a legal or equitable mortgage. Mortgages can be legal or equitable.

Pledge: A pledge is a transaction wherein the borrower delivers to the lender or a third party document evidencing his/her title to property for the purpose of securing a loan on the basis that the title documents will be returned upon repayment of the loan.

The characteristics of a pledge are provided below:

- It is used secure the performance of a principal obligation;
- The pledgor has complete ownership of the property pledged;
- The pledge is perfected by the delivery of the property pledged; and
- When the principal obligation becomes due, the things, which the pledge consists, may be alienated for the payment of the creditor.

Charge: A charge creates a security interest in a property in favor of the chargee, which can be enforced on the occurrence of specified events. In Nigeria, two types of charge can be created over real estate – a fixed charge and a floating charge.

Lease of assets and lease of business

A lease is an agreement between two parties (known as the lessor and lessee), by which the lessor transfers the right to use the asset within the agreed lease period to the lessee in exchange for consideration (rent) which could be money or money's worth. Under Nigerian laws, there is no distinction between lease of assets (residential premises) and lease of business (commercial) leases.

Leases exceeding three years must be by deed while leases less than three years which are usually called tenancy are not mandatorily required to be by deed. They can simply be in writing. The deed of lease must be signed, sealed, and delivered by the respective parties to the lease. Ordinary a lessee can sublet its interest in a lease save where the lease/tenancy agreement expressly prohibits same.

Various states have tenancy/recovery of premises laws which regulate lease transactions within the state. For a lease to be valid in Nigeria, there must be certainty as the juristic nature and capacity of the contracting parties, the property to be leased must be ascertained and in existence, the period of time (term) covered by the lease must be certain, the lessee must have possession of the leased property, and the lease document must be prepared and executed in accordance with the relevant law. For this purpose, it is advisable to seek the assistance of legal counsel.

Administrative permits applicable to construction or restructuring of assets

The construction or restructuring of assets in Nigeria will require compliance with certain permits issued by relevant authorities. One of such permits is building plan approval which is normally issued by the town planning authority of the relevant state where the construction or restructuring is to take place. The approval is required prior to

commencement of the construction/restructuring of the assets.

Certain state laws may also provide for the obtention of municipal permits prior to commencement of a construction/restructuring project. Obtaining permits is also in addition to compliance with local laws.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

One of major ESG legislations/rules/regulations governing real estate projects is the CFRN which requires the state to protect and improve the environment and safeguard the water, air and land, forest, and wildlife of Nigeria as part of the state's environmental objective.

The National Environmental Standards and Regulation Enforcement Agency (Establishment) Act 2007 (NESREA Act) provides for the protection and sustainable development of the environment and its natural resources. The NESREA Act empowers the National Environmental Standards and Regulation Enforcement Agency (NESREA) to ensure compliance with environmental laws, both local and international, and provide measures aimed at preventing environmental pollution. Section 8 of the NESREA Act also empowers NESREA to make regulations on air and water quality, and the control of harmful substances and other forms of environmental pollution and sanitation.

With regards to the construction of certain real estate projects, the Environmental Impact Assessment Act 1992 mandates that an Environmental Impact Assessment (EIA) be carried out to assess the potential impact of a proposed project on the environment. The assessment applies to both public and private activities. An EIA report is usually required as part of the documents to be submitted in applying for regulatory approval of certain projects.

Direct taxes applicable to sales

Sale of real estate in Nigeria has both direct and indirect tax implications. The direct tax implication for such sale is capital gains tax (CGT) which is governed by the Capital Gains Tax Act, Cap C1, LFN 2004. CGT is levied on the gains accrued from the disposal of chargeable assets in Nigeria. The rate of CGT is 10% and real estate qualify as chargeable assets for the purpose of CGT.

Perfection/registration of title by the purchaser will also attract payment of stamp duties, consent fees and land registration fees.

Latest developments in Nigeria, and areas to focus on in the future:

- Membership of Real Estate Developers Association of Nigeria (REDAN) is now compulsory for all real estate companies in Nigeria.
- Pursuant to the Economic and Financial Crimes Commission (Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing of Weapons of Mass Destruction for Designated Non-Financial Businesses and Professions, and Other Related Matters) Regulations, 2024, dealers in real estate, estate developers, estate agents and brokers are now required to register with the Special Control Unit against Money Laundering (SCUML). One of the requirements for registration with SCUML is the presentation of a REDAN certificate. Thus, real estate companies are now required to obtain REDAN membership and certification to be able to obtain SCUML registration.

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Real Estate Law in Norway

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Overview of the Norwegian Legal System

General introduction to the main laws that govern the acquisition of assets in Norway

The purchase of real estate is regulated by the Norwegian Alienation Act, while the purchase of shares of a property single-purpose vehicle (SPV) is regulated by the Norwegian Sale of Goods Act. As most commercial property is held through separate limited liability companies, the distinction is important. This duality has raised certain questions in the past regarding the buyer's entitlement to seek compensation for property defects when the formal object of purchase has been shares. The Alienation Act is also fairly consumer-oriented; thus, a commercial real estate transaction will normally be regulated by a customized standard agreement to cover both the aforementioned duality and the professional business aspects of the transaction. Almost all commercial real estate transactions in Norway are sold according to such a standard contract. Various standards are on the market, with the Norwegian Business Real Estate Brokers Association prevailing today, although it is considered somewhat lenient towards the interests of the seller.

All commercial and residential leases are governed by the Tenancy Act. The Act applies to all agreements relating to the right to use a property in return for remuneration, with the exception of ground lease agreements, which are governed by the Ground Lease Act. In the case of renting business premises, lease agreements may deviate from the provisions of the Tenancy Act.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Nearly all commercial real estate is held through separate limited liability companies, with each company functioning as a single-purpose vehicle (SPV) for the property in question, and such SPVs typically owned by a limited liability company in a holding structure. The main drivers for these structures are tax regulation and, to some extent, stamp duty.

Investments in the Norwegian real estate sector are therefore mainly carried out through the acquisition of shares of property SPVs or property portfolios consisting of SPVs (in whole or in part), or through professionally managed funds.

The real estate ownership normally pertains to both the building and the plot of land, upon which the building is standing. However, ownership may be split between the building and the land upon the establishment of a ground lease agreement with a duration exceeding 10 years (typically 99 years for commercial real estate). Due to economic reasons, including stamp duty, some properties are also owned separately from the property title, with such title being held elsewhere in the corporate structure. However, this requires particular attention during the purchase to ensure legal protection.

All acquisitions of real estate ownership rights as well as the right of usage are conditioned upon the applicable concession from the authorities. Exceptions only apply to commercial condominiums within joint housing ownership.

However, there are no practical limitations on foreign investment in and ownership of Norwegian real estate, except for farmland and some important exceptions within the industry and energy sectors (waterfalls, etc.).

The most important acts limiting acquisition and ownership of real estate are the Norwegian Concession Act and the Act on Acquisition of Waterfalls, Mines, and other Real Estate. In effect, the Norwegian Competition Act will also limit acquisitions of companies in possible violation of Norwegian and European Union (EU) competition and antitrust legislation. A concession is normally not necessary for the acquisition of SPVs that already have obtained a concession; direct acquisitions of developed property when the plot of land is no larger than 100,000 square meters; or acquisitions of undeveloped land for the construction of a permanent residence or holiday home on plots of land no larger than 2,000 square meters.

Notary role in the real estate transactions

There are no notaries public in Norway and no roles in transactions.

Real estate registry system

Norwegian properties are registered in a land registry maintained and operated by the Norwegian Mapping Authority, which is the judicial authority for properties in Norway. The land registry is the official register of legal rights and obligations associated with fixed property and housing cooperatives. The land registry lists ownership in addition to rights and encumbrances such as mortgages, leasing rights and pre-emptive purchasing rights.

Registration may still be conducted by original paper-based documents sent by post; however, an increasing number of registrations are today done digitally. Details of the physical aspects relating to a property, such as borders, areas, buildings, and addresses, are registered in the cadaster property register, which is maintained by the different municipalities.

In Norway, there is no requirement to register property ownership in the land registry. Consequently, the registered owner may not necessarily be the actual owner of the property. However, recent discussions have centered on the potential introduction of a registration requirement, particularly for security reasons. As a result, a change in this area is possible.

As mentioned, failure to register ownership of property, rights, encumbrances, etc., does not alter the underlying legal situation between the original contractual parties. However, a third party may in good faith extinguish all rights, including ownership rights that are not registered prior to the time of the colliding right of the third party. Registration of a transfer of title in the land registry is therefore the only way to obtain legal protection against third parties.

No notary public is involved during the registration process. Registration of a change of ownership to a property by the Norwegian Mapping Authority is subject to 2.5% stamp duty based on the market value of the property. This does not apply to the sale of companies that own the property, as the direct ownership of the property itself does not formally change. Exceptions are also made for the first transfer of newly built properties, where the 2.5% stamp duty applies only to the appropriate ground value. The sale of real property or shares is not subject to VAT. This implies that input VAT on building costs is not deductible when the purpose is to transfer the property after completion. However, some exceptions exist where the property is built with the purpose of letting out. The authorities do not hold a similar register for the purchase of shares. The transfer of shares is registered in a register of shareholders operated by the company itself (private limited companies) or by the Norwegian Electronic Securities Register (mandatory for public limited companies, opt-in available for private limited companies). Access to the register of shareholders must be given to all who request it, so anyone may review who owns the shares of a limited company.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

The seller's contractual representations and warranties are normally limited to direct loss and with a basket amount regulation and maximum cap equivalent to 10% of the

purchase price. The standard warranties of the seller in the most commonly used standard form contracts regarding purchase of SPV companies are that:

- The company owns the property and holds title thereto;
- The company holds full and unrestricted title to all assets entered on the balance sheet;
- The company holds no other types of assets than those set out on the balance sheet;
- The company has no debts or other financial liabilities apart from those set out in the balance sheet and in the agreements disclosed to the buyer in connection with the conclusion of this contract, hereunder tax liabilities of any type;
- The financial statements of the company are correct and based on generally agreed accounting principles;
- The company is in possession of the documentation required under applicable value added tax (VAT) provisions for the acquisition/production and use of capital goods;
- The information in the adjustment specification (for VAT), is complete and correct;
- The company has not rendered any guarantee or furnished any security for the benefit of the liabilities of any third party;
- The company has no employees, and no pension obligations as against the seller or anyone else;
- The company is not party to any legal proceedings or other legal dispute;
- The seller holds, as per the transfer of ownership, full and unrestricted title to the shares;
- The share capital of the company is fully paid up;
- The shares are transferred free of any encumbrances of any type, and that the shares are not subject to any rights of first refusal or other preemptive rights;
- No distributions on the shares, or other wholly or partly gratuitous transfers, to shareholders or anyone else, have been resolved, other than those reflected in the balance sheet;
- No rights relating to the shares (hereunder dividend rights, pre-emptive rights, etc.) have been separated from the shares;
- The activities of the company will, during the period from signing the contract until closing, be pursued in the customary manner, hereunder that no material agreements will be concluded, terminated for breach, amended, or terminated without cause, and that, during the same period, no other decisions of material importance to the company will be made without the written consent of the purchaser;
- The encumbrance situation of the property will be as set out an appendix;
- The property is leased as stated in an appendix;
- The seller is not aware of any claims or rights that limit the use or utilization of the property beyond what follows from the land titles and land charges of the property or the zoning plan and zoning regulations applicable to the property and the entries recorded in respect of the property; and
- The seller is not aware of the existence of any written order, etc., from government authorities in relation to the property that has not be complied with, paid or similar.

Mortgages and other usual guarantees adopted in financing assets

Properties may be encumbered with mortgages as well as other types of securities, based on a first-come, first-served principle with no upper limit. Properties are generally also considered as stable collateral for other financial purposes and are therefore widely used for financing bank loans and similar. Even though there is a general prohibition against using the assets in a target company as security for a loan that enables the acquisition of the target company, there is a narrow exemption with regards to using the property as security in SPV transactions.

As with the protection of the title to the property, unregistered loans or other types of agreed securities will not have any effect against third parties that have registered their security in good faith prior to the unregistered security. Two other common forms of securities are the "urådighetserklæring" and the "sikringspant." The first, which can be loosely translated as a declaration of non-disposal, is a catch-all encumbrance that prohibits anyone deleting or registering any security, mortgage, or lien, or selling the property, without the written approval of the right holder. The latter is a normal

mortgage, but with the sole function of securing all liabilities that may arise during the course of a transaction.

Lease of assets and lease of business premises

Based on the prevailing Norwegian lease standards, the three most common contract types regarding leases of business premises are:

- As is: The tenant rents the business premises as they are presented at the time of the contract or takeover and accepts all non-material defects. The tenant will be responsible for indoor maintenance, whereas the lessor assumes responsibility for the maintenance of the exterior of the building as well as the replacement of technical installations (lifts, air conditioning systems, etc.). The lessor must accept normal wear and tear during the lease period (i.e., the general deterioration of the lease object due to normal usage by the tenant). Thus, the tenant is only responsible for lack of maintenance and any damage caused to the lease object that arises during the lease term. The lessor is responsible for maintenance of the common areas, such maintenance being a part of the joint costs paid by all tenants;
- As built/as new: The tenant rents business premises that are new and often built to the particular specifications of the tenant. All defects or deviations from the specification are subject to complaint by the tenant; in all other ways, as above; and
- Bare house: As above, but the lessor typically rents the entire building structure for a long period and will thus assume the entire responsibility of the building, including insurance, all maintenance, and replacements.

The typical commercial lease term will be for a fixed period of between of five and 10 years; however, certain commercial properties are also rented out on a short- or mid-term basis. In many cases, long-term agreements have an option for the tenant to extend the lease, normally for no longer than 10 years (five plus five years), under the same legal terms and conditions but at a renegotiated price (at the market level) for each prolongation term.

Lease agreements may be terminable or non-terminable during the fixed lease period; they may also be agreed to have an undefined term, but typically with a requirement of six to 12 months' prior notice of termination.

Rent is normally agreed as a fixed sum per square meter per year, exclusive of the proportional part of the joint costs of the property and applicable VAT. The lease for retail property is often set as a percentage of turnover. The tenant must also pay all costs that relate to own usage of power, insurance of its own business, normal indoors maintenance and repairs. In 'as is' and 'as new' leases, the lessor is required to insure the building and replace all technical installations when maintenance is no longer remunerative. The tenant must normally accept all actions by the lessor that are necessary for the maintenance and renewal during the lease period. If such actions affect the lease materially, the tenant may claim damages or a discount on the lease.

Prior to the commencement of the lease, the tenant must normally issue a bank guarantee equal to three to 12 months' rent, or deposit into a deposit account as security for any unpaid rent or other claims the lessor may have against the tenant. The rent is typically adjusted yearly to accord with the general consumer price index. The parties will often agree that the rent may not be reduced.

Normally, the tenant may not hold back or offset their rent obligations against claims they have against the lessor. If these claims are not honored by the lessor, the tenant must take out separate legal proceedings to have their claim covered. Subletting and transfer rights normally require the prior written approval of the lessor, subject either to reasonable cause or without reason. However, the tenant may normally transfer the agreement, or sublet within a structure of companies, as long as the guarantee is upheld, and the solvency and solidity of the final tenant is not reduced.

Administrative permits applicable to construction or restructuring of assets

The Norwegian Planning and Building Act contains detailed regulations related to planning on the national, regional, and local levels. Further requirements for dispensation and exemption applications and regulations related to

responsibility, control, and supervision during the construction phase, as well as the main requirements during the completion and approval phase. In addition, the Act also regulates landowners' general rights to compensation due to the compulsory acquisition by the authorities for planning purposes or by direct claim of public ownership (expropriation).

As a rule, planning is organized as a top-down system, so that no plan at a lower (more local) level may be in conflict with plans higher in the hierarchy. Planning is generally a continuous and sector-dependent process at all governmental levels. As an example, the latest revision of the national transport plan influences regional zone planning, which again may have consequences for the approval or refusal of local construction projects that appear to be in line with current plans. A plan may also be objected to by any party directly affected by the plan, as well as being subject to overriding sector-specific public concerns. Thus, ratifying plans is considered a complex affair.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

Polluted environmental considerations have occupied a considerably large place in Norwegian legislation over the past few decades and are particularly visible in the planning and approval stages of property development projects. Environmental warranties have also found their way into most business real estate transactions. The Norwegian Pollution Act stipulates that the main responsibility for pollution damage rests on anyone that "operates, uses or holds" any real estate, object, plant, or business without regard to culpa. As a starting point, this would normally be the owner. In cases where the owner and the operator of the property are not the same, the owner may be jointly liable with the operator (as the polluter), for example, if such owner is liable according to the Norwegian Neighbor Act.

Pollution liability in Norway is built upon the international "polluter pays" principle. This means that the polluter must not only cover all reparative and preventive costs, but also the social costs that such pollution results in for society.

Over the past few years, several regulations related to ESG have come into force, impacting the real estate sector. Initially, the regulations primarily apply to large, publicly listed companies and financial institutions. However, requirements related to climate and the environment are constantly evolving and will become stricter in the future to enable society to fulfil the Paris Agreement. The scope of the regulations is expanding, and it is expected to eventually apply to a large number of companies. As all financial institutions are subject to the legislation, this will also directly affect the real estate industry.

Key legal requirements include:

- The Transparency Act, which requires large companies to account for the measures they have in place to ensure human rights and decent working conditions within their own operations, supply chain, and among business partners. Large companies are those covered by the Accounting Act § 1-5 or meet two of the following three criteria:
    - Sales revenue: NOK 70 million;
    - Balance sheet total: NOK 35 million; or
    - Average number of full-time equivalents in the financial year: 50.
- TEK17, which imposes requirements for climate adaptation, energy, health and environmentally hazardous substances in building products, soil contamination, biodiversity, handling of construction and demolition waste, and particle emissions. New climate requirements are anticipated;
- The Working Environment Act, which sets requirements for a good working environment, safe and fair employment conditions, an inclusive working life, and cooperation between the parties in the labor market;
- The Gender Equality and Anti-Discrimination Act, which includes an obligation to report on activities, requiring companies to report on:
    - The actual state of gender equality in the business; and
    - The efforts the business has made to fulfil the activity obligation. The obligation applies, among others, to companies with 50 employees or more, or with 20 employees or more if demanded by one of the parties in the labor market;

- EU Taxonomy, which is a common system to define which economic activities are "sustainable" in the EU, including within the real estate sector, for example, construction of new buildings, purchase and ownership of property, and renovation of existing buildings. The Taxonomy has now been introduced in Norway, and initially, publicly listed companies with over 500 employees, as well as all banks and insurance companies, are required to report. From the financial year 2023, they must include information in their annual reports on the extent to which their business satisfies the Taxonomy criteria. It can be expected that more companies will have to report over time.
- Many banks, investors, and insurance companies use the Taxonomy to determine which activities to lend to, invest in, or insure. This allows them to obtain more favorable terms in the European capital market if they choose activities that meet the Taxonomy criteria. As demands from the market and authorities shift towards a greener direction, banks, investors, and insurance companies see that it may involve high risk to lend to, invest in, or insure "grey buildings" or "grey facilities". Initially, better conditions are provided for green buildings, but in the future, Taxonomy requirements could become an absolute requirement to obtain financing and insurance.
- Corporate Sustainability Reporting Directive (CSRD), which also applies to sustainability reporting and imposes greater requirements for measurement and transparency by companies. The directive has been implemented in Norway for the financial year. The regulations standardize and normalize the information provided by companies, and trust in this information becomes more important. CSRD requires the report to be assured by an independent party, and this will strengthen credibility and reduce the risk of greenwashing.

Direct taxes applicable to sales

Capital gains tax at 22% is due when real estate is sold as an asset, in addition to 2.5% stamp duty to register the deeds. Commercial real estate is usually sold as shares in SPV which is tax exempt.

The leasing of real property is exempt without credit for VAT purposes. It is, however, possible to opt for a voluntary registration for VAT purposes for the leasing of real property to VAT liable businesses, municipalities, and counties. Consequently, it is not possible to opt for a VAT registration when renting to tenants that only conduct business that falls outside the scope of the VAT acts (state governmental bodies, healthcare, financial institutions, etc.). A consequence of voluntary registration is that the lessor may deduct input VAT on the building costs, maintenance, etc., and at the same time invoice the rent and other supplies with VAT. The VAT adjustment scheme applies for input VAT on the building costs (capital expenditure) of real property. The adjustment period is 10 years, implying that the real property must be used in a taxable business for this period in order to avoid repayment of deducted VAT.

Latest developments in Norway, and areas to focus on in the future:

- The energy nation Norway has a solid economy and one of Europe's highest GDP per capita. As of August 2024, the Norwegian Oil Fund is worth 1200 in excess of 1 500 billion Euros, which corresponds to more than 3 times Norway's GDP.
- Strong rental growth in both the office and logistics & industrial.
- Segments in the wake of the pandemic, reflecting both strong demand and high construction and financing costs – pushing up rents for new-builds. However, the occupier demand in the office market has recently slowed somewhat, while construction costs remain high.
- Norwegian office workers are to a large degree back in the office and the percentage of people working from home is lower than in many comparable European countries.
- The office segment has historically been the largest segment in terms of transaction volume, and we expect this to continue.
- The Oslo region is growing has 1.5 million inhabitants. as of January 2024. The population is projected to increase by 10 to 15% by 2040.

Norway an attractive CRE market

Norway's CRE market remains a liquid one and which has become increasingly professionalized over the past couple of decades. Strong fundamentals, such as political stability, sound government finances, and a well-functioning transaction market makes Norway an attractive market for international investors. However, some international investors not currently present in the Norwegian market have noted some worries about the CRE market. The local currency introduces FX risks, and Norwegian investors' grip on the market have made some international investors worried about the market liquidity. Overall, the Norwegian market remains attractive to international capital, and we expect this to continue.

Transaction market to normalize

As investors are adjusting to the higher interest rates and the gap between sellers and buyers narrows, we are likely to see a normalization of the transaction market. 2023 was a slow year with low transaction volumes, but in 2024 activity is picking up. We expect investor capital that traditionally have been active will return to the market and increase the transaction activity. International investors have shifted their focus away from offices and towards other segments, where particularly logistics have been attractive. This must be viewed in connection with the high vacancy rates and large drops in value for office properties in several US and some European cities. Norwegian investors still seem to view office as an attractive segment, reflecting the relatively limited impact of WFH on office occupier demand in Norway.

Preparing for the EU taxonomy
The EU taxonomy will have a significant impact on whether a new construction project, rehabilitation, or acquisition of property is to be classified as "green." The taxonomy is highly relevant for both new and existing CRE investors in the Norwegian market as there is an increasing focus on sustainability and social responsibility among investors, property owners, banks, and tenants. New reporting requirements will further increase both landlords' and tenants' focus on sustainability.

High construction costs driving office rental growth
Due to a rapid rise in construction costs and higher yields caused by rising interest rates, new construction activity in Oslo's fringe office areas have become unprofitable, given today's market rents. This entails a strained supply side, which in isolation puts upward pressure on rents. For the gap between market rents and the rental requirements for new-builds to close, we believe either rents must increase, or yields must decrease – or a combination of the two. With this in mind, we believe that office rental growth for new-builds and refurbished premises in the city center will be strong over the next couple of years.

By Anne Bruun-Olsen, Senior Partner of Cushman & Wakefield

Real Estate Law in Poland

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Overview of the Polish Legal System

General introduction to the main laws that govern the acquisition of assets in Poland – real estate rights

The Constitution of the Republic of Poland, which sets out the fundamental rights of the state, includes in its constitutional protection the right to property, the right to other property rights, and the right to inheritance. The right to property may be restricted only by law and only to the extent that it does not violate the essence of the right to property. The right to property is enjoyed by everyone, i.e., by natural persons irrespective of their nationality and by legal persons under private law, including commercial companies and housing cooperatives.

The fundamental legal act regulating real estate law including the acquisition of assets in Poland is the Act of 23 April 1964 – the Civil Code (Journal of Laws of 2024, No. 1061) (in Polish: Kodeks Cywilny). Among other things, it contains, the general definition of real estate and agricultural real estate, which is the basis for further interpretation of specific provisions. According to Article 46 of the Civil Code, real estate is a part of the surface of the ground constituting a separate object of ownership (land), as well as buildings permanently connected to the ground or parts of such buildings, if they constitute a separate object of ownership from the ground in accordance with specific provisions. On the other hand, according to Article 46^1 of the Civil Code, agricultural real estate (agricultural land) is real estate that is used or can be used for agricultural production activities in the field of plant and animal production, with the exception of horticulture, fruit, and fish production.
A special form of property rights in Poland is the perpetual usufruct. Land owned by the State Treasury and located within the administrative boundaries of cities and towns, as well as land owned by the State Treasury and located outside these boundaries but included in the city's spatial development plan and transferred for the performance of city management tasks, and land owned by local government units or their associations, may be transferred to natural and legal persons for perpetual usufruct. The usufructuary may use the land to the exclusion of other persons within the limits established by the laws and principles of social coexistence and by the agreement to lease the land to the State Treasury or to local government units or their associations for perpetual usufruct. Within the same limits, the perpetual usufructuary may dispose of his rights. The provisions on the transfer of ownership of real estate apply mutatis mutandis to the transfer of land for perpetual usufruct to the State Treasury or to local government units or associations thereof. A special feature of the right of perpetual usufruct is that buildings and other facilities erected by the perpetual usufructuary on land owned by the State Treasury or land owned by local government units or associations thereof are his property. The same applies to buildings and other structures acquired by the perpetual usufructuary in accordance with the relevant regulations when concluding a perpetual usufruct lease agreement. Land owned by the State Treasury or by local government units or their associations shall be leased in perpetual usufruct for a period of 99 years. In exceptional cases where the economic purpose of the perpetual usufruct does not require the land to be leased for 99 years, it may be leased for a shorter period, but not less than 40 years. During the last five years before the expiry of the term provided for in the agreement, the perpetual usufructuary may request an extension for a further period of between 40 and 99 years; however, the perpetual usufructuary may request such an extension earlier if the period of depreciation of the intended expenditure on the land used is significantly longer than the time remaining before the expiry of the term provided for in the agreement. The extension may be refused only on grounds of important public interest. An agreement to

extend the perpetual usufruct should be concluded in the form of a notarial deed. The perpetual usufructuary must pay an annual fee for the duration of his right. An agreement for the transfer of land to the State Treasury or of land belonging to local government units or their associations for perpetual usufruct may be terminated before the expiry of the term specified therein if the perpetual usufructuary uses the land in a manner clearly incompatible with the purpose specified in the agreement, in particular if, contrary to the agreement, the usufructuary fails to erect the buildings or installations specified therein.

In the Polish legal system, there is also an institution of limited rights in rem, which are: usufruct, easement, pledge, co-ownership of premises and mortgage.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

The basic forms of transfer of ownership are:

- Sale and Purchase Agreement;
- Exchange Agreement (Umowa Zamiany);
- Donation Agreement (Umowa Darowizny);
- Real Estate Transfer Agreement; or
- Any other agreement obliging the transfer of ownership of the object specified as to identity.

The transfer of ownership of the real estate may not be subject to any conditions or time limits.

In the Polish legal system, it is possible to acquire ownership of real estate by means of a prescription. This means that a holder of real estate who is not the owner of the real estate acquires the ownership of the real estate if he/she has held the real estate for 20 years without interruption as a spontaneous possessor unless he/she has acquired the ownership in bad faith. After 30 years, the owner of the real estate acquires the ownership of the real estate, even if he or she acquired the ownership in bad faith.

In the case of sale of real estate in Poland, in some circumstances there may be a reservation of the right of pre-emption, which may apply to certain land, e.g., forests, agricultural land, in favor of certain entities such as the State Treasury, local government units, a person engaged in agricultural activity. The property to which the right of pre-emption applies may be sold to a third party only on condition that the person entitled to the right of pre-emption does not exercise it. The right of pre-emption shall be exercised by notice to the debtor. If the conclusion of a sale and purchase agreement of the real estate to which the right of pre-emption applies requires the use of a particular form, the declaration of the exercise of the right of pre-emption shall be made in the same form.

Pre-emption provisions have been included in various acts in Poland, examples of which are listed below:

Civil Code

If a co-owner of an agricultural property sells his co-ownership share or part of it, the other co-owners have the pre-emptive right if they operate an agricultural holding on common land. However, this does not apply if the co-owner who also manages an agricultural holding sells his share property together with that holding or if the purchaser is another co-owner or a person who would inherit the holding from the seller.

The Property Management Act of 21 August 1997 (Journal of Laws of 2024, No. 1145)

The municipality has the pre-emption right of first refusal on the sale of, inter alia, properties listed in the Register of Historic Buildings or the right of perpetual usufruct of such properties.

The Revitalization Act of 9 October 2015 (Journal of Laws of 2024, No. 278):

The Municipal Council may establish the pre-emptive right for the benefit of the municipality to purchase real estate properties located within the revitalization area or the designated as revitalization sub-areas.

The Forest Act of 28 September 1991 (Journal of Laws of 2024, No. 530):

In the case of the sale by a natural person, a legal person, or an organizational unit without legal personality, to which legal capacity has been conferred by law, of land not owned by the State Treasury which is:

- Registered as forest in the land and buildings register;
- Designated for afforestation in accordance with the local spatial development plan or the decision on the conditions for land development; or
- Covered by a simplified forest management plan or a decision of the district governor on forest inventory

The State Treasury, represented by the State Forests, has a pre-emptive right by law to purchase such land.

Act on Formation of the Agricultural System of 11 April 2003 (Journal of Laws of 2024, No. 423):

- In the case of the sale of agricultural real estate, the right of pre-emption of the lessee (dzierżawca) is granted by law if:
- The lease is made in writing, has a fixed date and has been exercised for at least three years from that date; and
- The agricultural real estate acquired is part of the family holding of the lessee.

In the absence of a person entitled to pre-emption or in the event of failure to exercise the right of pre-emption, the right of pre-emption shall be vested by law in the National Agricultural Support Centre (Krajowy Ośrodek Wsparcia Rolnictwa), acting on behalf of the State Treasury. Where the right of pre-emption of agricultural real estate is vested by law in several entities, the National Agricultural Support Centre acting on behalf of the State Treasury, shall have priority in the exercise of the right of pre-emption, except for the priority by law of another entitled person acting on behalf of the State Treasury.

There are also restrictions on the acquisition of real estate by foreigners in Poland. According to the provisions of the Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners (Journal of Laws of 2017, No. 2278): The acquisition of real estate by a foreigner requires a permit. The permit is issued by administrative decision by the Minister of the Interior if the Minister of National Defence does not object and, in the case of agricultural property, if the Minister of Rural Development does not object.

A foreigner within the meaning of the Act is:

- A natural person who is not a Polish citizen;
- A legal entity domiciled abroad;
- An unincorporated association of the above-mentioned persons with its registered office abroad, established in accordance with the legislation of a foreign country; or
- Legal entities and unincorporated commercial companies having their registered office in the Republic of Poland and directly or indirectly controlled by persons or companies listed in the above points.

The acquisition of real estate by a foreigner in violation of the law is void.

Real estate registry system

There are two main property registers in Poland, which are:

- Land and Mortgage Register (księgi wieczyste); and
- Land and Building Register (ewidencja gruntów i budynków).

Land and Mortgage Registers were systematized in the Act of 6 July 1982 on Land and Mortgage Registers (Journal of Laws of 2023, No 1984). Pursuant to the Act, land and mortgage registers are kept for the purpose of establishing the legal status of real estate and may also be kept for the purpose of establishing the legal status of cooperative ownership of premises. Land and Mortgage Registers are open to the public.

A very important principle in the Polish legal system is the presumption of conformity of the Land and Mortgage Register with the actual legal status. In the event of a discrepancy between the legal status of a real property recorded in the Land and Mortgage Register and the actual legal status, the contents of the Register are resolved in favor of the person who acquired the property or other real right through a legal transaction with a person entitled to do so according to the contents of the Register; this institution is called the guarantee of public credibility of the Land and Mortgage Register (rękojmia wiary publicznej ksiąg wieczystych). The guarantee of the public credibility of the land and mortgage registers does not protect dispositions made free of charge or to a purchaser acting in bad faith. The guarantee of the public credibility of the land and mortgage register is excluded by a reference to

an application, a complaint against a decision of a court registrar, an appeal or a cassation appeal and a warning regarding the discrepancy between the legal status recorded in the land and mortgage register and the actual legal status of a property. In addition to rights in rem, the Real Estate and Mortgage Register may also show personal rights and claims, such as: the right of lease or tenancy, the right of pre-emption, the right of life, the right to transfer ownership of real estate or perpetual usufruct or to establish a limited right in rem.

The Land and Mortgage Register is divided into four sections:

- The first contains the description of the real estate and the entries of rights relating to its ownership;
- The second contains entries relating to ownership and perpetual usufruct;
- The third is intended for entries relating to restricted rights in rem, with the exception of mortgages, for entries relating to restrictions on the disposal of real property or perpetual usufruct and for entries relating to other rights and claims, with the exception of claims relating to mortgages; and
- The fourth is for entries concerning mortgages.

Land and Mortgage Registers are created and maintained in the ICT system. The basis for the registration of real estate in the Land and Mortgage Register is the data from the Land and Building Register.

The Land and Building Register is regulated by the Act of 17 May 1989. Geodetic and Cartographic Law (Journal of Laws of 2024, No 1151).

The Land and Building Register contains information on:

- Land - its location, boundaries, area, types of land use and their qualification classes, references to land registers or sets of documents if they have been established for the real estate on which the land is situated;
- Buildings - their location, use, function, and general technical data; and
- Premises - their location, utility functions and area.

The data contained in the cadastre form the basis for economic planning, spatial planning, tax and benefit assessment, cadastral designations, public statistics, real estate management and the farm register. The cadastre covers the territory of the Republic of Poland with the exception of the territorial sea.

The surface units of country subdivision for the purposes of records are:

- Evidential unit (jednostka ewidencyjna);
- Evidential district (obręb ewidencyjny); and
- Cadastral plot (działka ewidencyjna).

The evidential unit is the area of the municipality. In the case of urban-rural municipalities, two registration units are established - one for the urban area and one for the rural part of the municipality. In cities where there are separate districts or delegations, the evidential unit may be the area of the district or delegation. The evidential unit is divided into evidential districts. In rural areas, an evidential district may comprise the whole village with its adjacent physiographic objects or a separate part of it. In urban areas, an evidential district may comprise the whole town or a delimited part of it. A cadastral parcel is a contiguous area of land within a cadastral district, legally homogeneous and separated from its surroundings by the boundaries of cadastral parcels. Within the cadastral district, a cadastral parcel is identified by its number, which is a natural number.

The land uses shown in the records are divided into the following groups

- Agricultural land;
- Forest and wooded land;
- Built-up and urbanized land;
- Land under water; and
- Other land.

Data from the cadastral database is visualized in the form of a cadastral map.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

Representations and warranties are widely used in Polish legal transactions. They constitute a form of declaration of

will which creates contractual obligations between the parties, and their breach gives rise to contractual liability in accordance with the general principles of the Civil Code. It is important to remember that they are added to a contract by the will of the parties. The Polish legal system does not regulate representations and warranties; however, due to the fact that Polish law applies the principle of freedom of contract, the parties themselves may decide to include them in the contract in order to secure their interests and the distribution of risks. For this purpose, it is appropriate for the parties to seek assistance from attorneys specialized in the field.

The basic representations that are likely to be included in any contract are representations as to the person of the seller and the seller's ability to enter into the sale agreement. Such representations might include, for example, that the seller has received all necessary approvals from the company's bodies to dispose of the shares; that no bankruptcy or other reorganization proceedings have been commenced against the seller.

Other representations and warranties made by the vendor include matters relating to the legal status of the property itself. These usually arise after due diligence has been carried out on the real estate. Examples of such representations are those relating to the accuracy of the acquisition of title to the property, the determination of the absence of third party rights or claims and the access of the property to a public road.

The seller's assurances regarding the quality of the goods affect the warranty for defects in the goods sold, which is established in the Polish legal system. This defect consists in the fact that the sold item does not comply with the agreement, in particular:

- It does not have the characteristics that such an object should have in view of the purpose specified in the contract or as a result of the circumstances or intended use;
- Does not have the qualities which the seller has assured the buyer of, including by way of a sample or model;
- Is not fit for the purpose stated by the buyer to the seller at the time of the conclusion of the contract and the seller has not expressed any reservations as to that purpose; or
- Has been delivered to the buyer in an incomplete condition.

The seller is exempt from liability under the warranty if the buyer was aware of the defect at the time the contract was concluded. If the goods sold have a defect, the buyer may reduce the price or rescind the contract, unless the seller immediately and without undue inconvenience to the buyer replaces the defective goods with non-defective goods or remedies the defect. This restriction shall not apply if the goods have already been replaced or repaired by the seller or if the seller has failed to comply with its obligation to replace the goods or remedy the defect.

In this context, it is important to emphasize the importance of due diligence report, because the more accurate the seller's representations about the real estate being sold, the greater the extent of the seller's liability for its defects, since the moment there is a misrepresentation, the seller's liability is triggered.

Mortgages and other usual guarantees adopted in financing assets

The basic rules governing mortgages are set out in the Act of 6 July 1982 on land registers and mortgages (Journal of Laws of 2023, No. 1984).

A mortgage is a limited right in rem. A mortgage requires registration in the Land and Mortgage Register and is entered in Section IV of the Land and Mortgage Register. It is recorded in Section IV of the Land and Mortgage Register. It is created to secure a specific claim arising from a specific legal relationship; a property may be encumbered with a right under which a creditor may seek satisfaction from the real estate irrespective of who has become the owner and with priority over the personal creditors of the real estate owner.

The subject of the mortgage may also be:

- Perpetual usufruct together with the buildings and installations on the land in use owned by the perpetual usufructuary;
- Co-ownership of premises (spółdzielcze własnościowe prawo do lokalu); and
- Debts secured by a mortgage.

A mortgage secures a monetary claim, including a future claim. A mortgage secures a claim up to a certain amount of money. If the mortgage is too large, the owner of the mortgaged property can ask for the mortgage to be reduced. A contractual mortgage can also secure several claims from different legal relationships to the same creditor. A mortgage secures claims for interest and awarded legal costs up to the amount of the mortgage, as well as other claims for incidental benefits, if they are mentioned in the document that forms the basis for the registration of the mortgage in the Land Register. The mortgagor may claim satisfaction from the mortgaged property, notwithstanding the limitation of the debtor's liability under the law of succession.

A mortgage on real estate also encumbers its appurtenances. The appurtenances to the real estate are subject to the mortgage even after they have been removed, as long as they remain on the real estate, unless they have been disposed of in accordance with the principles of sound management and the contract of disposal is evidenced by a written document with an officially certified date. The mortgage covers the owner's right to rent, but until the property is repossessed by the mortgagor, the owner may collect the rent.

The extinguishment of a claim secured by a mortgage result in the extinguishment of the mortgage, unless further secured claims arise in the future from the legal relationship in question.

In addition, pledges are also a common form of security in real estate financing. In Poland, there are various types of pledges, such as a pledge on goods or a pledge on rights, and there is also a special form of pledge, namely a registered pledge. It should be noted, however, that real estate as such cannot be pledged.

Lease of assets and lease of business

A lease agreement or a tenancy agreement (umowa dzierżawy) is governed by the provisions of the Civil Code, but its content is mainly determined by the arrangements made between the entrepreneurs in the agreement. In accordance with the principle of freedom of contract, entrepreneurs are free to determine the terms of the legal relationship they enter into, as long as they do not contravene the principles of social coexistence or the law (for example, it is not possible to enter into a lease agreement for a specific object in order to use it to commit a crime). Under a lease agreement, the lessor (wydzierżawiający) undertakes to provide the lessee (dzierżawca) with an asset for use and benefit for a specified or unspecified period of time, and the lessee undertakes to pay the lessor the agreed rent. A lease may relate to a “goods” - this definition includes both movable and immovable property (e.g., business premises or a farm).

A special form of contract is provided for:

- An enterprise lease agreement (umowy dzierżawy przedsiębiorstwa) - the agreement should be made in writing with notarized signatures;
- A property lease for more than one year - the agreement should be made in writing; and
- An agricultural lease providing for a right of first refusal - the agreement should be made in writing with notarized signatures.

The agreement should contain additional provisions, for example on termination, penalties, damages, jurisdiction for disputes and post-contractual settlements.

The nature of a lease agreement (umowa najmu) and a tenancy agreement (umowa dzierżawy) is very similar, which is confirmed by the legislation itself - in matters not regulated by the Act, the provisions of a lease agreement apply to a tenancy agreement. In both cases, the entrepreneur leasing or renting the object is obliged to pay rent, but in the case of a lease, his rights under the concluded agreement are more extensive. The lessor has the right not only to use the thing, but also to receive benefits.

Please note that in the Polish legal system there are two types of contracts: lease and tenancy. The differences between them have been described above. Importantly, a tenancy (użytkowanie) in English is often translated as a lease. In this analysis we try to distinguish between the two by adding Polish translations.

A business can also be leased. This is not a typical solution, as a lease (dzierżawa) is usually for service premises or farms, but a business can be leased, for example, if an heir does not want to take over the running of the business. The lease of a business should be in writing with notarized signatures. If the business includes real estate a notarial deed is required. The fact that a business has been leased must be disclosed in the Business Register (KRS - ewidencja działalności gospodarczej). In the case of a lease of an enterprise, it is important that the subject matter of the lease be fully specified - a lease of an enterprise may include, for example, patents, concessions, and licenses necessary for the operation of the enterprise.

In the case of a lease (dzierżawy) of company assets, the assets of the company, e.g., machinery, equipment, stock, etc., are the subject of the lease. The lease agreement must specify the exact scope of the assets transferred and their value. If the company's assets are leased, the Accounting Act of 29 September 1994 Law (Journal of Laws of 2023, No. 120) requires the lessee to record the lease agreement in the accounts.

Administrative permits applicable to construction or restructuring of assets

The basic administrative decision issued in connection with the planned construction of an established project is the building permit. The regulation of the building permit is provided in the Act of 7 July 1994 Building Law (Journal of Laws of 2024, No. 725). According to the Act, a building permit is defined as an administrative decision authorizing the commencement and execution of construction or the performance of construction works other than the construction of a building. Construction work may be commenced only on the basis of a decision on a building permit issued by an architectural and construction administration authority. The law contains a closed catalogue of activities that do not require a building permit, but instead require a notification, and those that require neither a permit nor a notification. A building permit shall expire if construction has not commenced before the expiry of three years from the date on which the decision became final or construction has been interrupted for more than three years. A building permit may be transferred to a new developer if, inter alia, the developer attaches to the transfer application a declaration that he has taken over the conditions contained in the decision and the consent of the existing developer. The building permit can be issued after an environmental impact assessment has been carried out, if required, which leads us to the next necessary decision, the decision on environmental conditions.

The regulation of the environmental decision is provided in the Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments (Journal of Laws of 2024, No. 1112). A decision on environmental conditions specifies how the investment (project) is to be carried out in order to cause the least possible damage to the environment. It is issued after the authority has carried out an assessment of the project's impact on the environment and is required if the project is considered to have a significant impact on the environment. Projects that may have a significant impact on the environment are divided into those that may and those that may not:

- Always significantly affect the environment; and
- Potentially significant affect the environment.

For projects that are always likely to have significant effects on the environment, the authorities are required to carry out an environmental impact assessment. For projects that are likely to have a potentially significant effect on the environment, the authority to which you submit your application will decide whether to carry out an environmental impact assessment. In the environmental decision, the authority may include environmental requirements to be met by the developer.

Subsequently, if there is no valid zoning plan for the property in question, it is necessary to obtain a zoning decision, which is regulated by the Law of 27 March 2003 on Planning and Spatial Development (Journal of Laws of 2024, No. 1130). As a rule, the zoning decision is issued by the mayor or president of the city. The zoning decision

shall not create any rights over the land and shall not infringe the property rights and entitlements of third parties.

The zoning decision and the environmental decision must be obtained before applying for building permit.

As part of the investment process, it may also be necessary to obtain a decision to exclude land from agricultural production or permission to cut down trees. In some cases, it may also be necessary to obtain a water permit in accordance with the provisions of the Act of 20 July 2017. Water law (Journal of Laws of 2024, No. 1087). A water permit must be obtained, among other things, in the following cases: water services permit: abstraction of groundwater, discharge of sewage into water or land, special water use: use of water in ponds and ditches, land drainage.

The final approval that completes the investment process is a permit to use the constructed facility which is called the occupancy permit. Regulations concerning this decision are also included in the Building Act. This decision must be obtained before the facility can be used. The construction supervision authority issues a decision on the occupancy permit after a mandatory inspection. In the occupancy permit, the construction supervision authority may specify the conditions for the use of the object or make its use dependent on the completion of certain construction works within a specified period of time.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

The Corporate Sustainability Reporting Directive (CSRD) serves as the primary legal framework governing ESG reporting requirements in Poland, incorporating the obligations previously set forth under the Non-Financial Reporting Directive (NFRD).

Scope of application

The CSRD imposes reporting obligations on the following entities:

1. Listed entitles: Companies listed on regulated markets within the European Union (EU), including small and medium-sized enterprises (SMEs).
2. Threshold criteria: Companies that meet at least two of the following criteria:
   - Have a workforce of more than 250 employees;
   - Report a net turnover exceeding €40 million; or
   - Possess a balance sheet total exceeding €20 million.
3. Non-EU entities and EU presence: Entities incorporated outside the EU but operating with the EU that:
   - Generate a net turnover exceeding €150 million within the EU, and either have subsidiary companies within the scope of the CSRD or maintain a branch within the EU with an annual net turnover exceeding €40 million.

Exemptions: It should be noted that subsidiary entities may be exempted from the requirement to publish sustainability reports, if they satisfy specific conditions as prescribed under the CSRD.

- Implementation timeline for the CSRD
- 2025: Applies to entities covered by the NFRD and those meeting CSRD thresholds in 2024;
- 2026: Applies to all large companies; and
- 2027: Extends to all SMEs listed on regulated markets.

European Sustainability Reporting Standards (ESRS)

The ESRS are applicable to entities governed by the CSRD as detailed above. The ESRS are comprised of two principal sections:

1. ESRS 1 (General Requirements): Establishes the conceptual framework for reporting rules and definitions; and
2. ESRS 2 (General Disclosures): Outlines cross-sectional requirements for the disclosure of information, including aspects related to management and strategy.

Reporting process

1. Disclosure requirements: The ESRS delineate requirements for the location and presentation of disclosed information. The report must include four components:
   - General information (ESRS 2);

- Environmental information (ESRS E1);
- Social information (ESRS S1); and
- Governance information (ESRS G1).

2. Double materiality: Reports must adhere to the principles of double materiality, addressing both impact and financial aspects.
3. Assessment: Double materiality is assessed by identifying Impacts, Risks, and Opportunities (IROs), engaging stakeholders, and determining the relevance of IROs.
4. Documentation: Identification and documentation of material IROs.

Direct taxes applicable to sales

Tax rate and payment obligation: The real estate tax is imposed at a rate of 19% on the capital gain derived from the sale of real estate. The tax is payable by the end of April of the year following the year in which the sale occurred, and it must be calculated in accordance with the annual PIT-39 tax return.

Exemptions from tax liability: The seller may be exempt from the obligation to pay the real estate sale tax under the following conditions:

- The sale occurs more than five years after the acquisition of the property, with the five-year period commencing on 1 January of the year following the acquisition;
- The proceeds from the sale are allocated towards the seller's personal housing purposes within three years from the end of the tax year in which the sale took place; or
- The transaction does not result in capital gain.

Latest developments in Poland, and areas to focus on in the future:

- From 31 August 2023, perpetual usufructuaries of developed land will be able to request the sale of the land in their favor. This right is commonly referred to as the conversion of perpetual usufruct into ownership.
- The redemption request must be made by 31 August 2024. After this date, the landowner will be free to refuse to sell the land.
- The perpetual usufructuary may not require the purchase of the land if, inter alia: the land is undeveloped, the perpetual usufruct was established after 31 December 1997, the perpetual usufructuary has not fulfilled the obligations set out in the agreement on the transfer of the land for perpetual usufruct or in a relevant administrative decision.
- The price depends on the percentage of the annual land use fee.
- In the case of State Treasury land, the price will normally be 60% of the market value of the land (in the case of a one-off payment) or 75% of the market value of the land (in the case of instalment payments). The perpetual usufructuary will also be required to pay the difference between the market value of the land and the price, subject to de minimis aid rules and limits.

By Konrad Bisiorek, Partner Associate, Deloitte Poland, and Marta Bijak-Haiduk, Partner, Deloitte Poland

Real Estate Law in Portugal

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Overview of the Portuguese Legal System

General introduction to the main laws that govern the acquisition of assets in Portugal – real estate rights

The Portuguese Constitution (Constituição da República Portuguesa) sets out the right to private ownership (direito à propriedade privada), which is also a fundamental right to property.

Full ownership means the exclusive right to own, to use and to transfer the property with no time limitation. Fiduciary ownership is only accepted in the Madeira Free Trade Zone.

The Portuguese Civil Code (Código Civil Português) also provides other property rights, the general principles, and rules applicable to contracts, horizontal property, and condominiums.

Other rights in rem are also governed by the Portuguese Civil Code, including building rights (direito de superfície), beneficial interest (usufruto), right of use (direito de uso e habitação) and the urban lease (housing and non-housing) which is also governed by the New Urban Lease Law (Novo Regime do Arrendamento Urbano).

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Real estate property may be acquired directly (via asset deal), or indirectly through the purchase of equity interests of the entity owner of the property (via share deal). In both cases, due diligence should be conducted before the transaction - preferably by attorneys specialized in the field - to determine the legal and tax status and potential risks of the target property (in case of an asset deal) or target company (in case of a share deal).

There are no restrictions to the ownership right in Portugal regarding foreign or non-resident investors. Foreign investors need to obtain a Portuguese taxpayer number and, in case of foreign citizens with residence outside the European Union, it is mandatory to appoint a tax representative.

Notary role in the real estate transactions

In asset deals the title of the property is transferred mainly with a sale and purchase public deed entered by the parties before a notary. However, according to Portuguese law, lawyers may also perform tasks that had been exclusively performed by notaries until recently. Therefore, the transfer of property may also be executed by signing a contract before a lawyer, solicitor, or a Land Registry competent office (Balcão Casa Pronta).

The main documents required for the completion of the sale and purchase are the Land Registry certificate (certidão do Registo Predial), Tax Registry certificate (caderneta predial), proof of payment of the tax fees (stamp tax and real estate transfer tax) or the tax slip with the tax exemption (if applicable), energy performance certificate (certificado energético e da qualidade do ar interior) and evidence that the entities entitled to any legal or contractual pre-emption-right have not decided to exercise their right to acquire the property (if applicable).

Indirect transfers of real estate rights (share deals), through the acquisition of shares of a Portuguese company that owns a property, do not need to be executed before a notary and can also be executed by signing a contract between both parties.

Real estate registry system

The Land Registry Office is the entity responsible for keeping public records of each property's legal status, including registered ownership, liens, and encumbrances.

The registration of facts establishing the constitution, recognition, acquisition, or changes of in rem rights over a property is legally mandated.

The registry at the Land Registry Office stipulates that the ownership right is enforceable against third parties. The Land Registry is based on the principle of registration priority, according to which the first recorded right prevails over following registration. The Land Registry Office's certified information is accessible electronically (online). The seller must obtain an access code to provide the information to the buyer and then the Land Registry certificate, with all the information of the property, is available for a period of six months.

Real estate properties also must be registered at the Tax Registry certificate to keep an updated description of the property, its updated tax asset value (VPT – Valor Patrimonial Tributário) and the identification of the owner.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

Representations and warranties and specific indemnities are normally based on the outcome of the due diligence. Typical representations and warranties given by a seller include the capacity of the seller, ownership of the property, charges, and encumbrances, third party rights, planning and zoning, permits, litigation and liabilities, defects, and environment risk.

Conditions precedent to the transactions can also be agreed (e.g., obtaining a specific permit or insurance, a change in registry, conclusion of any works in the property or a mortgage cancellation). Provisional acquisition registration at the Land Registry Office is also common in asset deals, to ensure priority of the registration.

It is market practice for parties to execute a promissory sale and purchase agreement, setting forth the agreed terms of the transaction, prior to the deed. It is common to establish:

- Price and payment conditions – Usually a down payment is stipulated, which typically represents a percentage of the price, between 10% and 25%. In case of breach of the contract by the promissory buyer, the promissory seller can retain the amount already paid as down payment. In case of breach of contract by the promissory seller, the promissory buyer is entitled to receive twice the amount paid as down payment. As an alternative, the parties can claim the "Execução Específica," according to which the non-breaching party can obtain a court order which compels the other party to comply with the exact terms agreed between the parties in the contract;
- Deadline for completion – The parties establish a deadline for the final deed;
- Pre-emption rights – The law grants a pre-emption right to co-owners, lessees (in this specific case, only after the lease contract has, at least, two years, as better detailed below), owners of rural plots of land (for the sale of adjoining properties) or plots of land located in National Agricultural Reserve (Reserva Agrícola Nacional), and public entities (for the acquisition of some properties located in specific areas or properties classified as assets of special historic or architectural value). Therefore, before the final deed of sale and purchase, it is mandatory to give notice to the entitled entities/persons of the terms and conditions of the transaction; and
- Breach – The law grants compensation as consequence to breach of the promissory contract. However, the parties may establish different consequences for contract breach.

Mortgages and other usual guarantees adopted in financing assets

Loan agreements are usually granted with a mortgage, using real estate property as collateral.

In order to finance the purchase of a property in Portugal, it is common for the financing entities to create mortgages on the property itself to protect their interests. There are also other guarantees as pledges over shares and pledges over receivables. To be enforceable and to have effect vis-à-vis third parties, mortgages and other charges must be registered at the Land Registry Office.

Leases of premises

Applicable laws

The lease agreement is governed by the Portuguese Civil Code and the New Urban Lease Law (Novo Regime do Arrendamento Urbano). According to the applicable law, lease agreements may be executed for a fixed or an indefinite term and may be for housing or non-housing purposes. Lease agreements must be executed in writing and, when entered into for a term longer than six years, must be registered in the Land Registry Office to have effect vis-à-vis third parties. Additionally, any urban property that was subject to a lease agreement until 2024 had to have an updated use permit, issued by the relevant municipality, in accordance with the activity to be carried out in the property (e.g., housing, or commercial). With the approval of a new legislation called Urban Simplex (Simplex Urbanístico – Decree Law No. 10/2024, of 8 January), a variety of measures were adopted in order to simplify the legal framework applicable for urban licensing, including new cases of prior communication, with the respective elimination of the issuance of new use permits in said cases. For those cases in which the issuance of use permits was eliminated by law, the lessor is still required to demonstrate that the leased premises are suitable for the purposes of the contract (by presenting the property's documentation that the Urban Simplex now requires to deliver to the municipality once the respective works are concluded, as better detailed below).

Additionally, on 7 October 2023, Law No. 56/2023 the More Housing Program (Programa Mais Habitação) came into force to combat real estate speculation and the housing crisis in Portugal. This program presented a set of measures aimed at promoting affordable rental housing, encouraging housing supply, regulating rents, and ensuring greater protection for the lessees. Among the measures, we highlight the implementation of tax measures for lessors who make properties available for rent, stabilization of rental contracts, monitoring mechanisms to combat real estate speculation, and the creation of a support scheme for families in situations of housing vulnerability.

This program was created to reinforce the already existing Affordable Rent Program (Programa de Arrendamento Acessível), in an effort to regulate in a more developed perspective the needs of private individuals in accessing the housing market.

In 2024, with the entry into office of a new government, certain measures were considered disproportionate - e.g., forced rentals – and were, therefore, amended, and other tax measures were introduced.

Types of lease agreements

According to the Portuguese law, there are: (i) rural leases, meant for farming, forestry, or field work purposes, and (ii) urban leases, meant for housing purposes and for non-housing purposes. In this regard, all commercial leases are qualified as non-housing leases under the Portuguese law. While the housing leases must comply with specific provisions determined by law, the rules regarding duration, termination, and opposition to renewal of non-housing lease agreements (e.g., commercial leases) can be established freely by the parties, provided that some mandatory rules are observed, as detailed below.

The lease of retail spaces in shopping centers and retail parks is normally regulated by shopping center agreements. Considering that there is no specific law for these agreements, they are usually very detailed and govern not only the use of the shop but also the services provided by the shopping center administration to the lessees.

Typical provisions for lease agreements

Term

Lease agreements for housing purposes have an initial fixed term, which may not exceed 30 years. The minimum period for a lease for housing purposes is one year (the only exceptions for not complying with the minimum limit period are for contracts meant for non-permanent housing or for special transitional purposes).

On the other hand, the term for non-housing lease agreements can be freely agreed by the parties. In case the parties do not establish a term for the lease agreement, the agreement is considered to have a fixed term of five years.

Renewal

The parties normally establish a fixed term in the housing lease agreements, which is automatically renewed for successive periods (of equal or different duration). For this type of leases, the lessors may only oppose to the renewal of the respective term, which must be executed by giving a prior written notice, determined in accordance with the period of the agreement.

On the other hand, the lessees of this type of lease agreement may oppose to its renewal, giving a prior written notice, determined in accordance with the period of the agreement. In addition, the lessees may terminate the agreement at any time, after a third of the initial term of the agreement, or its renewal period, has passed, by giving a prior written notice, also determined in accordance with the period of the agreement.

On the first renewal, the housing lease agreement must be renewed for at least three years (if the initial duration is less than three years), unless the lessor needs the house for themselves or for their children.

In the non-housing lease agreements, the parties are free to provide the terms and conditions, but: (i) in the absence of a stipulation by the parties, the lease agreement is deemed to be concluded for a fixed term of five years and the lessee cannot terminate the agreement less than one year in advance; (ii) unless otherwise stipulated by the parties, the lease agreement with fixed term is automatically renewed at its expiry date for successive periods of the same duration or of five years if this is shorter; and (iii) in the first five years after the start of the lease agreement, the lessor cannot oppose to its renewal.

Termination

Leases usually terminate at the end of the respective term. However, lease agreements may also be terminated for other reasons, either: (i) by mutual consent of the parties; (ii) in result of contractual breach by one of the parties; (iii) specific grounds, such as (a) need for housing by the lessor or by their immediate descendants; or (b) for the demolition or carrying out of deep remodeling or renovation works.

Maintenance works

The parties may agree on the rules applicable to any maintenance works on the leased property. The lessor is usually responsible for structural and major repairs and taxes, while the lessee is responsible for any other wear and tear repairs.

Rent amount and updates

As a general rule, the parties may freely agree on phased or variable rents, as well as in the rent update mechanism. In Portugal, the rent is usually paid on a monthly basis, and is usually updated on an annual basis according to the official rent update coefficient, published each year in the Portuguese national gazette, unless otherwise agreed by the parties.

Security

The lessee's security obligations are normally secured via a cash deposit or a bank guarantee in the amount corresponding to a certain number of rent periods.

Assignment and sublease

The assignment of the lessee's contractual position, as well as the sublease of the property, is not allowed without the prior consent of the lessor. However, the assignment may be allowed in the event of a transfer of the lessee's commercial activity, which will result in the automatic transfer of the lease agreement to the respective third party, provided that certain legal requirements are fulfilled.

Pre-emption rights

Lessees who have held leases for longer than two years have a pre-emption right in the event of the sale of the relevant property, as well as if the lessor wishes to enter into a new lease agreement with a third party.

Taxes payable on rent

Lease agreements are subject to stamp duty tax, which is currently payable by the lessor at a rate of 10% of the first rent. The rent is exempt from value added tax (VAT), but the lessor may waive this exemption if certain legal requirements are met. In addition, the rental income of the

lessor will also be subject to taxation, either income tax or corporate tax.

Housing rental agreements under the Affordable Rental Program are exempt from stamp duty tax.

Administrative permits applicable to construction or restructuring of assets

Main permits/licenses required for building works and/or the use of real estate

In Portugal, the building rules of each municipality is specified in planning instruments, which are the general municipal plan (Plano Director Municipal), or more detailed plans that may be in force in a specific area, the master plans (Planos de Urbanização) and the detail plans (Planos de Pormenor).

With the introduction of the Urban Simplex, as already mentioned above, the administrative simplification materialized through the continuous elimination of licenses, authorizations, and unnecessary administrative acts; limiting administrative requirements and other barriers considered disproportionate, presenting new cases of prior communication, exemption, and "waiver" of prior control.

Prior to filing any licensing requests, it is possible to file a previous information request (Pedido de Informação Prévia or PIP) in order to obtain information issued by the competent entities regarding the project's feasibility. The PIP currently has a validity of two years, with possibility to request a one-year extension.

The municipality with jurisdiction over the area where the real estate property is located is responsible for assessing the validity of the construction process and use of each property.

The applicable law provides two types of procedures for licensing urbanistic operations:

- License: The license is requested for any urban operation when the law does not establish specifically the exemption of license of subject to previous communication. The licensing decision is subject to tacit approval for the procedures that initiated after 4 March 2024; and
- Previous communication: In the case of an operation subject to previous communication, the promoter is not allowed to choose to submit the operation in question to a licensing procedure.

The administrative changes introduced by the Urban Simplex have eliminated the construction license and replaced it with proof of payment of the fees due.

With regard to the use permit and authorization for use, the urban planning operation of using the building:

- The use of a property or building unit after the conclusion of works subject to prior control depends on the submission, to the municipality, of: (i) a term of responsibility signed by the works director or the works supervision director; and (ii) the final plans.
- If there is a change of use without works subject to prior control or the use of new buildings or new building units, following works exempt of prior control, the operation shall be preceded by a prior communication within 20 days (in case the municipality does not reply, said request is considered tacitly accepted).

When assessing the architectural project, the competent municipality is prevented from assessing any other element than those expressed in the law.

Special urban rehabilitation framework

In Portugal, the government provides special tax benefits for the rehabilitation of buildings for residential purposes, built for at least 30 years or located in urban rehabilitation areas determined by each municipality.

Protection of historic areas

The municipalities and the national cultural heritage department (Património Cultural, I.P.) have a pre-emption right in the transfer of any classified real estate or buildings which are located with certain historical areas.

Urban planning operations regarding to development, reconstruction, alteration, extension, conservation, or demolition works that are located in protection zones for real estate in the process of being classified or real estate

classified considered of national interest or of public interest are exempt from a favorable prior opinion from the national cultural heritage department (Património Cultural, I.P.).

Environmental and energy

Environment – applicable law

The Portuguese Environmental Law establishes the legal regime of liability for environmental damages and transposes Directive 2004/35/CE of the European Parliament and of the Council of 21 April, which approved, based on the polluter-pays principle, the environmental liability applicable to the prevention and remediation of environmental damage. According to the applicable legal framework, the party that caused the environmental damage is responsible for the payment of the preventive and remedial measures to be adopted.

Portuguese environmental law sets out three types of environmental liability: civil, administrative, and criminal liability. The civil and administrative liability may arise from damage caused to the environment by an economic activity. The Portuguese Criminal Code sets out, among others, the environmental crime of pollution offense. Furthermore, Portuguese law establishes a joint and several liability of legal persons and their directors and managers for any environmental damage.

Energy certification system of buildings

In accordance with the Portuguese applicable law, for purposes of transfer and lease of residential and some types of non- housing properties, the owner or the lessor must obtain and deliver with execution of the sale and purchase agreement, or the lease agreement, an energy certificate describing the building's energy efficiency and consumption expected for normal use. The energy certificate is issued by a certified technician and must be registered at the respective competent energy agency (ADENE). The energy certificate is issued for a 10-year period.

Direct taxes applicable to sales

Taxes associated with the acquisition, sale, and ownership of real estate:

- Municipal real estate transfer tax (Imposto Municipal sobre as Transmissões Onerosas – IMT);
- Stamp duty tax (Imposto do Selo);
- Municipal property tax (Imposto Municipal sobre Imóveis – IMI); and
- Additional municipal property tax (Adicional ao Imposto Municipal sobre Imóveis – AIMI).

There are two main taxes associated with the acquisition of properties in Portugal (i) municipal real estate transfer tax (Imposto Municipal sobre as Transmissões Onerosas – IMT), and (ii) stamp duty tax (Imposto do Selo). Additionally, the owner of a property located in Portugal will also be subject to municipal property tax (Imposto Municipal sobre Imóveis – IMI) and in some cases additional municipal property tax (Adicional ao Imposto Municipal sobre Imóveis – AIMI).

IMT

Transfer of property rights is subject to IMT, payable by the buyer, prior to the transfer of the property. Tax is levied on the market price of the transaction or by the property's tax value, whichever is higher. Tax rates vary depending on the use that the property will be subject to, the value of the transaction and the qualifications of the buyer: (i) residential properties between 0% and 8%; (ii) other urban properties: 6.5%; (iii) rural properties: 5%; and (iv) properties acquired by an entity based in a country with a more preferable tax regime: 10%.

Decree Law No. 48-A/2024, of 25 July sets forth the exemption of municipal real estate transfer tax (IMT) and stamp duty tax for individuals up to 35 years old purchasing their first house.

The abovementioned exemption is only applicable if the transaction value does not exceed the limit of the first IMT limit (if this amount is exceeded, only IMT will be paid on the remaining value of the transaction).

Stamp duty tax

Stamp duty tax (along with IMT) is charged at the assignment of property rights, at 0.8% of the market price of the transaction or by the property's tax value, whichever is higher. Stamp duty tax is also charged on certain formal acts and documents that are exempt from VAT, such as contracts and credit concessions, executed either by Portuguese parties or within the Portuguese territory.

The acquisition of properties by individuals 35 or younger are exempt from stamp duty tax payment (as better detailed above).

IMI

IMI is a property tax charged annually, based on the tax value of the property. This tax is payable by the owner of the property, regardless of being a personal or legal entity. The IMI rate for urban properties range between 0.3% and 0.45%, depending on the location of the property, while a 0.8% rate is charged on rural properties. Also, property owned by residents in tax havens (except individuals) or by entities in a direct or indirect domain or control relation with entities domiciled in tax havens, is levied at 7.5%. The tax basis of urban property is calculated on several criteria such as average construction price, type of construction, quality standard, age, and location of the building, or other features of the property).

AIMI

AIMI is a property tax charged annually, based on the tax value of the property, only applicable to real estate. Tax is calculated by aggregating the sum of the tax registration value of all the urban properties held by the same taxpayer. Taxpayers subject to this tax can be individuals or corporations, as well as structures or collective bodies without autonomous legal personality and undivided inheritances, that are owners, usufructuaries or have the surface right. The AIMI rate for urban properties ranges between 0.4% and 0.7%, depending on whether the tax subject is an individual/inheritance. Also, property owned by residents in tax havens are taxed at 7.5% – however, AIMI only applies to aggregate real estate property of at least €600,000 (US$633,576*) in the case of individuals or inheritances, or €1.2 million (US$1,267,152*) for taxpayers that are married or living in non-marital status and opt to submit a joint tax return.

Personal income tax (IRS)

In the event of sale of a property, the holder of property will be subject to personal income tax, over capital gains made with the transaction.

In the event the seller of the property is a Portuguese tax resident, only 50% of the capital gains will be included in the tax basis, which will be levied at progressive tax rates from 13% to 48%, with the ability to have an extraordinary charge rate up to additional 5%, in case the tax basis is higher than €250,000 (US$263,990*). If the seller of the property is a non-tax resident in Portugal, capital gains for property sale will be subject to a flat rate of 28% of the totality of the tax basis. However, due to consistent judicial decisions, Portuguese courts have decided that non-tax residents may be eligible to choose to opt into the same regime as Portuguese tax residents. If the seller of the property is resident in a tax haven, capital gains will be subject to a 35% rate of the total amount of the tax basis.

Notwithstanding the above, there is the possibility of exempting the taxation of capital gains from property sale if the property is the taxpayer's primary residence and if the total amount obtained from the real estate deal is reinvested in the acquisition, construction, or improvement of another property for permanent residence purposes, located either in Portugal or in a European Union member state or in a European Economic Area member state, since such investment is performed between 24 months prior and 36 months after the relevant property sale.

When the sale of the property occurs, adjustments to the tax basis can be performed, such as the inclusion costs related with the maintenance of the property (for the last 12 years) and administrative and legal costs related to its sale. Property owners who wish to lease the property will also be subject to flat rates ranging from 25% to 5%, depending on the term of the lease. However, if the property owner is a tax resident in Portugal, they can opt to be subject to progressive tax rates from 13% to 48%.

Tax benefits

The More Housing Program has revoked several tax benefits related to rehabilitation works, becoming only applicable the deductibility for tax purposes, up to a limit of €500, corresponding to 30% of the expenses borne by the owner related to the rehabilitation of: (i) properties located in "urban rehabilitation areas" and rehabilitated according to their respective rehabilitation strategies; or (ii) leased properties subject to phased rent increases under the New Urban Leasing Regime (NRAU), which are subject of rehabilitation actions.

*According to the 10 December 2024 exchange rate

Real Estate Law in Romania

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Overview of the Romanian Legal System

General introduction to the main laws that govern the acquisition of assets in Romania – real estate rights

The general legal framework regarding the acquisition of real estate assets in Romania is regulated by the Romanian Civil Code and by Law No. 7/1996 regarding cadaster and the land book system. These laws provide the mandatory conditions applicable to all real estate transactions (asset deals) (e.g., capacity, specific formality requirements for the transfer deed, price, and main parties' obligations, seller's warranties, publicity conditions, etc.).

The notarized (i.e., authenticated) form is imposed under Romanian legislation as a validity condition for transfer of deeds concerning real estate rights, and the relevant legal provisions are included in Law No. 36/1995 regarding public notaries and notary activities.

In addition, specific provisions on real estate acquisitions are scattered throughout various pieces of legislation depending on the particular types of real estate assets, such as:

- Pre-emption rights and specific taxes applicable to the sale or purchase of arable lands located outside city limits, as regulated under Law 17/2014;
- Pre-emption rights applicable to historic monuments, as regulated under Law No. 422/2001 regarding the protection of historic monuments; and
- Restrictions and limitations resulting from the special laws governing the restitution of real estate assets taken over by the state during the communist period, such as Law No. 10/2001 on the legal regime of certain real estate assets abusively taken over during the period between 6 March 1945 to 22 December 1989.

Lastly, the development and construction legal framework contains legal provisions also relevant in the context of real estate acquisition:

- Law No. 350/2001 regarding the territorial development and urbanism;
- Law No. 50/1991 governing the authorization of construction works; and
- Law No. 10/1995 governing the quality of constructions.

New legislative proposals with impact on the real estate market

The draft bill of the Urbanism and Construction Code, which will significantly change the entire legislation on urbanism and construction permitting and development in Romania, is currently in the final approval stages. However, the final form and date on which it will enter into force are still unclear. The new Urbanism and Construction Code is meant to bring together the provisions related to the construction field dispersed across various normative acts and will introduce substantial changes which will pose a challenge both for developers and for the authorities responsible for enforcing the new legal provisions.

A new draft law on creating and operating real estate investments trusts is under parliamentary debates. This new draft legislation is meant to significantly change the accessibility and manner in which investments in real estate on the Romanian market will be performed. As per the draft law, these types of entities will issue shares to be traded on stock markets, offering many benefits (as compared to investing directly in property) such as diversification of investment portfolios, liquidity, and transparency. In addition, these provisions provide a way for investors to benefit from the cumulative rental income and capital appreciation of properties, without bearing the

burden of the many costs associated with owning real estate immovables directly. In other words, this draft law (to the extent it will be enacted) could have a significant impact in boosting the real estate market in Romania.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Types of acquisition structures

Various legal structures, such as asset deals, share deals, forward purchase mechanisms, or transfers of on-going concerns (business transfer agreements), are used for the acquisition and/or development of real estate property in Romania.

Detailed legal, tax, technical, environmental, and commercial due diligence of the asset/company prior to the signing and closing of the transaction is recommended. Once the main commercial terms of a transaction are agreed, it becomes a market practice for a letter of intent, memorandum of understanding or term sheet to be executed. Except for provisions governing exclusivity, confidentiality and transaction timeline, the rest of the clauses in the abovementioned documents are generally non-binding.

In case of promissory sale-purchase agreements, if one of the parties refuses to conclude the final agreement, the other party is entitled to request the court of law to rule a decision replacing the sale purchase agreement. The relevant claim must be filed in court no later than six months after the date the final agreement should have been concluded.

The advance paid under a promissory sale/purchase agreement is secured by a legal mortgage over the target property. Unless the purchaser expressly waives the legal mortgage, the public notary is bound to register the legal mortgage with the relevant land book(s).

The timing for completing a real estate deal ranges from a couple of weeks to longer, depending on the contemplated structure. The main legal procedures that usually trigger delays in closing of a deal (and should be considered when setting the timeline) are:

- The registration of the purchaser with the land book; if the acquisition is financed by banks (or similar institutions), the facility may not be disbursed until the purchaser is registered as owner with the land book (and, in some cases, the bank's mortgage is also recorded therein);
- The Competition Council clearance, provided that certain legal thresholds are met;
- In some cases, the clearance of the Superior State Defense Council is required if the asset has a specific destination (among the ones specifically listed by the law) which is deemed strategic by the public authorities (such as: agri-business, energy, or transportation security, etc.);
- The foreign direct investment (FDI) screening for both European Union (EU) and non-EU investments;
- Pre-emption procedures for the acquisition of extra-muros arable lands; and
- Pre-emption procedures for the acquisition of historic monuments.

Share deals will require registration of the transfer with the Trade Register, while asset deals will require the notarization of the transfer deed by a public notary as a prerequisite for the valid land transfer, followed by registration of the purchaser as the new owner with the relevant land book(s).

Restrictions applicable to real estate acquisitions – foreigners

The legal regime regarding the acquisition of real estate assets by foreign investors differs depending on (i) the type of real estate assets (land or buildings), and (ii) whether the foreigners are nationals of EU member states or non-EU member states.

While there are no restrictions for the acquisition of buildings by foreign entities and individuals, with respect to acquisition of land, the following applies:

Nationals of EU member states (both companies and individuals) and stateless persons domiciled in EU member states

- May acquire land under the same conditions as those provided by law for Romanian nationals, for the purpose of setting up secondary offices or secondary residence in Romania, starting from 1 January 2012; and
- May acquire agricultural land and forestry land under the same conditions as provided by law for Romanian nationals starting from 1 January 2012.

Nationals of non-EU member states (both companies and individuals) and stateless persons domiciled in non-EU member states

- May acquire the ownership right over land in Romania under the terms of the applicable international treaties, on the basis of reciprocity conditions; and
- Conditions for the acquisition of land may not be more favorable than for the nationals of EU member states.

Restrictions applicable to real estate acquisitions – agricultural lands located outside city limits

The sale of agricultural land located outside city limits are valid only with the observance of the legal pre-emption rights established in favor of the co-owners, the family (spouses, relatives, and in-laws), the owners of agricultural improvements over the land subject to the sale, the land lessees, the owners or lessees of the neighboring plots of land, young farmers, neighboring state institutions in the field of agricultural research, people living in the respective territorial and administrative division (town) and in neighboring ones, and the state, through the State Property Agency (in this order, under equal price and conditions).

In addition, agricultural lands located outside city limits can be purchased by certain categories of individuals or companies (provided that the beneficiaries mentioned above have failed to exercise their pre-emption right), as follows: (i) individuals who have lived in Romania for the five years prior to the sale and have undergone agricultural activities and were registered with the Romanian fiscal authorities within the same period, or (ii) companies that have had their headquarters or secondary headquarters in Romania for the previous five years and a minimum of 75% of their income within the respective five years resulted from agricultural activities. An additional requirement for such companies is that the main shareholder should have been located in Romania for at least five years prior to the sale offer.

The sale of certain categories of agricultural lands located outside city limits also requires specific approvals issued by the Ministry of National Defense and the Ministry of Culture. In particular, if the land was subject to agricultural or forestry activities, as well as industrial, economic, or military activities that may impact the quality of the soil, obtaining a soil quality certificate becomes a mandatory prerequisite to any sale.

The sanction for breach of the abovementioned procedures is the annulment of the sale agreement.

80% tax applicable to the sale of agricultural lands located outside city limits - asset deals

An 80% tax is applicable on the sale of each agricultural land plot located outside the city limits (i.e., "asset deal" type of sale) before the expiry of eight years from the date of its acquisition. The tax base is calculated as the positive difference between (i) the value of the agricultural land on the date of sale, and (ii) the value of the land on the date of its (previous) purchase. Such a value will be determined by reference to the indicative value established by the chamber of public notaries, or the minimum value established by the market study carried out by the chamber of public notaries, as the case may be, from the relevant date.

The tax is calculated and collected by the public notary before the authentication of the relevant notarial transfer deed. Thus, the seller must pay the 80% tax before signing the sale contract. For taxpayers who have the obligation to pay the profit tax, the 80% tax established by this law represents a non-deductible expense when determining the fiscal result.

The incomes obtained by non-residents from the sale of agricultural land located outside the city limits will not be

subject to the double taxation avoidance agreements concluded by Romania with other states.

80% tax applicable to the sale of the control package of legal entities holding agricultural lands located outside city limits - share deals

An 80% tax will be applied to the sale of the control package of legal entities owning one or more plot of agricultural land located outside the city limits and which represent more than 25% of their assets, to the extent that the transfer takes place before the expiry of eight years from the date of the purchase of any of such land. The obligation to pay the 80% tax pertains to the individual and/or legal person assigning the control package.

The tax base is calculated as the positive difference between (i) the value of the agricultural land on the date of transfer of the control package, and (ii) the value of the land at the time of its acquisition. Such values will be determined by reference to the indicative value established by the chamber of public notaries or to the minimum value established by the market study carried out by the chamber of public notaries, as the case may be, from the relevant period.

If the legal entity owns several plots of agricultural land located outside the city limits, the 80% quota is applied to the total amount calculated by adding up the positive differences for the land acquired less than eight years prior to the transfer of the control package, without taking into account the negative differences determined in accordance with the abovementioned calculation method.

If the agricultural land located outside the city limits was acquired as a result of an in-kind contribution to the share capital of the entity in which the control package is transferred, the term of eight years will also include the period of time when the shareholder held ownership of the land, subject to in-kind contribution.

Restrictions applicable to real estate acquisitions – historic monuments

The ownership title to property listed as a historical monument may be transferred only with the observance of the Romanian state's pre-emption right upon acquisition.

A sale agreement concluded in breach of the legal provisions will be null and void.

New tax applicable for foreign direct investment (FDI) screening

As of November 2023, a fee of €10,000 is required by the Competition Council for the performance of the FDI screening. The fee is refunded to the investor if the authority decides that the investment does not fall under the Romanian FDI screening regime.

Notary role in the real estate transactions

Under Romanian law, the purchase of ownership rights over real estate property is performed through sale and purchase agreements (or other relevant transfer deeds) concluded in notarized (i.e., authenticated) form. Therefore, for an acquisition through an asset deal (including sale and purchase, donation, share capital contribution, transfer of business, settlement agreements, etc.), to be valid, the authenticated, notarized form of the deed is required.

The signing of the sale and purchase agreement for real estate verifies the legal conditions for concluding the contract, including the verification of the representation powers of the signatories.

After the authentication procedure, the public notary sends the documentation and the registration application to the Land Book Office for the transfer of the ownership right to be registered in the relevant land book. Once the updated land book excerpt is issued, the new owner of the real estate must register the ownership title with the local fiscal authorities.

The notary fee is calculated either by reference to a set of official evaluations (the public notary grid) that are updated from time to time. If the purchase price is higher than the values in the grid, the fees are calculated by reference to the purchase price; otherwise, the calculation is made based on the official values. For transactions that do not exceed a threshold of RON 20,000 (approximately US$4,450 according to the exchange rate on 3 September 2024), the notary fee is 2.2% of the value of the

transaction. The notary fee for a transaction of a higher value is calculated as a fixed fee for each threshold plus an additional percentage applied to the value of the transaction exceeding that threshold.

For example, a fixed fee of RON 6,405 (approximately US$1,359.62*) is applicable for a transaction value exceeding RON 600,001 (approximately US$127,365*) plus an additional 0.60% of the transaction value exceeding this threshold.

It is customary for the buyer to also pay the land book registration and notary fees; however, the parties may agree to share these costs.

Real estate registry system

Real estate properties and related rights are registered in the relevant land books held by the public authorities. Land books are opened for each real estate asset (land or, respectively, land and buildings) regardless of the identity of the owner.

Local offices for Cadaster and Land Registration are located in each county of Romania. All public registrations carried out within the abovementioned structures are further centralized under the supervision of the National Agency for Cadaster and Land Registration.

Currently, proof of ownership (or related real estate right) may be performed by way of notarized transfer deeds. However, the Civil Code provides that the proof of ownership right to real estate assets will be made by the excerpt from the land book as of the date the cadastral works for each local municipality are finalized. Hence, once the cadastral works are finalized, the registration with the land book will become a condition for the valid transfer of the title of real estate assets (save for certain limited exceptions provided by law).

The registration is also relevant for secured creditors (e.g., financing banks), in the sense that the registration date ensures the priority ranking against other creditors.

Further, land book registration offers special protection to the good-faith registered owners against third party claims against the title, after a certain period of time (five years when the acquirer may prove good faith).

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

The Civil Code regulates only two types of warranties (applicable in case of an asset deal): warranty against eviction (i.e., total, or partial loss of title) and hidden defects of the real estate. The seller's liability against eviction and flaws is regulated in detail by law and can be limited or extended (within the limits permitted by the Civil Code).

Since the legal regime of other representations and warranties is not clearly defined under Romanian law, the remedies available to the buyer are generally the ones regulated under the contract, which can be further settled in court or in arbitration. For this reason, it is always advisable to entrust the drafting of the contract to an experienced legal counsel.

Generally, the seller gives representations on the following matters:

- Validity of title;
- Lack of litigation;
- Factual status of the asset;
- Disclosure of due diligence information;
- Potential litigation regarding the real estate;
- Technical situation of the asset (including equipment), environmental obligations, fiscal and land book registration; and
- Validity of its corporate approvals, sufficiency of funds, lack of any insolvency state (or alike).

Limitation of seller's liability

The representations and guarantees granted by the seller may be subject to disclosure of information to the purchaser.

The Civil Code allows the parties to negotiate and establish limitations on the seller's liability with respect to the eviction and/or the hidden defects that may affect the real estate asset subject to the transaction.

Nevertheless, according to Romanian law, there are certain limits within which the parties may regulate the liability of the seller.

Namely, the liability of the seller may not be limited to matters which were known by the seller or which the seller should have known upon the performance of the sale of such asset but were not disclosed to the purchaser.

For material transactions where lawyers are involved, one or all of the following main limitations of the seller's liability are negotiated:

- Limitation depending on the disclosed information (namely the seller will not be held liable for matters arising from the information disclosed to the purchaser, with the exception of specific indemnities agreed for certain matters);
- Limitation of time;
- Limitation of amounts – the Civil Code sets a minimum threshold equal to the purchase price of the asset; however, for breach of non-fundamental warranties, the threshold can be set as a percentage of the purchase price; and
- Limitation to the payments made by the title insurance company.

Mortgages and other usual guarantees adopted in financing assets

In case financing is obtained for the acquisition of real estate assets, the financing institutions will condition the granting of the loan on the establishment of first rank mortgages over the acquired real estate.

To this end, the financing intuitions will typically perform additional due diligence verifications of the title and status of the acquired real estate asset. Normally, the financing process is performed simultaneously with the acquisition process, with the seller and/or purchaser providing the necessary documents and information enabling the creditor to determine if the real estate fulfills the necessary conditions for securing the loan.

Typically, the financing institutions require the real estate asset to be free of any encumbrances which may affect the priority of their mortgage. Thus, any prior mortgages or seizures registered with the relevant land books of the acquired real estate have to be de-registered in order to proceed with the acquisition financing.

The mortgages will be registered over the land and buildings, or over the land and the buildings intended to be developed thereon.

Lease of assets and lease of business

The general framework applicable to lease agreements is regulated by the Civil Code; specific provisions govern residential leases and land leases. Residential leases are also governed by EGO No. 40/1999 on residential tenant protection. Specific provisions may apply if the premises are located within an industrial park (qualified as such according to the law).

Apart from the mandatory legal requirements, other exceptions to the parties' entitlement to freely negotiate lease agreements may apply, for example, if the premises are subject to bank financing (minimum lease terms imposed by the bank must be observed) or if the building was developed under EU financing. If the latter, lease agreements must consider that the project must meet certain parameters undertaken upon the granting of the EU financing (such as granting microenterprises several facilities in terms of lower rents).

Although not expressly regulated by law, the market standard includes two main types of leases: (i) triple net leases (although, in Romania, capital repairs are born by the landlord), and (ii) non-triple net leases.

Typical provisions should refer to:

Length of lease term

The terms of a lease may vary as follows:

- Three to five years (exceptionally seven to 10 years) in cases of regular tenants; and
- 10 to 20 years in case of anchor tenants of retail projects.

Frequency of rent payments

Rent is typically paid in advance. Rent payments are made either monthly or quarterly (the last payment mechanism is applicable in case of anchor/large scale leases). Payment of a guarantee is made at the start of the lease.

The tenant may provide the landlord with the following guarantees securing its obligations:

- A letter of bank guarantee (preferably irrevocable, unconditional and at first demand); or
- A cash deposit.

The above should be accompanied (if necessary) by a parent company guarantee or a corporate guarantee.

Indexation of rent

As a rule, the base rent is indexed annually based on either the Monetary Union Index of Consumer Prices (MUICP) or the Harmonized Index of Consumer Prices (HICP). In some cases, the parties may agree to fixed base rents applicable during certain periods of time. The turnover rent mechanism is also frequently encountered in retail projects. Thus, the tenant pays the higher amount of a certain base rent, or a turnover rent calculated by reference to an agreed percentage of the tenant's annual turnover.

Insurance of the premises

Typically, the tenant contracts and maintains insurance for: (i) the tenant's fit-out works; (ii) the content, equipment, assets, furniture, and other personal items in the premises; and (iii) civil liability insurance towards third parties and/or its employees and/or any other third parties, including the tenant's liability towards the landlord.

Generally, the insured risks include fires, storms, blizzards, floods, earthquakes, lightning, explosions, rebellions, riots, deliberate damages, explosions and overflowing of water tanks, devices or pipes and other risks or insurance requested by the landlord (in any case, under the reserve of excluding excesses and limitations imposed by insurers).

The landlord concludes (i) property insurance for the building (including landlord's installations and equipment); and (ii) insurance against property owners' and third party liability in respect of the common areas. The insurance taken by the landlord does not cover the assets located within the premises which are not under the landlord's ownership.

Execution of fit-out works within the premises

As a general rule, for any works entailing the issuance of a building permit, the permit is issued in the landlord's name. Thus, only minor/temporary works can be performed independently by the tenant without the landlord's prior approval or acknowledgment.

Even anchor tenants are usually imposed contractual prohibitions in performing certain works/alterations in the premises, such as those which:

- Affect the structure of the building;
- Affect the external appearance of the premises or of the building;
- Impact on the heating, air-conditioning, ventilation, or other systems of the building;
- Would reduce the leasable area of the premises; and
- Obstruct the windows, doors, or any areas of natural light.

Service charge

Payment of service charge refers to an estimated amount multiplied by the gross leased area, set for the first calendar year, starting with the handover date, paid monthly in advance for the services provided by the landlord, according to the lease agreement (such services may refer, but are not limited to: repair, renewal, decoration, cleaning, maintenance and lighting of the common areas of the building, cleaning the outside external glass façade, snow and ice clearance, providing the operation of heating, air conditioning and ventilation systems within the common areas, heating, cooling and ventilation of the tenants premises, security and protection 24 hours/365 days, etc.).

Termination of the lease

The lease agreements can be terminated either: (i) unilaterally (break options) as per the contractual provisions, (ii) by default, or (iii) in case of force majeure. Typical events of default triggering termination included in lease agreements are:

- Delay in payment of rent or service charge;

- Breach of the permitted use of the premises;
- Breach of the tenant's obligations regarding the security instruments to be made available by the tenant; and
- Breach by the tenant of obligations regarding the permitted works/alterations within the premises.

If the lease is concluded for an unlimited duration, it can be unilaterally terminated by either party, subject to serving prior written notice at a reasonable time in advance.

Administrative permits applicable to construction or restructuring of assets

Construction development

Under Romanian law, the right to develop construction is granted only to owners and holders of real estate related rights (except for special licenses granted to oil and natural gas operators).

In Romania, the process for obtaining a construction permit entails:

- Issuance of an urbanism certificate;
- If required under the urbanism certificate– preparation and approval of an urbanism plan (either zoning urbanism plan - PUZ or a detailed urbanism plan - PUD);
- Issuance of all prerequisite approvals requested under the urbanism certificate (fire permit approval, approval issued in connection with the environmental protection, approvals referring to several utilities' connection, etc.); and
- Issuance of the building permit.

Additionally, the building permit requires a rather complex technical project (that must be endorsed by specialized verifiers).

The owner of land located within the perimeter of archaeological sites, as defined by Government Ordinance No. 43/2000 must observe specific regulations concerning restriction for protecting and recovering of the archaeological patrimony. If archaeological works are required in a specific area, any other activities are suspended until completion of an archaeological investigation, as evidenced by a certificate for archaeological clearance.

Planning and development of real estate

The strategic planning and zoning in Romania are governed by the provisions of:

- Government Decision No. 525/1996 approving the general urbanism regulation;
- Law on Territorial Planning and Urbanism No. 350/2001 and the related Implementation Norms (approved by Order No. 233/2016);
- The general urbanism regulations enacted at the level of each administrative unit; and
- The Administrative Code of Romania, approved through Emergency Government Ordinance No. 57/2019.

As mentioned above, the Urbanism and Construction Code (replacing and amending the various pieces of legislation in the field) is pending enactment in Romania.

The typical legislative and governmental controls for strategic planning and zoning are:

- For preparation and approval of the strategic planning documentation, there are plans prepared (at the level of public authorities) for the national territory, certain zones as well as for counties;
- For preparation and approval of the zoning documentation, the law defines (i) the general urbanism plan; (ii) the zoning urbanism plan; and (iii) the detailed urbanism plan; and
- The implementation of and compliance with the strategic planning and zoning regulations are typically ensured by the Romanian State Inspectorate in Constructions and the Chief Architect Institution (through their representatives at local level).

Furthermore, specific legislative and governmental controls are applicable to ensure a strategic planning and zoning of certain areas/objectives of public interest, such as highways, national roads, bridges, railways, environmental protected areas, historical monuments, etc.

Construction permits

The first step in obtaining a construction permit is the issuance of the urbanism certificate, which presents the building parameters, restrictions, limitations, and/or specific requirements to be observed for development on a certain plot of land.

Of the restrictions or special requirements typically applicable to construction in Romania, the following are significant:

- Specific restrictions deriving from the zoning regulations, e.g., permitted and prohibited use of the plot of land, and building parameters;
- Restrictions deriving from the specific location of the plot, e.g., vicinity of special types of facilities/ infrastructure, such as historic monuments, archaeological sites, special protection areas, military units, airports, and utilities networks;
- General building restrictions/prohibitions on plots qualified as green areas, forests, or arable lands;
- Specific height regime and other requirements deriving from the location of the buildings in the vicinity of air traffic corridors;
- Specific requirements entailing the neighbors' approvals in case either new constructions are developed adjacent to or in the nearby vicinity of the neighboring ones for which protection intervention measures are necessary; and
- In the case of construction development with a destination different than the one of the neighboring buildings and/or for the change of destination of premises in the existing buildings.

Once the building permit is obtained, the investor is requested to send a written notice to the City Hall and the State Inspectorate in Constructions, certifying the date when the execution works effectively start. Commencement of works must occur within the deadline specified in the building permit, which may be a maximum of 24 months. Once commencement is officially announced, the execution works must be performed within a certain period of time expressly provided in the permit, which may be subsequently prolonged if certain conditions are met.

During the performance of construction works, the State Inspectorate in Constructions as well as other special local authorities/bodies are entitled to verify if the works are being commenced/performed in compliance with the building permit.

Completion of works is marked by the execution of a reception protocol with the participation of the local city hall's representatives and (in certain cases provided by law) of the representatives of firefighting authorities and the State Inspectorate in Constructions.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

Polluted land

Under Romanian legislation, the buyer of a real estate asset, even without having caused the pollution or contamination, would be compelled by the public authorities to perform the remedial/decontamination measures. As a preliminary step, in some cases, the seller would be required to perform a contamination investigation before the sale of the real estate assets and to provide the buyer with the details thereof and the related decision of the environmental authority. Depending on the transaction mechanism, the buyer may further trigger the seller's liability in this respect. In addition, in certain instances (i.e., if the seller's activity on the property required an environmental permit), before closing the transaction, the parties are bound to undertake a notification procedure in front of the environmental protection authority and, subsequent to closing, indicate the way they agree to split the environmental obligations imposed by the environmental authority.

Energy efficiency qualifications

With respect to buildings, the energy efficiency verification is performed by issuing an energy performance certificate. According to Romanian legislation, upon completion of a construction, it is mandatory for the owner/ investor/ manager to obtain an energy performance certificate issued by an independent auditor (i.e., natural person certified by the Ministry of Development, Public Works and Administration). For existing buildings, the certificate also

includes recommended measures to reduce energy consumption and to increase the share of renewable energy used in total consumption.

Apart from the applicable fine for not obtaining and displaying such a certificate, any transfer of ownership over the building in the absence of the energy performance certificate is sanctioned with relative nullity, while the reception minutes are null and void in such an event.

ESG rules

Although the real estate sector is not directly subject to compulsory ESG standards, the Romanian business environment (including in the real estate sector) has recently begun to consider ESG aspects, realizing that they can play a major role in the long-term success of the organization. All companies, including those in the real estate sector, can be subject to corporate sustainability reporting requirements (which also cover ESG aspects) if they exceed certain financial and number of employees thresholds. At the same time, while not all ESG requirements are directly related to real estate matters specifically, companies may be subject to other related ESG requirements.

Direct taxes applicable to sales

Depending on the alternative chosen (asset deal vs. share deal), under the acquisition phase, several implications should be considered when determining the most efficient solution from a tax point of view, including, but not limited to the possibility of taking over the tax losses carried forward, depreciation costs, deductibility of borrowing costs with respect to financing the transaction, etc.

Asset deals

For the seller, the tax treatment would differ depending on the tax regime of the company (i.e., corporate income tax, minimum turnover tax, or microenterprise tax). If it is subject to corporate income tax (which is generally the case), the seller should be taxed at 16% on the overall gain that resulted from the sale of the property. Such gain is computed as the difference between the sale price and the fiscal value of the building/land (i.e., acquisition cost and historical construction cost). Previous valuations made for the property are not considered in the tax value. Starting 2024, a separate analysis should be made if the seller is subject to minimum turnover tax in order to correctly assess the tax impact upon the sale of the real estate property.

From the buyer's perspective, following the acquisition of a real estate property, the acquisition cost becomes the new tax value of the asset, from which the related tax depreciation can be calculated. The buyer should split and book separately any real estate property, including buildings and land, considering that different depreciation regimes and property taxes apply.

Share deals

Income from the sale of shares in a Romanian company is non-taxable if the shareholder held at least 10% of the shares in the Romanian company for more than one year at the time of the sale. Thus, if the seller transfers the shares in a Romanian company holding real estate property for which these ownership conditions are fulfilled, the income obtained from the sale of shares are not taxable in Romania. Compliance obligations should still be performed, and non-resident sellers should register in Romania within 30 days from the date of sale.

As regards share deals performed within the one-year period of ownership, the tax treatment would depend on the provisions of existing double tax treaties which could be applied.

The potential buyer should look carefully at the purchasing company's tax valuation of the property as well as the deferred tax calculation (i.e., unrealized exchange differences and the accumulated tax losses of the company), which will have an impact on possible future income reduction of the company.

Attention should also be given to the financing costs related to the acquisition and tax implications at the level of the holding company acquirer, considering the provisions of the Anti-Tax Avoidance Directive already implemented.

For both asset and share deals, if the transaction is performed between related parties, transfer pricing rules should also be observed.

*According to the 10 December 2024 exchange rate

Latest developments in Romania, and areas to focus on in the future:

- In recent years, the real estate investors, nationals, or foreigners, have been very active in the Romanian market. We have witnessed a change in the preference of investors, from office and retail to logistics and industrial projects. In what concerns the retail sector, the trend of investment has shifted from the development of complex shopping centers located in the main cities of Romania to projects located in medium to small towns across Romania.
- High interest rates continued to shape the Romanian residential real estate market in 2023. These rates increased construction costs for developers and led to higher prices and mortgage rates for buyers. However, recent moves by the European Central Bank and the National Bank of Romania to start cutting interest rates as inflationary pressures ease may encourage real estate investments and boost mortgage lending.
- A boost for the diversification and growth of real estate investments is expected to come from the new draft law regarding the establishment of the legislative framework for the operation of real estate investments trusts/REITS.
- The developers of new projects, particularly in the residential sector, are faced with the difficulties resulting from the continuous changes in the VAT threshold applicable to the acquisition of certain medium-sized residential units.
- In addition, real estate developments in Bucharest are undergoing a period of uncertainty due to the ongoing proceeding regarding the invalidation in court of the Bucharest General Urbanism Plan and the suspension/invalidation of the zoning urbanism plans of the sectors. Since the process for obtaining construction permits for new projects in Bucharest is still frozen, the major real estate players are shifting their attention to nearby surrounding areas as well as to other important cities in Romania (such as Cluj, Timisoara, Iasi, and Constanta).

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Overview of the Serbian Legal System

Real estate law – legal framework and overview of main regulations governing acquisition of assets in Serbia

This section contains a list of the most significant pieces of legislation, which, in our view, may be applicable to the acquisition and lease of real estate in Serbia. Please note that, depending on the complexity and structure of the transaction, other potential regulations may also be applicable. Thus, the list of regulations specified below is not exhaustive and should be perceived as a general guideline for the implementation of real estate transactions in Serbia.

Ownership Act

The Ownership Act[10] governs the ownership right and possession over movables and immovables, third party rights over immovables (i.e., servitudes, pledges, etc.), and the procedure for foreigners acquiring immovables in Serbia. This act is considered as the underlying act in the field of real estate.

Public Notaries Act

The Public Notaries Act[11] empowers notaries to accept a declaration of will from the parties, to give these declarations the necessary written form, and to issue certificates that have the character of public documents.

The act regulates the particulars of a notary's work. The provisions of the Public Notaries Act specify the form in which certain private documents (e.g., agreements) must be drafted and executed to produce legal effects.

Property Transfer Act

The Property Transfer Act[12] governs the transfer of ownership title to real estate via legal transactions, with or without consideration. The Property Transfer Act prescribes the form of a real estate transfer agreement and the jurisdiction of public notaries for certifying the transfer documents.

In addition, the Property Transfer Act bestows the pre-emptive purchase right upon:

- Co-owners of the property;
- Owners of the neighboring parcels, in case of agricultural land; and
- A third party, in case of contractual pre-emptive right and regulates the pre-emptive right procedures.

10 Act on Basics of Ownership and Proprietary Relations (In Serbian: Zakon o osnovama svojinskopravnih odnosa, "Official Gazette of SFRJ", nos. 6/80 and 36/90, "Official Gazette of SRJ", no. 29/96, and "Official Gazette of the Republic of Serbia", no. 115/2005).

11 Public Notaries Act (In Serbian: Zakon o javnom beležništvu, "Official Gazette of the Republic of Serbia", nos. 31/2011, 85/2012, 19/2013, 55/2014, 93/2014, 121/2014, 6/2015 and 106/2015).

12 Real Property Transfer Act (In Serbian: Zakon o prometu nepokretnosti, "Official Gazette of the Republic of Serbia", nos. 93/2014, 121/2014, and 6/2015).

Public Property Act

The Public Property Act[13] is a framework regulating public property as well as other property rights of the state, autonomous province, and municipalities/cities. Natural resources (e.g., water, water streams, geothermal, and mineral resources etc.), goods of general importance (forestry, agricultural land, etc.), goods in general use (as stipulated in the law), property used by public bodies and organizations of the state, provinces, and municipalities/cities, agencies etc., fall under the public property regime.

The procedures for the sale of state-owned construction land by the Republic of Serbia as well as conditions, manner, and procedure for the swap of real estate owned by the Republic of Serbia are laid down in the decree on conditions, manner, and procedure in which the publicly owned land may be disposed of or leased for a price/rent lower than the market price, or without compensation, and in the Decree on Disposal of State-owned Construction Land[14].

Cadaster Act and Law on the Registration Procedure with the Cadaster

The Cadaster Act[15] and Law on the Registration Procedure with the Cadaster[16] jointly regulate, inter alia, the procedure for state surveys and the registration of immovables, ownership rights, encumbrances, and third party rights to immovable property before cadaster register, as well as infrastructure and underground facilities before infrastructure register. Stated laws also prescribe rules pursuant to which the owners of the property are registered, as well as procedures for the registration of remarks and prior remarks with respect to a specific property, which are important for the registration of ownership.

Construction Act

The Construction Act[17] governs the spatial development process, development, usage and transfer of state-owned construction land, and the designing and construction of buildings.

The Construction Act sets out the procedure for adopting planning documents. It also lays down the requirements for obtaining construction permits and use permits for buildings/structures (excluding mining buildings/structures which are regulated by a separate law). Further, it regulates the manner of disposal of publicly owned construction land and the possibility of its lease.

The amendments to the Construction Act from 2023 introduced a major change concerning the right to use

13 Law on Public Property (In Serbian: Zakon o javnoj svojini "Official Gazette of the Republic of Serbia", nos. 72/2011, 88/2013, 105/2014, 104/2016 - new law, 108/2016, 113/2017, 95/2018, and 153/2020).

14 Decree on the Conditions, Method, and Procedure for the Disposal of Construction Land in Public Ownership of the Republic of Serbia (In Serbian: Uredba o uslovima, načinu i postupku raspolaganja građevinskim zemljištem u javnoj svojini Republike Srbije "Official Gazette of the Republic of Serbia", nos. 56/2016, 59/2016 and 7/2017)

15 Act on State Survey and Real Estate Cadastre (In Serbian: Zakon o državnom premeru i katastru, "Official Gazette of the Republic of Serbia", nos.72/2009, 18/2010, 65/2013, 15/2015, 96/2015, 47/2017, 27/2018, 41/2018, 9/2020 and 92/2023).

16 Law on the Registration Procedure with the Real Estate Cadastre and Utilities (In Serbian: Zakon o postupku upisa u katastar nepokretnosti i vodova "Official Gazette of the Republic of Serbia", nos. 41/2018, 95/2018, 31/2019, 15/2020 and 92/2023).

17 Law on Planning and Construction (In Serbian: Zakon o planiranju i izgradnji "Official Gazette of the Republic of Serbia", nos. 72/2009, 81/2009, 64/2010, 24/2011, 121/2012, 42/2013, 50/2013, 98/2013, 132/2014, 145/2014, 83/2018, 31/2019, 37/2019, 9/2020, 52/2021 and 62/2023).

state-owned construction land. Previously, the Act on Conversion of Right of Use to Construction Land into Ownership[18] imposed a fee for changing the right of use to an ownership right, if the right to use state construction land was acquired through the purchase of a company via privatization, bankruptcy, or enforcement proceedings.

Under the amendments to the Construction Act from 2023, the conversion to ownership in mentioned situations is conducted without incurring any fee, which simplifies the conversion process and expedite construction procedures in these specific situations. This law also contains provisions on the payment of a fee for the conversion of agricultural and forestry land into construction land, which are complimentary to the provisions of forestry and agricultural land legislation.

Act on Agricultural Land

The Act on Agricultural Land[19] governs the planning, protection, development, utilization, and transfer of agricultural land.

Forests Act

The Forests Act[20] regulates the preservation, protection, planning, cultivation and use of forests, disposal of forests and forest land, supervision of the implementation of this law, as well as other issues important to forests and forest land, including change of the purpose in specific cases.

Mortgage Act

The Mortgage Act[21] governs the rules and procedures for establishing mortgages as a security instrument over immovable property, as well as types of mortgages, registration of mortgages, mortgage foreclosure, etc. This statute is particularly important in cases where the target real estate is mortgaged.

Obligations Act

The Obligations Act[22] governs the obligation relations and sets forth default rules of various contracts, including the SPA, the lease contract, and the construction agreement.

Moreover, the Obligations Act encompasses provisions regulating tort claims and damages. These provisions are applied in situations where no specific rules are provided by a special regulation.

Finally, the Obligations Act contains a statutory seller's guarantee (which can be modified via SPA) that the sold property is free of any third party claim.

Legalization Act

The Legalization Act[23] governs the conditions and procedure for the legalization of illegally constructed and/or modified buildings as well as consequences of legalization. The amendment to the Legalization Act from 2023 facilitates the temporary connection of illegally constructed residential buildings to infrastructure,

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18 Law on Converting the Right of Use into Ownership on Construction Land for Compensation (In Serbian: Zakon o pretvaranju prava korišćenja u pravo svojine na građevinskom zemljištu uz naknadu "Official Gazette of the Republic of Serbia", nos. 64/2015 and 9/2020) – no longer applicable due to amendments to the Construction Act.

19 Act on Agricultural Land (In Serbian: Zakon o poljoprivrednom zemljištu, "Official Gazette of the Republic of Serbia", nos. 62/2006, 65/2008, 41/2009, 112/2015, 80/2017 and 95/2018).

20 Forests Act (In Serbian: Zakon o šumama, "Official Gazette of the Republic of Serbia", nos. 30/2010, 93/2012, 89/2015 and 95/2018).

21 Mortgage Act (In Serbian: Zakon o hipoteci, "Official Gazette of the Republic of Serbia", nos. 115/2005, 60/2015, 63/2015, and 83/2015)

22 Obligations Act (In Serbian: Zakon o obligacionim odnosima, "Official Gazette of SFRJ", nos.29/78, 39/85, 45/89, and 57/89, "Official Gazette of SRJ", no. 31/93 and "Official Gazette of SCG", no. 1/2003 and "Official Gazette of the Republic of Serbia" no. 18/2020).

23 Law on Legalization of Buildings (In Serbian: Zakon o ozakonjenju objekata "Official Gazette of the Republic of Serbia", nos. 96/2015, 83/2018, 81/2020 - US decision, 1/2023 - US decision and 62/2023).

including water supply, sewage, electricity, gas, and district heating networks.

Family Act

The Family Act[24] governs property relations in a family, including ownership relations between spouses and partners in domestic partnerships.

Ownership rights in Serbia, ownership restrictions, and acquisition structure usually applied in real estate transactions

The Serbian legal system distinguishes the following forms of ownership based on the number of titleholders: (i) individual ownership; (ii) co-ownership; and (iii) joint ownership.

Ownership rights

Generally, any individual or a legal entity may obtain ownership rights on residential buildings, apartments, commercial buildings, business premises, agricultural land, and other real estate, except for natural resources that are owned by the state.

The ownership over real estate can be acquired pursuant to the

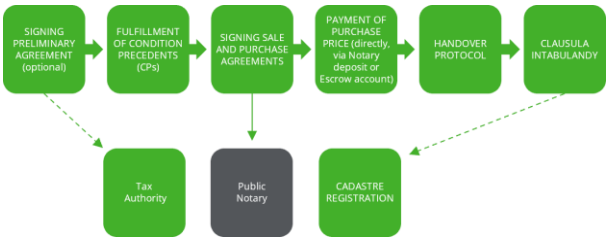
- Statute;
- Legal transaction (pravni posao);
- Inheritance; and
- Public body's decision.

The most common type of legal transaction is the sale and purchase agreement of real property (SPA). Each SPA, after being drafted and negotiated with the assistance of legal counsel, should be signed by the parties, and solemnized by a public notary.

According to the Public Notaries Act, an SPA must be entered into through a certified document (solemnized) before a public notary. The public notary verifies that the legal transaction is permitted by law. The public notary then inserts a confirmation (i.e., solemnization) clause, which is a precondition for the agreement's validity and confirmation that the parties to the agreement were informed of the content and the expected legal effects of the document.

Once the SPA has been concluded, a purchaser is entitled to register ownership over the property in the real estate cadaster, based on the owner's statement allowing registration of the purchaser's ownership right (so-called clausula intabulandi). Most commonly, the statement is inserted in the main SPA (i.e., transfer instrument). Alternatively, the statement may be given separately from the main SPA. This statement is a precondition for effecting registration of the ownership on the real estate property.

Below is a diagram of the simplified procedure for the purchase of a real estate.



Ownership right over an immovable property, on which another person has a valid title, may be acquired via a positive prescription (održaj), even if the owner of the land has not agreed to transfer it. In order to acquire ownership of such property via positive prescription, the person needs to fulfill the following criteria:

- To act in a good faith (i.e., a state of mind which implies believing that a person has a property right over the held property);
- To have a valid legal basis for acquiring the property (e.g., sale and purchase agreement); and

24 Family Act (In Serbian: Porodični zakon, "Official Gazette of the Republic of Serbia", no. 18/2005, 72/2011 – another act and 6/2015).

- To have possession of the property for at least 10 years; or alternatively:
- To act in a good faith;
- Not to have a valid legal basis for acquiring the property; and
- To have possession of the property for at least 20 years.

Ownership is protected by law. An actual owner may seek to retrieve the possession via court from a non-owner.

Acquisition of public property

Apart from the publicly owned land (construction, forestry, agricultural) to which special regimes apply (please see below), public property may be sold to a private entity exclusively pursuant to a decision of a competent authority.

The competence for deciding on a disposal of property depends on the owner of the property. State-owned real estate may be sold exclusively following a decision from the government of Serbia on disposal.

The decision is prepared by the Republic Directorate. Conversely, the property owned by the municipality can be disposed of pursuant to a decision from the municipal assembly.

The general rule is that public property is sold in a public tender procedure at a market price. Exceptionally, public property could be sold via direct bargain and at a rate below the market. In these exceptional cases, the decision, including a proposal, must contain a rationale for such a sale that proves the existence of special circumstances that justify the sale in such a manner. The market value of the real estate is determined by a competent tax authority.

The conditions and procedures for disposal of publicly owned construction land through direct bargains and public tenders are regulated in more details in (i) the Decree on Disposal of State- owned Construction Land owned by the Republic of Serbia; and (ii) applicable municipal regulations.

Co-ownership

Co-ownership is when several persons/entities have ownership rights over the same real estate whereby the ownership share for each of them is determined in proportion to the whole (ideal share). If the co-ownership shares are not determined, it is assumed that they are equal. Co-ownership is usually acquired based on an agreement, by inheritance, division, or in another way prescribed by special laws.

The co-owner has the right to keep and use the real estate together with the other co-owners in proportion to their share, without violating the rights of other co-owners. The co-owner may dispose of their share without the consent of the other co-owners, provided that they honor their pre-emptive purchase rights.

All co-owners jointly manage co-owned real estate. For regular management activities, the consent of co-owners whose shares together make up more than half the value of the property will be required, while to undertake activities that exceed the scope of regular management (alienation of the whole property, change of purpose, lease of the entire property, establishing a mortgage, constitution of servitude right, etc.), requires the consent of all co-owners. Management can be entrusted to one of the co-owners or a third party. If the co-owners cannot reach an agreement on management, this can be decided by the court.

The co-owner always has the right to demand the division of the co-owned real estate, and such right cannot be excluded.

Joint ownership

Joint ownership is the ownership of several persons on real estate when their shares are determinable but are not defined. This will be the case with common premises of a residential building in the case of apartment purchase or joint ownership by the spouses.

According to the Family Act, any property acquired prior to marriage or the establishment of a domestic partnership, or from inheritance and gift agreement, is considered as a personal property and the person is entitled to freely dispose of such property.

Conversely, joint property is the property acquired through work during the marriage or a domestic partnership. According to the Family Act, joint property is managed jointly and with mutual consent. In conducting regular management activities in relation to the joint property, the consent of the other partner is assumed. However, disposal or encumbering of joint property is deemed to fall outside of regular management, and thus, the explicit consent of another spouse/partner is required for selling or mortgaging the property.

The law further provides that, even if only one spouse/partner is registered as the owner of the property it will be deemed that both are registered (owners), unless a consent of other spouse or prenuptial/property division agreement exists. Given the above, an issue may arise when the agreement is concluded with the registered owner, without the consent for disposal of the spouse/partner, in which event the agreement may subsequently be annulled.

In practice, this type of risk is mitigated by obtaining a written notarized statement from the spouse in which they consent to the sale of the relevant property. This consent could represent an integral part of the SPA or could be issued as a separate notarized document.

Moreover, the Law on the Registration Procedure with the Cadaster, introduced in 2018, provides that joint ownership in favor of both spouses will be registered (ex officio) in each case when the buyer, who is married, acquires new property, unless there is a joint statement by the spouses that the property in question is actually the personal property of the buyer (one of the spouses). In this way, the lawmakers wish to align the cadaster register with the provisions of the Family Act.

Restrictions of real estate ownership

Rights of foreigners

Foreign physical and legal entities that perform business activities in Serbia may acquire ownership over real estate (other than agricultural land) if:

- Such property is required for their business; and
- Reciprocity exists between the two countries.

Foreign physical persons may also acquire ownership of an apartment or a house if the reciprocity exists.

Reciprocity between Serbia and the country of origin of a foreign entity/individual may be:

- Contractual reciprocity – existence of a bilateral agreement between Serbia and the country of origin of a foreigner which regulates the matter of acquiring real estate for foreigners; and
- De facto reciprocity (applicable in the absence of bilateral agreement) – meaning that the acquisition of certain rights by foreigners is not guaranteed by international agreements or parallel laws but is in fact provided in practice.

Acquisition of agricultural land is reserved exclusively for citizens of Serbia. The exception is the possibility for European Union (EU) citizens to acquire agricultural land under very restrictive conditions.

However, Serbian companies owned exclusively or partially by foreigners are not deemed as foreign entities for the purpose of acquisition of immovable property, so the restrictions do not apply to them, i.e., they may acquire the right of ownership over all types of real estates (including agricultural land).

Restrictions applicable to the acquisition of agricultural and forestry land

The general principle embedded in both the Forests Act and the Act on Agricultural Land is that forests, forest land, and agricultural land, which are state-owned, cannot be transferred (sold) to private owners except in some limited cases. Specifically, pieces of forests/forestry land can be sold to the user in case of inability of rational management by the state. Also, publicly owned agricultural land can be sold to an individual–Serbian national, who has a registered agricultural holding and can acquire up to 20 hectares of agricultural land (assuming that other conditions are met), whereby the total surface of the land owned by such a buyer after the acquisition does not exceed 40 hectares.

Furthermore, the applicable regulations prescribe that only specific state land can be acquired which:

- Is located at least 10 kilometers or less from the state border, with the approval of the government;
- Is not planned for construction in the valid planning document;
- Is not subject to restitution;
- Does not belong to protected natural assets; and
- Does not belong to or does not border with the security zone/military base.

Moreover, the state cannot sell more than 20% of the total area of the state agricultural land which can be leased in a single municipality.

Finally, a pre-emptive purchase right of neighboring parcels would have to be respected.

Given the above, the only alternative to the purchase of respective land could be to have the necessary forest and agricultural land change their purpose into construction land by adopting a new, or changing the existing, planning document for which a government act is required.

Pre-emptive purchase right

In cases where the buyer acquires land directly from the private owners, it should be considered that a potential pre-emptive right may exist. The Property Transfer Act bestows the pre-emptive purchase right upon:

- Co-owners of the property;
- Owners of the neighboring parcels, in case of agricultural land; and
- A third party, in case of contractual pre-emptive right.

Agricultural land and co-owners: Prior to selling the land to the buyer, the owner of the plot is obliged to offer their land on identical terms to the holders of pre-emptive rights co-owners (if any), and, if this is an agricultural land, to the owner of adjacent agricultural land.

The offer to the holders of pre-emptive purchase rights needs to be in writing and delivered via registered mail to all the holders of the pre-emptive purchase rights. The return receipt signed by the owner represents evidence of receipt of the offer, and this document can be used in court in case of a dispute.

The deadline for a holder of pre-emptive rights to exercise their pre-emptive rights is 15 days from the receipt of the offer. There is a statutory assumption that the holder of pre-emptive rights has rejected the offer if they do not reply within 15 days, in which case the owner may sell the land to a third party under the same or less favorable terms.

In the event the land is sold contrary to this statutory limitation and by disregarding the pre-emptive rights of third parties, holders of these rights may submit lawsuits seeking from the court to annul the sale and purchase agreement and to order the sale of the land to them on the same terms. The right to seek annulment of the agreement must be exercised by the holders of the pre-emptive rights within 30 days from the date when such a person or a legal entity finds out about the sale, or in any case, within two years from the transfer of ownership.

However, the plaintiff would have to deposit the market value of the property with the court simultaneously with filing the suit, which makes such suits unattractive and represents a barrier to misusing pre-emptive rights.

Forest land: The state (or its company that manages the forests) has pre-emptive rights in case a private owner wishes to sell their forest, provided that the respective forest borders with the state- owned forest. The holder of the pre-emptive right in case of the forest is obliged to declare whether it accepts the offer within 30 days from the receipt of the offer sent by the owner of the forest.

Unlike the pre-emptive rights of co-owners or with respect to the agricultural land, if the forest land is sold in contravention of the pre-emptive right rules, the sale and purchase agreement would be null and void.

Water land: The Republic of Serbia has a pre-emptive purchase right on water land. Therefore, before selling the water land, the private owner has an obligation to offer this land to the Directorate for Water. The directorate is obliged to respond to the offer within three days from its receipt. Following a negative response or lack of timely response, the water land can be sold pursuant to the same or less favorable terms (from purchaser's perspective).

Contractual pre-emptive rights: The general rules and principles of statutory pre-emptive rights apply similarly to the pre-emptive rights established by an agreement; however, some specifics concerning deadlines are different. Specifically, the maximum duration of the pre-emptive right is five years, the deadline for responding to the offer from the pre-emptive purchase right holders is one month from notification. The deadline for submitting the lawsuit is six months from the date when the holder of pre-emptive right finds out about the agreement and, in any event, five years from the transfer of ownership to the third party.

Corporate law restrictions

In addition, for acquisition of property from private companies, and depending on the value of the property and the overall assets of the seller, there could be special internal corporate procedures within the seller company which must be complied with in order to complete the transaction (e.g., decision on disposal of the high-value property, etc.).

Real estate registry system

The Serbian real estate cadaster (katastar) is a complete register of all cadaster plots, buildings, and any (ownership) rights, encumbrances, and third party rights attached to them (e.g., servitudes, long-term leases, mortgages, etc.). It is operated by the Serbian Geodetic Authority, which has its offices in each municipality.

The cadaster, in its official capacity, also registers annotations and any data/property right change, i.e., registration, modification or cancellation of the requests submitted by the owner or third party who has adequate legal interest/right (e.g., mortgage creditors) and is open to the public.

The registration of ownership title transfer with the cadaster is mandatory and a precondition for acquiring ownership over real estate (narrow exceptions to this rule exist), as well as for the creation of rights in rem (stvarnih prava).

The acquisition of property rights has two phases:

- Obtaining "iustus titulus" (contract or other legal act for the transfer of ownership); and
- "Modus acquirendi" (the manner of the transfer itself) which is registration before the competent cadaster.

The cadaster records any transfer of property rights and is updated regularly. Registration is based on the application submitted either by a notary public or courts (ex officio), the attorney-at-law or geodetic organization representing person with adequate legal interest. Conditions for the registration of ownership include:

- The property must be registered in the cadaster;
- A party to the SPA must be registered as an owner of the property at the time of submission of the request for registration (with an exception explained below); and
- Valid basis for registration of ownership (e.g., SPA, court ruling or inheritance order, etc.), which has to contain the time, date and place of the solemnization, description of the property in line with the cadaster data, sale and purchase price (if applicable), personal data of the parties, statement of the owner (seller) permitting registration of the purchaser's ownership (i.e., clausula intabulandi), etc.).

Certain deviations exist in practice where ownership of the property is acknowledged without registration-so called unregistered ownership (vanknjižna svojina). Specifically, applicable regulations allow the registration of ownership against the registered owner who is not a party to the SPA or other transfer instrument if the request for registration is accompanied by the evidence of proper legal continuity between the registered owner and the party to the agreement with the buyer.

The real estate cadaster is a public register, meaning that the principle of reliance in public records (načelo pouzdanja u javne knjige) applies. This principle states that the data registered in the cadaster are "true, reliable and that nobody can suffer any damage if they have relied on the data registered therein." In other words, any acquirer acting in good faith and with trust in the cadaster enjoys legal protection (assuming other legal preconditions are met). The purpose of this principle is to guarantee the safety of real estate transactions.

Notary role in the real estate transactions

The notary public holds a key role in each real estate transaction by protecting the rights of their clients as well as increasing the efficiency and control of each transaction.

Agreements on the disposal of rights over immovable property, including mortgage agreements, need to be certified (solemnized) while unilateral pledge/mortgage statements must be concluded in the form of a notarial deed. Non-compliance with the prescribed form will make the transaction null and void.

Only the public notary where the real estate is situated has jurisdiction for certifying the document. In case of several properties, located in different regions of the country, are being acquired by the same agreement, the public notary may notarize such an agreement based on the rules of attraction of jurisdiction.

The parties are free to determine the terms of the agreement; however, the content undergoes strict legal control by the notary public prior to the notarization. The public notary informs parties to the agreement of relevant circumstances surrounding the property that is being transferred (e.g., lack of use permit, ongoing legalization procedures, etc.) and their legal implications, and makes sure they understand the content and legal consequences of their contractual obligations, as well as to reflect the resolutions of the parties properly. Further, notaries public have access to the Legal Information System of the Republic of Serbia (PIS), which records all real estate transactions and contracts, making multiple sales of the same real estate almost impossible.

Finally, public notaries are obliged to inform a competent tax authority and cadaster about each real estate transaction, ensuring that each change in ownership of the property is reflected in the land registry in a timely manner.

Additionally, a document concluded in the form of a notarial deed represents an enforcement title allowing the creditor to initiate enforcement proceedings directly when other legal requirements are met.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

The Obligation Act provides two general types of responsibility for the seller: responsibility for material (physical) defects and responsibility for legal defects (eviction/evikcija).

The responsibility for material (physical) defects exists when real estate does not have all the agreed characteristics, or if there are certain material defects (flaws). After identifying the defect, the buyer has an eight-day deadline to inform the seller and request that they remove specific defects or to demand a decrease in the purchase price, or eventually terminate the sale and purchase agreement and demand compensation for damages. The seller will not be liable for the defect if such a defect has appeared six months after the handover of real estate unless a longer period is stipulated. Liability for material defects can be limited or excluded by the agreement.

The responsibility for legal deficiencies (eviction) arises when there is a third party right on the real estate that excludes, diminishes, or restricts the buyer's right, whereby the buyer was unaware of it, or had not agreed to buy the real estate with such an encumbrance.

The buyer has one year from finding out about the third party right to inform and demand from the seller to eliminate any third party rights or claims on the purchased property. Should any claims of a third party arise following the sale, the seller is obliged to provide all legal assistance necessary to refute the claimants' assertions with regard to the sold property. However, if the court accepts the third party's claim and the purchaser loses all or certain rights over the property, the purchaser is entitled to terminate the agreement or request a reduction in price, depending on the particulars of the case. This responsibility of the seller can be limited or completely excluded, except in cases where the seller was aware of the third party right, in which case the liability release will have no effect on the buyer.

In addition, the contractor must ensure the stability and security of the new building for 10 years and provide a two-

year warranty for the quality of performed works, from completion/handing over of the performed works/property.

Mortgages and other usual guarantees adopted in financing assets

The mortgage (hipoteka) is regulated by the Mortgage Act and is used for the security and collection of claims. A mortgage is a lien right on real property that entitles the creditor, in the event of debtor's failure to repay the due debt, to request the collection of a claim secured by the mortgage from the value of the real estate prior to ordinary creditors and junior mortgage creditors, and regardless of who the owner or possessor of the real estate is.

For a mortgage to be legal, it must be registered in the real estate cadaster. A mortgage can be registered against land, buildings, special parts of the building (i.e., apartments, business premises, garages) as well as against buildings undergoing construction, provided that the investor has obtained a construction permit.

It can be registered on the entire real estate, its part or co-ownership share. If there are multiple registered mortgages on one property, they are ranked based on the time they were registered in the cadaster.

Mortgages registered on buildings under construction, or their separate parts/units, are registered on the underlying plot where the buildings are being developed, which is important for project financing and/or the acquisition of real estate prior to finalization. After the completion of construction works, obtaining a use permit by the investor and registration of the building in the cadaster, the mortgage is re-registered, changing from the plot to the newly registered building or its separate units.

There are four types of mortgages:

- Contractual mortgage, established by the mortgage agreement concluded between the real estate owner and the creditor, for securing the debt repayment;
- Unilateral mortgage, registered on the basis of a mortgage deed (pledge statement);
- Statutory mortgage, based on the provisions of special laws; and
- Judicial mortgage, registered on the basis of a court's decision.

The contractual mortgage rules apply mutatis mutandis to unilateral, statutory, and judicial mortgages.

A contractual mortgage (agreement) is concluded in the form of a certified (solemnized) document, while a unilateral mortgage (mortgage deed) needs to be signed in a form of public notary deed. In order to register a mortgage, a public notary is obliged to create a valid electronic document and to send it to the cadaster within 24 hours. For the registration of a mortgage, a public notary fee and administration fee for registration in the competent cadaster must be paid. Both fees depend on the secured amount.

A mortgage agreement or mortgage deed must contain specific legal provisions in order to be enforceable. If the debtor fails to repay their debt, the creditor can start an out-of-court enforcement procedure in which they can choose to sell the real estate by public auction or via direct bargaining procedure. If the creditor fails to sell the real estate in an out-of-court sale procedure within 18 months from the registration of the remark on the mortgage sale in the cadaster, they may start a new enforcement procedure through a competent court.

According to the Mortgage Act, a registered mortgage survives the sale of the property. Thus, the buyer should be aware of any encumbrances established over the property when purchasing, and, where possible, agree with the creditors, in whose favor the mortgages have been registered, on the terms of deletion. Mortgages need to be registered in the cadaster, and the buyer may check whether the relevant property is mortgaged by obtaining the relevant property sheet from the cadaster or public notary. This check could also be performed on the online site of the cadaster. However, this site does not represent an official database and is often not up to date.

The risk is that the seller, who once paid for the property, may not use the funds to repay the debt, which would result in mortgage foreclosure and the sale of the property by public auction. In order to mitigate such risk, the buyer could pay a debt directly to the bank on behalf of the

debtor, based on agreement on such a payment, concluded between the buyer and the debtor (and/or the mortgage creditor), according to the Obligations Act.

Lease of assets and lease of business

The Obligation Act regulates the general rights and obligations in relation to leases, without making any distinction between the leasing of movables and immovable assets. Also, there is still no separate legislation in Serbia governing the lease of business premises; therefore, these general rules apply to leases of all privately owned property

Conversely, leases of publicly owned properties are regulated by the Public Property Act and are subject to specific rules.

The majority of the Obligation Act provisions are discretionary, meaning the parties are free to regulate them in any other permitted manner. As per the general rules, parties to lease agreements can be either natural or legal persons, either domestic or foreign. The subject of the lease can be the entire building, apartments, business premises, retail units, warehouses, garages, etc.

The lease agreement can be concluded for a definite or indefinite period. An agreement which is entered into for a fixed term will expire at the end of that period. However, if the lessee continues to use the leased property and the lessor does not object, it will be deemed that the new lease has been concluded for an indefinite period, and under the same terms and conditions, save for those relating to security instruments provided by third parties (e.g., pledges, guarantees etc.) that will cease to exist.

Conversely, if the lease is concluded for an indefinite period without defining a termination notice period, the statutory notice period of eight days will apply.

Lease agreements do not have to be in writing to be legally valid and binding. The exceptions are that the written form is required for long-term leases (i.e., lease for five plus years), and those signed with foreigners or foreign companies for the lease of touristic properties and amenities. However, in practice, the parties almost always choose the written form for reasons of legal security, especially with the lease of business premises where the subject of the lease is often property of great value. In addition, even if the parties opt for a written form, there is no obligation to notarize the lease agreement, except in cases when the parties wish to register a long-term lessee right to the cadaster, in which case the party's signatures on the agreement need to be certified by a public notary.

Unless the lessor and lessee have expressly agreed otherwise, the lessee may sub-lease the property to another person. The lessor may to collect the receivables arising from the lease, request direct payment of the amount owed by the sub-lessee pursuant to the sublease agreement. Also, the lessor may terminate the lease agreement if the lessee is sub-letting the premises without permission (if such permission is required by law or under the agreement).

The lessor is free to dispose of the leased property, in which event the buyer (i.e., the new owner of the leased property) will assume the lessor's rights and obligations from the lease agreement. This means that the new owner cannot terminate the agreement and require the lessee to vacate the leased property before the expiration of the lease term defined therein. If the lease was agreed for an indefinite term, the new owner will have to send a termination notice and honor a statutory or agreed notice period. By contrast, if the premises are sold within an enforcement procedure, the lease agreement will be terminated automatically if the lease agreement has not been registered in the cadaster prior to the first rank mortgage or the oldest foreclosure remark.

The Serbian Obligation Act sets the general rules for the lease of business premises. However, some of these are not appropriate or well-adjusted for commercial leases; therefore, the landlords/owners of retail and office space tend to regulate their obligations to the tenants with triple net lease agreements which are rather one-sided and in favor of the landlords. Given the recent expansion of the retail and office space market in Serbia, it is anticipated that a separate law governing the lease of business premises will be adopted, which is expected to provide a more suited legal framework for commercial leases and improve the lessee's position.

Administrative permits applicable to construction or restructuring of assets

The construction process in the Republic of Serbia can be divided into three administrative phases:

- Obtaining location conditions documents;
- Issuance of construction permit; and
- Issuance of use permit.

Location conditions are documents preceding the construction permit determining the rules of construction for a specific location. They are issued by a decision that contains all the data for the preparation of technical documentation, all in accordance with the valid planning document or urban plan. The request for obtaining location conditions is submitted electronically via the Central Information System (CIS).

With the amendments to the Construction Act of 2014 and introducing the so-called "one-stop-shop" system, the procedure for issuing construction permits has been accelerated considerably. The entire system and permitting procedure operate electronically; therefore, all documents must be submitted electronically and signed with a qualified electronic signature.

The procedure is initiated by applying through the CIS, along with adequate supporting documents (e.g., an extract from the construction permit design, proof of administrative tax payment, proof of ownership over the land, etc.). Competent authorities are required to obtain ex officio all necessary documents, which are issued by the competent public authorities. By law, the competent authority must issue a construction permit within five working days from the submission of the application. In effect, the entire process lasts approximately 100 days.

The construction permit is issued in the developer's name, but it may also be issued jointly in the developer's and the financier's name. A construction permit also includes details about building's dimensions, its estimated value, cadastral plots on which the construction process is taking place. It also specifies the permit's validity period and the technical and legal documentation based on which it is issued.

The use permit is the final administrative act which is issued based on a technical inspection of the facility. The use permit confirms that the facility is developed in line with the applicable (planning and zoning) regulations, and location conditions, that the installed equipment is tested and functional, the facility has all the necessary approvals from the competent authorities, and that the facility has passed all the necessary tests.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

Environmental Impact Assessment (EIA) procedure

Pursuant to the Law on Environmental Impact Assessment[25] and relevant subordinate legislation, the EIA procedure is mandatory for certain projects that have/may have an impact on the environment. This procedure is also relevant for issuing construction permits and for the commencement of construction works.

When developing certain projects, the project holder (investor) is obliged to request from the Ministry of Environmental Protection a decision on whether an EIA procedure should be carried out. Such a request must be filed on a prescribed template and must include, inter alia, data on the project parties and location, the description of project features, a description of the potentially materially adverse environmental impact, and the proposed measures to mitigate such an impact. Certain project documentation also must be filed as an exhibit to this request.

25 Law on Environmental Impact Assessment (In Serbian: Zakon o proceni uticaja na životnu sredinu "Official Gazette of the Republic of Serbia", nos. 135/2004 and 36/2009).

Failure to file the above request is a potential misdemeanor liability and results in an inability to initiate construction of the objects. Specifically, conducting an adequate EIA procedure is a mandatory precondition for the issuance of construction permits, as well as for notifications on the commencement of works to be confirmed. In case neither (as applicable in each case) of the EIA study or a resolution that the EIA study is not required, the requisite permits would not be issued, and the construction could not take place.
More specifically, requests for construction permits and/or confirmation of the notification of commencement of works would be dismissed, while new requests could only be filed once the necessary EIA-related documents are prepared, which could be a time-consuming exercise.

Energy certificates

In 2012, the Rulebook on Energy Efficiency of the Buildings[26] and the Rulebook on Conditions, Content and Manner of Issuing Energy Certificates[27] were adopted in the Republic of Serbia, introducing significant novelties in the field of civil engineering and the ESG segment. Based on these regulations, all buildings that are being constructed, reconstructed, sold, or leased in Serbia must have an energy performance certificate (energy passport). An energy passport is a document containing basic data about a building, information about the materials used in its construction, an energy consumption calculation, the building's energy class, and recommendations for improving the building's energy efficiency. Under amendments of the Construction Act, the energy performance certificate, previously required for use permit applications, now has to be included when concluding contracts for the sale or lease of new buildings.

On the other hand, existing commercial buildings must comply with this obligation within five years, and existing residential buildings within 10 years. Until these deadlines expire, the certificate is not required for certifying contracts for the sale or lease of such buildings. Apart from this novelty, the categorization of buildings by energy properties was also introduced, and eight energy classes were identified (from A+ as the most energy-efficient, to G class, as the least). New buildings must meet the requirements necessary to be classified as class C as a minimum. Existing buildings must improve their energy properties after adaptation by no less than one energy class.

There are few exceptions to the above obligations. Specifically, the energy passport is not required for: buildings that are being reconstructed with an area of less than 50 square meters net, buildings with a use limited to two years or temporary buildings that are used during construction, manufacturing plants, buildings used for religious ceremonies or buildings under a special regime of (cultural) protection, and buildings whose temperature upon heating does not exceed 12˚C.

Energy passports are issued by authorized organizations which must have at least two employees holding licenses as chief energy efficiency engineers, who have completed building energy efficiency training.

The incorporation of these regulations into Serbian legislature is a step towards the harmonization of local regulations with the regulations of the EU (e.g., Directive 2002/91/EC), which obligates the member counties to implement the goals set by the Kyoto Protocol.

Taxes

In Serbia, there are several types of taxes related to property. They are paid either for real estate transactions or for owning real estate.

26 Rulebook on Energy Efficiency of the Buildings (In Serbian: Pravilnik o energetskoj efikasnosti zgrada "Official Gazette of the Republic of Serbia", no. 61/2011).

27 Rulebook on Conditions, Content and Manner of Issuing Energy Performance Certificate of Buildings (In Serbian: Pravilnik o uslovima, sadržini i načinu izdavanja sertifikata o energetskim svojstvima zgrada "Official Gazette of the Republic of Serbia", nos. 69/2012, 44/2018 and 111/2022).

Property tax

Property tax is paid by a person who has the right of ownership on real estate located in the territory of the Republic of Serbia. That person may be a natural or legal person, either resident or non-resident. The tax rate is 0.4%. The tax base is determined by the body of the local self-government unit on whose territory the real estate is located, and the value of the real estate is determined by the usable area and the average price per square meter of the corresponding real estate in the zone where the real estate is located. This tax is paid quarterly, within 45 days from the beginning of the quarter. For the period before concluding the contract on the sale of real estate, the taxpayer is the seller. Therefore, prior to concluding the SPA, it is recommended to obtain a certificate on payment of property tax for the tax liability incurred up to the day of signing the SPA.

Capital gains tax

When selling real estate, it can happen that the seller becomes a taxpayer of capital gains tax. This tax affects a natural person (including an entrepreneur) who sells their real estate. However, for this obligation to arise, it is necessary that a capital gain exists. This will happen if the property is sold for a price higher than the one at which the respective property was acquired. The tax is paid on the difference between the sale price and purchase price, i.e., that difference will constitute the tax base. The tax rate on capital gains is 15%. However, the rate applicable to capital gains incurred by non-residents is 20% unless envisaged otherwise by a relevant double taxation treaty.

There are a few exceptions to the payment of this tax. Specifically, if within 365 days from selling the property, a seller re-invests the funds received from the sale into buying another property and therefore resolves the housing issue for themself or the members of their household, capital gains tax obligation will not apply (assuming that other conditions are met). If the new property is bought within the first 90 days, capital gains tax will not be payable. If the new property is bought, i.e., a housing issue is solved in the period from 90 to 365 days from selling the property, the seller will be obliged to pay capital gains tax, and the amount of paid tax will be returned subsequently based on a decision by the competent tax authority. Also, capital gains tax is not payable on a sold property that was in the seller's ownership for a period longer than 10 years, or if such a property was inherited within the first inheritance order.

Property transfer tax

Property transfer tax (PTT) in Serbia is payable by individuals and legal persons that sell real estate, intellectual property, or second-hand motor vehicles, vessels, or aircrafts.

The PTT rate is 2.5%. The tax base for the transfer tax is the contractual price. However, the tax administration (TA) has the right to assess tax on the basis of the market value, if they determine that the contractual price is below the market price. According to the applicable regulation, the taxpayer is the seller, while the buyer is a guarantor for the payment of the tax liability. However, in practice, the parties usually stipulate that the payment of PTT will be the sole obligation of the buyer.

The taxpayer is obliged to submit a tax return to the TA within 10 days from the taxable event, i.e., the day when the agreement on the sale and purchase of real property was executed. However, based on the Notary Act, the parties may opt to submit the tax return to a public notary which will then be forwarded to the competent TA. Payment of the transfer tax is due within 15 days of the receipt of this decision from TA.

Starting from 1 January 2025, local self-government units will fully determine, collect, and control the inheritance and gift tax and the tax on the transfer of absolute rights.

An individual who is a Serbian citizen and the buyer of their first apartment may ask for an exemption from payment from the PTT up to a certain amount.

Value added tax

Value added tax (VAT) is applicable on the first transfer of ownership rights for newly built buildings constructed after 1 January 2005. The first transfer of real estate is subject to VAT at a rate of 20%, save for the first transfer of apartments that is subject to the VAT at a rate of 10%. An individual who is a Serbian citizen and the buyer of their first apartment, may ask for refund of VAT paid.

Latest developments in Serbia, and areas to focus on in the future:

- Data from the Serbian Geodetic Authority related to the real estate market show that stabilization and calming of the market continued after extremely dynamic growth in 2021 and 2022, which followed the outbreak of the corona virus pandemic. Along with the stabilization and calming of real estate market activities, there is a moderate increase in apartment prices across the Republic of Serbia at the beginning of 2024. The total value of the real estate market in 2023 in the Republic of Serbia amounted to €6.5 billion, which is 13% less compared to 2022.
- Regarding residential construction activity, during 2023, approximately 36,000 apartments were constructed, marking an increase of about 6,000 compared to 2022. According to the Serbian Geodetic Authority, around 17,000 building permits for residential construction were issued in Serbia by H1 2024, which represents a decrease of about 5% to the same period last year. On the other hand, Belgrade region had about 8% increase under same criteria, reaffirming Belgrade's prominent role in residential construction activities.
- Belgrade office market has seen a significant increase in development activity, with a steady rise in the number of new office space deliveries each quarter. Despite availability of new office spaces and high demand, the overall vacancy rate declined to 7.25% by year-end, with Class A offices seeing a lower vacancy rate of 6.09%. In the fourth quarter of 2023, yields for prime office space were revised to between 8.25% and 8.75%.

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Overview of the Slovenian Legal System

General introduction to the main laws that govern the acquisition of assets in Slovenia – real estate rights

In this section, we identify the key legal acts in Slovenia pertaining to the field of real estate law. The below summary should thus be understood to represent a general overview of real estate law in Slovenia, and not as an exhaustive list of all applicable regulation.

Property Code

The acquisition of movable assets and real estate, as well as establishment of rights in rem on real estate, is primarily regulated by the Property Code (in Slovenian: Stvarnopravni zakonik; SPZ)[28].

SPZ is considered as the fundamental law in the field of real estate law in Slovenia.

In addition to definitions of the legal concepts of real estate, intabulation clause, etc. it also regulates the permissible ways of acquiring ownership of and on immovable (and movable) property, the relationship between and entitlements of co-owners/joint owners of real estate in co-ownership or joint ownership and the way in which it is managed, as well as how the joint or co-owned real estate is divided.

SPZ also contains provisions on the creation of mortgages, the different types of mortgages that can be created (in addition to the common mortgage, also the supra-mortgage (a lien on the claim secured by the mortgage) and the maximum mortgage) as well as some general provisions regarding actual commonhold (etažna lastnina).

Land Register Act

The Land Register Act (Zakon o zemljiški knjigi; ZZK)[29] regulates the rules for the entry of ownership right and other rights in rem, as well as certain rights related to contractual obligations, in the Land Register (zemljiška knjiga; ZK). The ZK is a public register for the registration and publication of information on rights on real estate and legal facts relating to real estate.

Currently, ZK is an electronic database that can be accessed by any logged-in user (an email address and a password are sufficient for access), provided the user knows the details of the real estate they wish to access (e.g., parcel number, cadastral municipality of the parcel or building number, cadastral municipality of the building and part of the building).

Act on the cadastre of immovable property

The Act on the cadastre of immovable property (Zakon o katastru nepremičnin; ZKN) regulates the establishment, management, and maintenance of a cadastre of immovable property, a register of state borders, a register of spatial units and a register of addresses.

Similarly to the ZK, under the ZKN, data are publicly accessible in a computerized electronic database, which is provided in the "e-prostor" application.

In addition to the cadastral municipalities, parcel numbers of immovable property and building numbers, the cadastral register of immovable property also records information on the rating of agricultural land, the type of actual and intended use of the land (agricultural land, forest land, building land, etc.), the surface area of the land,

28 Property Code, Official Gazette of the Republic of Slovenia no. 87/02, et. seq.

29 Land Register Act, Official Gazette of the Republic of Slovenia, no. 58/2003, et. seq.

and, in the case of a building, information on the year of construction of the building, the individual parts of the building in commonhold, the owner of the building (if the owner is a legal person), the energy performance certificate of the building, etc.

Obligations Code

Provisions of the Obligations Code (Obligacijski zakonik; OZ)[30] govern the contractual relations for the purchase of immovable property, as well as the conditions under which errors of fact or law in connection with the purchase of immovable property may be asserted.

According to provisions of OZ, the share purchase agreement (SPA) for the sale/purchase of immovable property should be concluded in writing[31].

Notary Act

The Notary Act (Zakon o Notariatu; ZN)[32] regulates the work of notaries as public law persons who enjoy the highest degree of trust. In relation to real estate, notaries certify signatures on SPAs (provided that the SPA contains an intabulation clause), propose the registration of ownership right and other rights in rem in the Land Register, draw up documents in the form of a notarial deed (e.g., an agreement on the creation of a mortgage, which must be drawn up in the form of a notarial deed, and in other cases required by law), etc. One of the notary's common functions in commercial practice is also to serve as an escrow agent.

Protection of Buyers of Apartments and Single Occupancy Buildings Act

The Protection of Buyers of Apartments and Single Occupancy Buildings Act (Zakon o varstvu kupcev stanovanj in enostanovanjskih stavb; ZVKSES)[33], lays down rules on the sale of apartments and single occupancy buildings to protect final buyers from the risk of default by the investor or intermediate buyer as seller under the SPA.

ZVKSES regulates certain aspects of the purchase of real estate (either a single dwelling building or an apartment as an individual part of a building located in a building with several individual parts (commonhold)), which are being sold as a newly constructed building.

In addition to the specific scope of application, ZVKSES also defines certain stricter conditions for sale of such real estate.

Family Code

The Family Code (Družinski zakonik; DZ)[34] regulates the property relations between spouses, including joint decision-making regarding the real estate that constitutes the spouses' or extramarital partners' matrimonial home.

According to the provisions of the DZ, real estate constituting the matrimonial home may be encumbered (e.g., with a mortgage) or alienated only with the consent of both spouses (or extramarital partners).

Ownership right in Slovenia, acquisition structure usually applied in real estate transactions; restrictions applicable to foreigners, other restrictions in real estate transactions in Slovenia

Slovenian legal system discerns between the following forms of ownership based on the number of titleholders, namely:

- Individual ownership;
- Co-ownership; and
- Joint ownership.

An ownership right over a thing is the right to possess, use, enjoy and dispose of a thing in the most extensive way. Generally, any individual or legal entity may obtain ownership right over real estate (subject to restrictions set out in more detail below).

30 Obligations Code, Official Gazette of the Republic of Slovenia no. 97/07, et seq.

31 Please note, if the SPA contains an intabulation clause (which is common in commercial practice), the seller's signature on the SPA must be notarised. If the intabulation clause is a separate deed to be delivered to the buyer together with the SPA, the signature of the seller must be notarised on the intabulation clause itself. All the above are requirements of the SPZ (see Article 23 of the SPZ).

32 Notary Act, Official Gazette of the Republic of Slovenia no. 2/07, et. seq.

33 The Protection of Buyers of Apartments and Single Occupancy Buildings Act, Official Gazette of the Republic of Slovenia, no. 18/04.

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A co-ownership right is a right of two or more persons over an undivided real estate (co-owners) where the share of each of them is determined in proportion to the whole (ideal share).

A joint ownership right is a right of two or more persons of an undivided real estate (joint owners) where their shares are not fixed in advance.

Acquisition of ownership right on real estate

According to provisions of SPZ, an ownership right on real estate can be acquired based on:

- Legal transaction (pravni posel);
- Inheritance;
- Law; or
- A decision of a public authority (e.g., a final court decision or a final decision of an administrative authority, unless otherwise provided by law).

Most commonly, acquisition of real estate is executed through legal transactions by concluding an SPA. The most common phases in the sale/purchase of a real estate are outlined below:

Preparation and signing of the SPA

The seller and the buyer, with the assistance of attorneys, agree on the terms and conditions for the purchase of the real estate in the SPA. According to the provisions of the OZ, the SPA must be in writing and must contain all the essential elements of the contract (the subject of purchase – real estate and the purchase price). As stated above, in commercial practice it is widely accepted that the SPA also contains the intabulation clause.

Submission of the SPA to the competent tax office

If the sale of the real estate is subject to real estate transfer tax (RETT), the SPA which has been signed by both parties, needs to be submitted to the competent tax office (Finančni urad) within the statutory deadline, i.e., no later than 15 days from the conclusion of the SPA. The competent tax office will then assess the corresponding amount of tax (more on this topic in the chapter on real estate taxation), whereby the tax base is the (sale) value of the real estate. After paying the tax (the RETT is paid by the seller, unless otherwise agreed in the SPA), the tax authority issues a certificate that the assessed tax has been paid which is stamped on the SPA (in commercial practice, we often hear that this is a "tax verified" SPA).

Without such a certificate of payment, it is not possible to certify the seller's signature on the SPA by a notary and to register the ownership right in the land register. If the sale is, however, subject to VAT, then the submission of the SPA to the tax authority is not necessary.

Notarization of the seller's signatures at the SPA

After obtaining the "tax verified" SPA (i.e., in case RETT is applicable) the next step is for the notary public to notarize/certify the seller's signature on the SPA. As stated above and per the provisions of SPZ, for ownership right to be transferred on real estate the seller must issue a buyer an intabulation clause (zemljiškoknjižno dovolilo), whereby the seller's signature on the intabulation clause needs to be notarized by a notary public.

If the intabulation clause is contained in the SPA (which usually is the case), the signature of the seller on the SPA must rather be notarized/certified.

Alternatively, intabulation clause can be prepared separately from SPA as an individual deed. In this event, the seller's signature must be notarized on the intabulation clause itself and the intabulation clause must be handed over to the buyer with the SPA.

Handover of the SPA and registration of ownership in the ZK

After the seller's signature on the intabulation clause is notarized, the seller hands over the SPA to the notary public with instructions to notary public to handover the SPA to the buyer once all the conditions per the SPA have been fulfilled (i.e., full payment of the purchase price by the buyer and other agreed-upon conditions).

Alternatively, the seller can keep the SPA in his possession until all conditions per the SPA have been met and then hands it over to the buyer.

Once the buyer possesses the SPA that contains an intabulation clause (or intabulation clause in the form of individual deed) he can register his ownership right in the

ZK. Per the provisions of SPZ the acquisition of ownership of real estate by legal transaction requires registration of ownership right in the ZK. The proposal for registration is submitted to the ZK most commonly by a notary public.

Restrictions on acquisition of real estate

Acquisition of real estate by foreigners

Foreigners (i.e., foreign citizens and legal entities with their registered office abroad), are classified into the following groups according to the possibility of acquiring ownership rights on real estate in Slovenia:

Foreigners who do not require a decision on the determination of reciprocity to acquire the right of ownership of real estate:

- Citizens and legal entities of the European Union (EU) member states (the latter based on Article 3a of the Constitution of the Republic of Slovenia (Ustava Republike Slovenije; URS) and the Act on the Ratification of the Treaty of Accession of the Republic of Slovenia to the European Union, by means of the Final Act);
- Citizens and legal entities of the member states of the Organisation for Economic Co-operation and Development (OECD) (the latter based on the Act on the ratification of the Convention on the OECD and of Additional Protocols nos. 1 and 2 to the Convention,[35] as well as Act on the Ratification of the Agreement on the Conditions of Accession of the Republic of Slovenia to the Convention on the OECD[36]);
- Nationals and legal persons of the member states of the European Economic Area (EEA) (the latter based on Article 40 of the Agreement on the European Economic Area[37]);
- Persons with the status of Slovenians without Slovenian citizenship (the later based on the Article 66 (1)(8) of the Act on Relations between the Republic of Slovenia and Slovenians Outside its Borders (Zakon o odnosih Republike Slovenije s Slovenci zunaj njenih meja; ZORSSZNM)[38]);
- Legal heirs and foreign testamentary heirs who would also be heirs after legal inheritance when acquiring ownership of real estate by inheritance (the later based on Article 6 of the Inheritance Act (Zakon o dedovanju; ZD)[39]); and
- Foreigners from the former republics of the Socialist Federative Republic of Yugoslavia (SFRY), who had already fulfilled all the conditions for registration of ownership right on real estate before 31 December 1990 (however, the registration was not realized or the procedure for registration in the ZK was not initiated) in the currently initiated procedures for registration of the ownership right to immovable property (the later based on the Act on the ratification of the Agreement on Succession Issues (Zakon o ratifikaciji Sporazuma o vprašanjih nasledstva; MSVN)[40]).

These foreigners may acquire real estate under the same conditions as Slovenian citizens, without the need to obtain a positive decision on reciprocity beforehand.

Foreigners who need a positive reciprocity decision to acquire ownership of real estate:

These include, for example, nationals and legal persons of candidate countries for EU membership (i.e., the Republic of North Macedonia, the Republic of Serbia, Montenegro, the Republic of Albania, Ukraine, the Republic of Moldova, Bosnia and Herzegovina).

35 Act on the ratification of the Convention on the OECD and of Additional Protocols nos. 1 and 2 to the Convention (in Slovenian: Zakon o ratifikaciji Konvencije o Organizaciji za gospodarsko sodelovanje in razvoj ter Dopolnilnih protokolov št. 1 in 2 h Konvenciji; MKOGSR), Official Gazette of the Republic of Slovenia, no. 55/10.

36 Act on the Ratification of the Agreement on the Conditions of Accession of the Republic of Slovenia to the Convention on the OECD (in Slovenian: Zakon o ratifikaciji sporazuma o pogojih pristopa Republike Slovenije h Konvenciji o Organizaciji za gospodarsko sodelovanje in razvoj; MSPKOGS), Official Gazette of the Republic of Slovenia, no. 55/10.

37 Agreement on the European Economic Area, Final Act, Official Journal of the EU, L 001, p. 3 – 36, et. seq., ratified with the Act ratifying the Agreement on the participation of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic in the European Economic Area with a Final Act (MEGP), Official Gazette of the Republic of Slovenia, no. 12/04, et. seq.

38 Act on Relations between the Republic of Slovenia and Slovenians Outside its Borders, Official Gazette of the Republic of Slovenia, no. 43/06, et. seq.

39 Inheritance Act, Official Gazette of the Socialist Republic of Slovenia, no. 15/76, et. seq.

40 Act on the ratification of the Agreement on Succession Issues, Official Gazette of the Republic of Slovenia, no. 71/02.

These foreigners may acquire real estate in Slovenia only after first obtaining a positive decision on reciprocity from the Ministry of Justice of the Republic of Slovenia.

Foreigners who cannot acquire ownership of immovable property or can acquire it only by inheritance, subject to reciprocity:

Foreigners and legal persons from all other countries not falling into any of the above categories. These foreigners may acquire ownership right on immovable property in Slovenia only by inheritance, subject to reciprocity.

Restrictions applicable to the acquisition of agricultural and forestry land

In Slovenia, the acquisition of agricultural and forestry land is subject to specific restrictions aimed at protecting the sustainable use of these lands and preventing speculation or excessive foreign ownership. These restrictions are governed primarily by the Agricultural Land Act (Zakon o kmetijskih zemljiščih; ZKZ)[41] and the Forest Act (Zakon o gozdovih; ZG)[42]. The laws outline who can acquire such land, under what conditions, and specific procedures that must be followed.

Special procedure that needs to be observed for the acquisition of agricultural and forestry land

The transaction for the acquisition of agricultural land, forest or a farm is approved by the administrative unit (Upravna enota).

The owner intending to sell the agricultural land, forest or farm must therefore first submit an offer to the administrative unit in the area where the agricultural land, forest or farm is located.

The administrative unit in whose area the agricultural land, forest or farm is located must immediately publish the offer on the notice board of the administrative unit and on the single national e-government portal.

The deadline for acceptance of the offer is 15 days from the date on which the offer is published on the notice board of the administrative unit (this deadline applies to any pre-emptive right holders or the buyer to whom the seller - the owner of the agricultural land, wishes to sell the agricultural land).

Anyone wishing to buy agricultural land, a forest, or a farm must submit a written declaration of acceptance of the offer, either by registered mail or in person at the administrative unit. After the deadline for accepting the offer, the administrative unit informs all parties involved (buyers and seller) of who accepted the offer within the required timeframe. The transaction is finalized once the administrative unit receives the declaration of acceptance and approves the sale. Approval by the administrative unit is a necessary condition for the transaction to be legally valid.

Approval is not required for the acquisition of agricultural land, forest, or farms in certain cases (e.g., transfers between spouses, partners, or between an owner and their legal heir, transfers based on gift contracts etc.).

Pre-emptive rights

ZKZ provides several layers of pre-emptive rights for the acquisition of agricultural and forestry land. These rights prioritize certain categories of buyers, particularly those with a vested interest in the land. The pre-emption right may be exercised by the pre-emption beneficiaries in the following order:

- Co-owner of the land for sale;
- The farmer whose land is adjacent to the land for sale;
- The lessee of the land for sale;
- Another farmer;
- An agricultural organization or an individual entrepreneur who needs the land or the farm to carry out agricultural or forestry activities; or
- The Farmland and Forest Fund of the Republic of Slovenia for the Republic of Slovenia.

If none of the abovementioned pre-emption beneficiaries exercise their pre-emption right, the vendor may sell the

[41] Agricultural Land Act, Official Gazette of the Republic of Slovenia, no. 71/11 et. seq.
[42] Forest Act, Official Gazette of the Republic of Slovenia, no. 30/93 et. seq.

agricultural land to anyone who has accepted the offer in due time and in the manner prescribed by the ZKZ, provided that the concluded contract is approved by the administrative unit.

Failure to respect the pre-emptive rights and concluding an SPA with a non-pre-emptive beneficiary (in the event pre-emption right was exercised) will render the sale of the real estate null and void. The same applies if the sale of agricultural land, forest or a farm is made without the approval of the administrative unit.

Real estate registry system

The Land Register Act (Zakon o zemljiški knjigi; ZZK)[43] regulates the rules for the entry of ownership right and other rights in rem, as well as certain rights related to contractual obligations, in the Land Register (zemljiška knjiga; ZK). The ZK is a public register for the registration and publication of information on rights on real estate and legal facts relating to real estate.

Currently, ZK is an electronic database that can be accessed by any logged-in user (an email address and a password are sufficient for access), provided the user knows the details of the real estate they wish to access (e.g., parcel number, cadastral municipality of the parcel or building number, cadastral municipality of the building and part of the building).

Notary role in the real estate transactions

In relation to real estate, notaries certify signatures on SPAs (provided, that the SPA contains an intabulation clause) or separately issued deeds with intabulation clauses, register ownership right and other rights in rem in the Land Register, draw up documents in the form of a notarial deed (e.g., an agreement on the creation of a mortgage, which must be drawn up and signed in the form of a notarial deed, and in other cases required by law), etc. One of the notary's common functions in commercial practice is also to serve as an escrow agent.

After the real estate transaction is completed, the notary is most commonly responsible for filing a motion to register the new ownership right on real estate in the ZK on behalf of the buyer. This is an important step, as ownership of real estate in Slovenia is only legally transferred once the buyer is registered in the ZK as an owner of real estate.

Additionally, notary is tasked with filing motions for registration of other rights in rem in the ZK (for example liens, mortgage, easements, etc.).

While not the primary role of the notary, they may also provide basic legal advice related to real estate transactions and prepare necessary documentation (e.g., SPA).

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

In Slovenia, the legal responsibilities of the seller in real estate transactions are primarily governed by the OZ, while some specifics are regulated by ZVKSES regarding the sale/purchase of either a single dwelling building or an apartment as an individual part of a building located in a building with several individual parts (commonhold).

Material and legal defects per OZ

OZ provides for two general types of seller's responsibility, namely responsibility for material defects and responsibility for legal defects.

The responsibility for material defects exists when real estate does not have all the agreed characteristics for its normal use if real estate does not possess the qualities and characteristics which were expressly or tacitly agreed or prescribed or if there are certain material defects (flaws). After identifying a defect, the buyer must notify the seller within eight-days, if one of the parties is a consumer, or immediately if both parties are business entities (i.e., in a commercial contract). If both parties are present during the inspection of the real estate for obvious defects, the buyer must notify the seller of any defects immediately,

43 Land Register Act, Official Gazette of the Republic of Slovenia, no. 58/2003, et. seq.

regardless of the parties' status. In the case of hidden defects, which appear after the handover and could not have been noticed at the time of the handover, the seller is only liable for defects discovered within six months after the handover.

A buyer who has notified the seller of a defect in a timely and proper manner can:

- Require the seller to remedy the defect or deliver another defect-free real estate;
- Ask for a reduction in the purchase price; or
- Withdraw from the contract.

In each of the above cases, the buyer has the right to claim damages.

The seller will not be liable for any defect that appears six months after the handover of real estate, unless a longer period is stipulated/agreed in the SPA, or if the seller knew or could not have been unaware of the defect. Seller's liability for material defects can be limited or excluded by the SPA. In commercial practice it is quite common that the SPA contains an "as seen - as bought" clause, which limits seller's liability for hidden defects.

The responsibility for legal defects arises when a third party holds a right over the real estate that excludes, diminishes, or restricts the buyer's right, and the buyer was either unaware of it or did not agree to buy the real estate with such an encumbrance.

If it becomes evident that a third party has a right over the property, the buyer, unless he is already aware of it, must inform the seller and ask the seller to release the real estate from such right or claim within a reasonable time. If the seller fails to comply with the buyer's request and the real estate is alienated from the buyer, the SPA will be deemed automatically terminated by law. However, if the buyer's rights are merely diminished or restricted, the buyer may choose to either withdraw from the SPA or demand a proportionate reduction of the purchase price. In any event, the buyer shall be entitled to compensation for the damage suffered. Seller's liability for legal defects may be limited or excluded by the SPA, except when the seller knew, or could not have been unaware, of such defects at the time the SPA was concluded. In such cases, any contractual provision limiting or excluding liability for legal defects shall be considered null and void.

The buyer's right to assert legal defects expires after one year from the date on which the buyer became aware of the third party's right.

Special regulation per ZVKSES

ZVKSES sets out stricter conditions for sale of real estate, whether it's a single dwelling building or an apartment in a building with multiple individual units (commonhold). For example, the seller must specify the technical characteristics of the real estate, including details about the construction works, equipment and installations, either in the SPA, an annex to the SPA (which forms an integral part of the SPA), or in the terms and conditions. Additionally, the buyer benefits from more favorable time limits for warranty claims regarding material defects compared to the provisions of the OZ. The agreement on waiving the seller's liability for hidden defects under the "as seen - as bought" principle is also excluded.

The seller is liable for defects in the real estate that could not have been detected at the time of handover (hidden defects) if these defects become apparent within two years after the handover.

To ensure the seller's obligation to remedy any defects that arise during this two-year guarantee period, the seller must, at the time of handing over the property to the buyer, provide an irrevocable bank guarantee. This guarantee ensures that the bank will pay the amount covered by the guarantee at the buyer's first request, without any objections.

Mortgages and other usual guarantees adopted in financing assets

A mortgage is a lien on real estate. In Slovenia mortgages are primarily regulated by the SPZ. A mortgage can be established based on a:

- Legal transaction;
- Court's decision; or
- Legal act – so-called legal mortgage (created when the conditions prescribed by law are met).

For a mortgage to be legally valid, it must be also registered in ZK.

There are several types of mortgages, namely:

- Contractual mortgage, established by a mortgage agreement and concluded between the real estate owner and the creditor to secure debt repayment. The debtor and creditor may also agree to conclude a contractual mortgage in the form of a directly executable notarial deed (which means that if the claim is not paid, the creditor can proceed directly to enforcement proceedings against the debtor);
- A mortgage may also be created by setting a maximum amount up to which the secured claims are guaranteed by real estate (maximum mortgage);
- A supra-mortgage, which is a lien on a claim secured by a mortgage; and
- A growing mortgage, which is being used in the case of taking out a loan for construction of a building. This allows the funds to be drawn down gradually according to the dynamics of construction.

To establish a mortgage based on a legal transaction, registration in the ZK is required. The registration in the ZK is made based on a legal deed that includes a valid intabulation clause.

The document must contain the following: the identification of the mortgage creditor and the debtor of the secured claim, and the pledger if they are not the debtor of the secured claim, the legal basis, the land registry designation of the real estate on which the mortgage is established, and the amount and maturity of the secured claim.

Lease of assets and lease of business

The lease of assets, including real estate (such as business premises) and movable property (such as vehicles or equipment), is primarily governed by the provisions of OZ. Additionally, the Housing Act (Stanovanjski zakon; SZ-1) regulates the residential lease relationships in more detail.

Lease of business premises

Currently, there is no specific law exclusively regulating the lease of business premises. Therefore, the provisions of the OZ fully apply.

OZ sets out the general rights and obligation in relation to leases, including the lessor's obligations to handover the leased asset, maintain it throughout the lease period and, if necessary, repair it. It also addresses the lessor's liability for material and legal defects in the lease. The lessee is obligated to use the leased asset as a responsible businessperson or diligent steward and to pay the agreed rent on time and in the correct amount.

Even though the OZ stipulates certain rights and obligations of both lessor and lessee, most of them are set out as default provisions, meaning the parties are free to regulate them in any other legally permitted way. Parties to a lease agreement can either be natural or legal persons, whether domestic or foreign. The subject of a lease agreement can be an individual land plot, a house, an apartment, or an entire building (e.g., parking lot complex, warehouse, logistic centers, shopping malls, etc.). Lease agreements can be concluded either for a definitive period of time or indefinite period of time.

A lease agreement does not need to be in writing to be legally valid - an oral agreement on the essential elements of a lease agreements is sufficient. However, for reasons of legal certainty and predictability, it is highly recommended to have the agreement in writing, especially in commercial practices where business premises are concerned.

Unless expressly agreed otherwise, the lessee may sub-lease the property to another person. The lessor has the right to collect receivables from the sub-lessee directly, pursuant to the sublease agreement. Also, the lessor may terminate the lease agreement if the lessee sublets the premises without permission.

Please note all business leases concluded before 19 June 2021 remain subject to the provisions of the Law on Commercial Buildings and Premises (Zakon o poslovnih stavbah in poslovnih prostorih; ZPSPP)[44], which imposed

44 Law on Commercial Buildings and Premises, Official Gazette of the Socialist Republic of Slovenia no. 18/74 et. seq.

stricter regulations on certain aspects of commercial leases, particularly regarding the early termination of fixed-term leases.

Administrative permits applicable to construction or restructuring of assets

The construction process in Slovenia is primarily governed by the Building Act (Gradbeni zakon)[45] and can be roughly divided into three phases

- Obtaining the design and other documentation (this includes obtaining design conditions and opinions from the competent authorities, if required);
- Issuance of construction permit; and
- Issuance of building use permit.

The design and other documentation, or parts thereof, are used for obtaining conditions, opinions, building permits, notifying the start of construction, carrying out the construction, obtaining the occupancy permit and registering and using the building.

The investor shall submit an application for a building permit with an administrative unit, which shall be accompanied by:

- The documentation required for obtaining the building permit;
- Opinions from the competent authorities, unless otherwise specified by law or the implementing zoning act;
- Evidence of the right to build, such as ownership or another real right over the immovable property where the construction is to be carried out;
- A notarized contract regarding the acquisition of this right, proposed for entry in the ZK; and
- A decision from the ministry responsible for the environment, issued in a preliminary procedure concerning the environmental impact assessment, in accordance with regulations governing environmental protection, if such a procedure or assessment is prescribed.

A building permit in Slovenia is issued by the administrative unit if the following conditions are met:

- The project documentation must be submitted for review, prepared according to legal regulations, and signed by the project designer and project manager. Both must be registered with the appropriate professional chamber;
- Necessary opinions from the competent authorities must be obtained, and the project must comply with relevant regulations;
- The utility documentation or relevant agreements must demonstrate that the building will have access to basic utilities (except for small auxiliary structures);
- The project must not negatively impact protected areas or require environmental assessments;
- The investor must have legal ownership or building rights; and
- Any required fees for land degradation or changes in agricultural land use must be paid.

If all the requirements are fulfilled, the competent administrative unit will issue a building permit to the investor. The time limit for issuing such a decision for a building permit is two months from the submission of a complete application, or three months if coordination with the relevant authorities is required. Once the building permit has become final and after the start of construction has been notified, the investor may commence building.

After construction is complete, a building use permit must be obtained. The investor must apply for a building use permit no later than 30 days after receiving notification from the contractor or supervisor that the construction has been completed.

The application for a use permit must be accompanied by:

- Project documentation of the completed works, including a signed declaration by the designer and the project manager, and by the supervisor, confirming that the works have been carried out in accordance with the building permit;
- An opinion of the competent authorities;

45 Building Act, Official Gazette of the Republic of Slovenia no. 199/21 et. seq.

- Evidence of the structure's reliability, including a signed declaration by the supervisor, the supervisor's supervisor, the contractor, and the construction manager. This evidence should demonstrate that the structure fully complies with the essential and other requirements in relation to its purpose, type, size, capacity, foreseeable impacts, and other characteristics, and that it conforms to the issued building permit;
- A description of the implementation of mitigation and compensatory measures, along with the opinion of the organization responsible for nature conservation on their operation, if such measures were specified in the building permit;
- A program of first measurements, where required, for facilities with environmental impacts;
- The consent of the authority responsible for nuclear safety for the start of experimental operation as provided for in the regulation governing protection against ionizing radiation and nuclear safety, in the case of nuclear and radiating installations; and
- Proof that an application has been submitted to the cadaster of buildings.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

In Slovenia, ESG criteria have gained increasing attention in recent years, particularly in response to European Union (EU) regulations and global sustainability efforts. As an EU member, Slovenia is subject to various ESG-related rules and directives designed to promote sustainability, mitigate climate change, and ensure good governance and social responsibility in corporate practices.

Energy performance certificate

According to Article 30(1) of the Energy Efficiency Act (Zakon o učinkoviti rabi energije; ZURE)[46], an energy performance certificate is a public document that provides information on the energy performance of a building or part of a building.

The energy performance certificate must be provided by the owner for buildings or parts of buildings that are being constructed, sold, or leased. It must be presented to the buyer or new lessee at the time of sale or lease, no later than before the conclusion of the contract. Instead of providing an energy performance certificate for an individual part of the building, an energy performance certificate for the entire building may be submitted. This obligation was introduced by the Energy Act (Energetski zakon; EZ-1), adopted in February 2014.[47]

Green Gateway

The transition to a low-carbon circular economy is crucial for ensuring the long-term productivity of the economy and the overall resilience of society. Through the reforms and investments of the Recovery and Resilience Plan, Slovenia is supporting the objectives of the National Energy and Climate Plan of the Republic of Slovenia and contributing to the implementation of the European Green Deal.

Some of the key components of Slovenia' initiative are:

- Reforming the planning and financing of energy renovation in public sector buildings (C1K2): The reform aims to enhance energy renovation in public sector buildings through cost-effective approaches and policies. Key measures include adopting the Long-Term Strategy for the Energy Renovation of Buildings (DSEPS) 2050, amending regulations on energy efficiency, and establishing stable financing for renovations in the sub-public sector. It will also create a government-approved list of buildings eligible for renovation. A major component is the prohibition of oil, fuel oil, and coal boilers in new buildings. By 31 December 2025, an action plan will be developed, outlining renovation needs, financing sources, and ensuring service continuity during renovations.
- The component "Renewable Energy Sources and Energy Efficiency in the Economy" (C1K1) from Slovenia's Recovery and Resilience Plan addresses

46 Energy Efficiency Act, Official Gazette of the Republic of Slovenia no. 158/20 et. seq.

47 Energy Act, Official Gazette of the Republic of Slovenia no. 60/19 et. seq.

challenges faced by renewable energy producers and consumers. Its goals are to increase the use of renewable energy, improve energy efficiency, and reduce greenhouse gas emissions.

Direct taxes applicable to sales of real estate

Two primary taxes applicable to real estate transactions in Slovenia are the real estate transfer tax (RETT) and capital gains tax (CGT). Additionally, value added tax (VAT) is levied on newly constructed real estate instead of RETT.

Real estate transfer tax

The real estate transfer tax is the most common tax levied on real estate sales in Slovenia. It is usually paid by the seller, though the parties can agree otherwise in SPA. In commercial practice it is also often agreed that the buyer bears the costs of RETT instead of the seller.

The standard rate is 2% of the market value of the real estate being sold and is applicable to the sale of existing real estate (buildings, houses, apartments) where VAT is not applicable. RETT applies to most of the real estate transactions.

In cases where VAT applies (typically for the first sale of newly constructed real estate or for the sale of real estate between legal entities per the provision of Article 45 of Law on value added tax (Zakon o davku na dodano vrednost; ZDDV-1)[48], the seller does not pay RETT.

Capital gains tax

CGT applies to the seller when they profit from the sale of real estate. This tax is levied on the difference between the sale price and the acquisition price (purchase price or inherited value).

CGT tax rate depends on how long the seller has owned the real estate:

- 25% if the real estate is sold within the first five years of ownership;
- 20% if the real estate is sold after five years;
- 15% if the real estate is sold after 10 years; or
- No CGT is due if the real estate is held for 15 years or more.
- The taxable amount is reduced by:
- Normal costs;
- Any real estate tax or inheritance and gift tax paid; and
- Actual costs incurred by the seller in renovating the real estate. Evidence of these costs must be provided through invoices, so it is advisable to keep all invoices from suppliers or service providers.

The tax is levied by the tax authority through a formal decision.

If an individual sells an apartment or a residential house (with a maximum of two apartments plus land) where they have had their permanent residence, owned it, and have effectively lived in it for at least the last three years before the sale, they are liable only to pay the RETT, but not the CGT.

Value added tax

In some cases, VAT may be applicable instead of RETT, specifically on the sale of newly constructed real estate or if the seller is a VAT-registered entity (usually a business), as stated above.

The standard VAT rate in Slovenia is 22%, but a reduced rate applies to certain residential real estate. Specifically, a reduced VAT rate of 9.5% is applied to dwellings, buildings intended for permanent residence, and parts of such buildings, provided these properties are part of a social policy. This includes their construction, renovation, and repair.

A dwelling is considered part of social policy if it does not exceed 120 square meters in a multi-apartment building or 250 square meters of useful floor area in a single-apartment building. The useful floor area is the sum of the floor areas of the living spaces.

48 Law on value added tax, Official Gazette of the Republic of Slovenia no. 13/11 et. seq.

Latest developments in Slovenia, and areas to focus on in the future:

- In 2023, the Slovenian real estate market continued its trend of declining sales, while real estate prices continued to rise. The ECB's two interest rate cuts, the first in early June 2024 and the second in early September 2024, which lowered the deposit interest rate to 3.5%, are expected to boost housing loan volumes and consequently increase the number of transactions.
- Numerous construction projects are still underway in Slovenia, with many expected to be completed by the end of 2024 or in Q2 of 2025. The capital city, Ljubljana, is leading the way with several new residential buildings in 2024, while commercial buildings are also being constructed at an accelerated pace. This development is generating significant interest from both domestic and international buyers.
- We are also closely monitoring the progress of the Ljubljana Passenger Centre project - a nearly €1 billion (approx. US$1,18 billion) initiative to rebuild and upgrade Ljubljana's passenger terminal for buses and trains. Additionally, we are keeping an eye on potential legislative developments regarding the short-term rental of apartments (e.g., Airbnb).

By **Ana Kastelec,** Local Partner, Attorney-at-law**,** Law Firm Deloitte Legal Reff – Branch office in Slovenia

Real Estate Law in Spain

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Overview of the Spanish Legal System

General introduction to the main laws that govern the acquisition of assets in Spain – real estate rights

The basic legislation regulating real estate law is contained in the Royal Decree of 24 July 1889, which approved the Spanish Civil Code. Mortgage legislation was established in the Decree of 8 February 1946, which approved the Spanish Mortgage Law, and the Decree of 14 February 1947, which approved the Mortgage Regulations.

The legislation governing urban leaseholds is the Spanish Urban Leasehold Law 29/1994, of 24 November. Real estate law covers the main laws governing real estate ownership and letting in Spain. However, other related regulations should be considered, such as local regulations applicable in some regions (e.g., in Catalonia, where there are specific laws regulating real estate rights).

For planning and zoning law, the Royal Legislative Decree 7/2015, of 30 October, which approved the consolidated text of Land and Urban Redevelopment Law, should be considered.

The environmental regulations regarding polluted land are mainly foreseen in the Law 7/2022, of 8 April, about waste and polluted land.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

The right of ownership is the most common right in real estate transactions, whereby the owner holds all the legal powers to be exercised over a given asset. However, Spanish law also includes other types of rights that, without covering such broad powers as the right of ownership, are usually taken into consideration by economic operators for certain commercial activities. These include surface rights regulated in State land legislation passed by Legislative Royal Decree 7/2015, of 30 October, by which the Consolidated Land and Urban Regeneration Law was approved. According to this law, surface rights are defined as rights in rem enabling buildings or structures to be constructed in the airspace above and the ground beneath another property, while the holder of the surface rights maintains temporary ownership of the buildings or structures built, notwithstanding the separate ownership of the land. For these surface rights to be valid, they must (i) be executed in a notarial deed and registered at the Property Registry, and (ii) establish a term for such surface rights not exceeding 99 years. Surface rights may only be created by the owner of the land, whether a public or private entity.

Another right generally used in Spain is the administrative concession, which is a legal transaction whereby the public authorities grant one or several rights over, or obligations in relation to, public property.

The administrative concession concept may be analyzed from two different perspectives: (i) the concession of public domain regulated in the Law 33/2003, of 3 November, of Property of the Public Administration; and (ii) the administrative concession contracts, regulated in Law 9/2017, of 8 November, of Public Procurement.

Lastly, a right that does not appear frequently in real estate transactions is usufruct, whereby the owner of an asset grants the use and enjoyment of it to a third party. Regarding the existing restrictions on real estate ownership, the right of ownership is defined in Article 348 of the Spanish Civil Code as the right to "enjoy, use and dispose of a thing, with no limitations other than those

established by laws". This definition means that the right of ownership is not an absolute right and is limited by legal provisions.

There are limitations regulated in private law, such as the Spanish Civil Code, Spanish Mortgage Law, etc., whereby the right of ownership may be limited. For example, in accordance with Article 26 of the Spanish Mortgage Law, the following are considered to be prohibitions relating to disposition and alienation:

- Those established by the law which have full legal effect without an express court or administrative decision do not require separate and special registration and are effective as legal limitations on ownership;
- Those of which the immediate origin is a court or administrative decision which are subject to a provisional entry in the Property Registry; and
- Those imposed by the testator or donator in acts or dispositions of a will, marriage settlements, donations and other acts for no consideration may be registered provided that current legislation recognizes their validity.

In addition, other types of restriction on ownership involve those included in administrative law whereby reasons of public interest prevail over private ownership. This would be, for example, in the case of compulsory purchase, where the deprivation of ownership is due to reasons of public use entailing the recognition of a right to compensation for the owner of the property subject to compulsory purchase. Another instance would be where the building in question has a historic value, which would prevent it from being purchased by a private operator. In both cases, the right of ownership would be limited.

Another limitation on the right of ownership in real estate transactions in Spain lies in the urban planning legislation of each autonomous community and the urban planning rules of each municipality.

Urban planning legislation, both at autonomous community and municipality level, in the latter case implemented through municipal planning regulations, implies a limitation on the powers inherent to the right of ownership and on the building rights over a piece of land. This is due to the fact that it regulates the maximum buildable volume calculated by reference to the use, the free and green spaces per square meter to be granted as part of the planning obligations relating to the ownership, including limitations on uses and the establishment of technical and construction conditions relating to specific buildings.

In addition, there is the industry-specific legislation, which, together with the urban planning legislation, also limits the right to build (for example, where a residential area was to be built in an avigation or road easement zone). In these instances, despite having ownership of the land, it may not be built on or, where this is possible, there are limits to construction.

Real estate registry system

The Property Registry is a public registry that falls under the Spanish Ministry of Justice. Each registry is headed by a registrar and has a specific territorial scope.

Any acts affecting ownership or rights in rem over public or private real estate are registered at the registry.

Certain administrative concessions and public property can also be registered.

The Property Registry provides legal certainty regarding the rights registered and helps ensure that legal dealings are secure and run smoothly.

The principles governing the functioning of the Property Registry are as follows:

- Voluntariness: The entry of registrable events in the Property Register is voluntary, except in the case of mortgages, which must be registered in all cases as they do not exist if they are not entered;
- Principle of request: Whoever wishes to register a title must make a request to the registry;
- Priority: This means that where applicants wish to register two incompatible rights, the rights of the holder who arrives at the registry first is registered and if there are two rights registered in relation to the same property, the oldest right will have priority;

- Lawfulness: Registrars must classify under their responsibility the lawfulness of the extrinsic forms of all the types of documents whereby registration is requested, as well as the capacity of the executing parties and the validity of the acts with operative effect contained in the notarial deeds from which they originate and of the register entries;
- Specificity: In order for titles to be registered at the registry they must meet the requirements concerning form and content under the terms established by law; and
- Chain of title: In order for titles to be registered or entered, the right of the person who granted them must have been previously registered or entered.

In addition, registration at the Property Registry results in the following most significant effects:

- Registry legitimacy: Registered rights in rem are presumed to exist for all legal purposes and belong to their holder in the manner determined by the respective entry;
- Unenforceability: Titles or other rights in rem over real estate which have not been duly registered or filed at the Property Registry do not adversely affect a third party;
- Registry authentication: A person who, in good faith, acquires for valuable consideration a right from someone who appears in the register as having the powers to transfer it retains such acquisition, once the right has been registered, even though, subsequently, the transferor's right is shown to be invalid for reasons not stated in the register; and
- Presumption of truthfulness: Entries under which titles are registered in the Property Register are effective until they are declared to be inaccurate (iuris tantum presumption). In other words, entries in the Property Registry are presumed to be true unless proven otherwise.

Lastly, the Cadastral Registry is an administrative registry managed by the Ministry of Finance. The Cadastral Registry contains a description of the real estate properties for tax purposes.

Historically, there was usually no coordination between the Property Registry and the Cadastral Registry so that it was, and still is, possible for the surface area of a property registered at the Property Registry to be different from that registered at the Cadastral Registry.

Spanish Law currently establishes a system of coordination between the Property Registry and the Cadastral Registry to ensure that the first includes a graphical georeferenced description of the registered properties.

Notary role in the real estate transactions

The notary plays an essential role in real estate transactions in Spain. In accordance with current legislation, only notarial documents may be registered at the Property Registry.

Although the sale and purchase of a property is usually first instrumented in a private document, in order for it to be registered and for its owner to be legally protected vis-a-vis third parties, it must be executed in a notarial deed.

The notary confirms that the transaction complies with all the legal requirements as the parties' ability, among others.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

Before executing the sale and purchase of real estate, the following issues should be ascertained (preferably with the assistance of an attorney), among others:

- Ownership of and encumbrances on the property (request an extract from the registry);
- Municipal building permits if any have existed in relation to the property;
- Municipal opening or first occupancy permits;
- Surface area and boundaries of the property;
- Certificate attesting that the payment of taxes and levies is up to date;
- In the case of a property under the commonhold system, a certificate attesting that payment of the contributions relating to the common areas and services is up to date;

- In the case of a plot or piece of land, evidence of compliance with the urban planning legislation by means of a request to the corresponding local council for a planning use certificate and the planning classification and category thereof; and
- In the case of a plot or piece of land where it is on record that it has been used to carry out potentially polluting activities, an environmental study should be performed.

In accordance with the Civil Code (and without prejudice to other provisions under local regulations), the seller is liable to the buyer for the legal and peaceful possession of the item sold and any flaws or defects it may have and, therefore, the buyer may seek liability due to breach of the contractual terms of the sale and purchase and due to hidden flaws. As regards hidden flaws in buildings, reference should be made to Building Law 38/1999, of 5 November, and the timeframes it stipulates. The purpose of this law is to regulate essential aspects of the building process by establishing the obligations and responsibilities of the parties involved in the process (developer, architect/technical architect, and builder). Additionally, it also regulates the guarantees required to carry out the process correctly, to ensure quality through compliance with basic building requirements and sufficient protection of the users' interests.

In all other respects, whatever cannot be verified in this regard should be included in the representations and warranties; otherwise, unexpected losses could be caused for the buyer.

From the seller's perspective, as in the case of all representations and warranties, an attempt will be made to negotiate the price by restricting or broadening the related clauses of the representations and warranties.

Mortgages and other usual guarantees adopted in financing assets

In real estate sales and purchases, the seller undertakes to hand over the property and the buyer to pay a price. Although ownership is transferred merely by agreement between the parties, price may be deferred and so, while the buyer immediately becomes the owner, it may take time for the seller to receive the entire price.

There are various systems for securing payment of this deferred price, which most notably include personal guarantees and in rem guarantees (such as mortgages).

In personal guarantees, the price is secured by a third party.

A mortgage, used very frequently in Spain, is a security interest created directly in others' disposable real estate, enabling the mortgage creditor to realize the value of the real estate in the event of breach of the principal obligation, such as the sale and purchase of the real estate, whether it be the real estate on which the mortgage is created or another piece of real estate. The registration of the mortgage at the Property Registry renders it effective, as compared to other legal transactions. If the mortgage debtor stops paying the instalments, the mortgage creditor may realize the value of the real estate in order to receive the price.

Lease of assets and lease of business

In accordance with the Urban Leasehold Law, there are two types of property leases: (i) a residential housing lease, and (ii) a lease for other uses. The latter encompasses leases of urban properties entered into for periods and those executed to carry on an industrial, commercial, professional, or other activity at a property.

One of the main differences between the legal regime governing residential housing leases and leases for other uses is the protective nature of the regulations for housing leases. Leases for other uses are governed in general by free will.

In practice, leases entered into in real estate other than housing transactions mostly have the following characteristics:

- They are entered into for a long period in order to recover the investment made and may be renewed easily by means of successive extensions;
- Depending on the type of activity carried on in the property, the lessee is usually required to take out property damage and third party liability insurance;
- If the lessee changes due to the merger, alteration, or spin-off of the lessee company, it is not considered an

assignment. As a result, the lessor is entitled to raise the rent unless an express waiver is agreed upon;

- Any repairs to be made, as well as authorizations, building or activity permits, are generally the lessee's obligation who must undertake them except, for example, in the event of damage caused by the owner of the property; and
- The lessee of a long-term lease is entitled to compensation at the end of the lease, but this compensation can be contractually waived.

In addition, there are some aspects that do not generally arise, but which are regulated in the Urban Leasehold Law, such as mortis causa transfer by subrogation to the heir or legatee who continues to carry on the activity or the lessee's right to indemnification for loss of customers.

Real estate leased for agriculture, farming or forestry are regulated separately in Law 49/2003, of 26 November.

Administrative permits applicable to construction or restructuring of assets

Royal Legislative Decree 7/2015, of 30 October, establishes the basic regulations regarding urban planning to be developed by the autonomous communities and the municipalities on their own powers.

Law 38/1999, of 5 November, regarding Building Regulation establishes (i) the technical and administrative requirements applicable on building, (ii) the agents involved in the construction; and (iii) guaranties and responsibilities that should be taken by the agents.

Additionally, a series of authorizations and permits in Spain are required to carry out economic activities and to build the facilities needed to perform them.

Acts which require a planning permit include building and construction works, and the installation of all types of new facilities and extensions thereto. In this case, urban planning legislation is the determining legislation when it comes to the granting of these permits by the municipal authorities, as the planning rules included in the municipal plan determine the planning limits (permitted uses, permitted volume, etc.) and construction terms and conditions (facade, distances, etc.) of the facilities to be built.

Once the corresponding building permit has been obtained and the building work completed, a first occupancy permit must be obtained, which verifies that the work completed complies with the building permit granted by the municipal authorities.

In order to carry out the activity, it is also compulsory to obtain an activity permit and, according to the type of activity to be carried out, another type of authorization may be required, such as the integrated environmental authorization granted by the environmental departments of autonomous communities, besides other types of authorizations required by industry-specific legislation.

Having obtained the activity permit, an opening permit may be also necessary to verify that the activity will be carried out in suitable conditions of habitability and used for the particular activity in question.

Environmental and energy – ESG rules and status of implementation

There is a variety of legislation on pollution in Spain although, for the purposes of real estate transactions, of particular note is the following, notwithstanding applicable local laws:

- Royal Decree 9/2005, of 14 January, establishing the relationship between potentially polluting activities for land and the criteria and standards for declaring land to be contaminated. This Royal Decree defines the potentially polluting activities requiring those who carry them out to submit a preliminary report on the state of the land to the environmental department of the autonomous community within two years; and
- Law 7/2022, of 8 April, about waste and polluted land. This law sets out the order of those responsible for the decontamination and recovery of land and, as a result, for the associated economic cost.

On the other hand, the owner of a property who wishes to sell or rent must obtain an energy efficiency certificate to be issued by a professional with the suitable academic and professional qualifications (architect, technical architect, etc.). This requirement arises from European Directives.

Direct taxes applicable to sales

The taxes which are generally the most significant in real estate transactions are:

- Value added tax/transfer tax: Depending on the characteristics of the transaction, the transfer of properties is subject to value added tax (VAT) or transfer tax (TPO);
- Stamp duty: Where a transfer of property has been taxed for VAT purposes, the notarial document executing the transfer is also subject to stamp duty (AJD); and
- Property tax: Lastly, although it is not an indirect tax, the property tax (IBI) is a compulsory municipal tax, paid annually on the value of the real estate.

Latest developments in Spain, and areas to focus on in the future:

- Law 12/2023, of May 24, 2023, of housing, which regulates the concept of large tenants, stressed areas, limits on the updating of rents, possible evictions, and information to be provided on purchases and leases.
- Some autonomous communities and local authorities are passing or aim to pass different legislation in order to regulate tourist or temporary leases.

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Real Estate Law in Sweden

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Overview of the Swedish Legal System

General introduction to the main laws that govern the acquisition of assets in Sweden – real estate rights

The Swedish Land Code

The Swedish Land Code (1970:994) (in Swedish: Jordabalken) is the most comprehensive legal framework in the real estate area in Sweden, covering most aspects of real estate law. It regulates the definition of immovable property and its appurtenances and boundaries, as well as the purchase, exchange, lease/rent and gift of immovable property and the rules governing the granting of various forms of usufruct. It furthermore constitutes a framework on the relationship between neighbors and the rights and obligations they have towards each other, which can become relevant e.g., when roots of trees or other vegetation on one property encroach on the other. Rules on the title and mortgaging of a property (how this should be done, by whom and when) can also be found in the Swedish Land Code.

The provisions in the Swedish Land Code are often mandatory, meaning that the law governs certain relationships regardless of what the contracting parties may have agreed upon. This applies mainly to purchase contracts and the various rights of use. The rules on tenancy are furthermore a clear example of mandatory legislation, designated to protect the tenant or the usufructuary and, therefore, might have consequences for the landowner's ability to cultivate his own land.

Other frameworks

Other important legal frameworks on the field, in selection, are the Swedish Planning and Building Act (2010:900) (Plan– och bygglag), which regulates the planning of land, water and construction, the Real Property Formation Act (1970:988) (Fastighetsbildningslag), containing provisions on, inter alia, the division of land into properties, as well as how the properties and land may be changed and under what circumstances, and the Swedish Environmental Code (1998:808) (Miljöbalken), promoting sustainable development and rules on good environment.

The Sale of Goods Act and the Contracts Act

For indirect property purchases, i.e., purchases of shares in real estate companies, in commercial contexts, the Sale of Goods Act (1990:931) (Köplagen) and the Contracts Act (1915:218) (Avtalslagen) applies.

Ownership rights: is there any kind of restriction for real estate ownership (foreigners, areas of country, others...) or restrictions to their use of land?

Ownership restrictions

There are no specific restrictions related to the ownership of real property or condominium flats (bostadsrättslägenheter) in Sweden. On the contrary, regarding purchases of condominium flats, the Swedish Tenancy Act (1991:614) (Bostadsrättslag) prohibits the establishment of such requirements, which would stipulate e.g., a certain citizenship, income, or wealth in order to become a member of the condominium association. Membership can be denied only if there are reasons to believe that the applicant in question would not be able to fulfil their obligations towards the condominium association, for example not being able to pay the monthly fee.

Regarding purchase of real estate, the purchase type differs from purchases of moveable property in the sense that the law prescribes formal requirements which must be fulfilled for validity,

Some restrictions regarding foreign ownership of properties may however apply following the entry into force of the Foreign Direct Investment Act (2023:560) (Lag om granskning av utländska direktinvesteringar) in December 2023. However, these restrictions only apply if the activities conducted on the property are classified as an essential service for the country or are especially worthy of protection (e.g., importance for national defense, hospitals, or infrastructure).

Easements and usufructs

Real property can be afflicted with easements (servitut). or usufructs (nyttjanderätt), which affect the property owners' use of land. Easements can be contractual (i.e., easements agreed upon between the property owners) or official (i.e., an easement created via an authority decision). They usually remain until further notice, despite ownership changes since they are connected to the property rather than to the owner. Usufructs on the other hand are binding for a maximum of 25 years if located on properties within zoning plan areas, alternatively 50 years if not located within zoning plan areas. They are created through an agreement with the property owner.

Property fixtures

Some additions or improvements to a land area, such as buildings, are deemed integral parts of the property and cannot be sold separately from the land. These additions are classified as immovable property (Fast egendom), and in order to separate immovable property from the land, it must be physically detached from the land area first.

The same principles apply to industrial property, including machinery or other equipment, unless the owner explicitly specifies in the property register that the industrial property should be distinct from the land.

The right of public access

One unique element of Swedish real estate law is the right of public access (allemansrätten). In short, the right of public access is described in Chapter 2 § 15 in the Constitution of Sweden as the "public's right to nature" and prescribes a right to travel and temporarily reside on private land without the property owner's consent.

The right furthermore implies that the public may, to a certain extent, use the private land for e.g., nature tourism and for picking berries and the property owner would not be entitled to compensation. Even if the right to public access versus the property owner's proprietary rights is controversial, the public's use of private land must not infringe the property owner's financial interests. Neither must the public cause any inconvenience to the property owner or those who reside on the property while exercising their rights.

Real estate registry system

Application for title with the Swedish Mapping, Cadastral and Land Registration Authority

According to Swedish law, title to real property must be applied for within three months from the acquisition. The title is registered in the Property Register kept by the Swedish Mapping, Cadastral and Land Registration Authority (Lantmäteriet) to act as proof of ownership, after which it may constitute grounds for potential banking errands and similar. If the acquirer of the property fails to apply for title within the three-month period, the Swedish Mapping, Cadastral and Land Registration Authority may force the acquirer to apply for title with a recurrent fine. Should the property be acquired via purchase, the buyer must pay stamp duty of 1.5% of the purchase price if the buyer is a physical person, alternatively 4.25% of the purchase price if the buyer is a legal person. In addition to the stamp duty, all acquirers must pay a registration fee of approximately SEK 825 The application for title must be submitted with a copy of the document of purchase, which may be either the title deed (köpebrev) or purchasing contract (köpekontrakt).

If the applicant is a legal person

If the buyer or seller of a real property is a limited liability company, the application for title must be submitted with a document of purchase and a certificate of

registration/extract of registration to show the signatory rights of the company. Should the real property be acquired in connection with a merger, an additional certificate will be required from the Swedish Companies Registration Office (the SCRO), confirming that the merger is executed.

Notary role in the real estate transactions

In Sweden, real estate transactions do not require attestation from notaries. The acquiree's signature on the document of purchase must be attested by two persons, who do not need to be notaries, in order for the application of title to be approved by the Swedish Mapping, Cadastral and Land Registration Authority.

Legal responsibility of the buyer and seller in real estate transactions - contractual representations and warranties

Buyer's duty to investigate

According to Swedish real estate law, the buyer has an extensive duty to investigate the real estate prior to purchase. Any potential defects and damages that should have been noted during the investigation cannot be invoked by the buyer in retrospect. During the investigation, if the buyer notices a defect on the property or something that leads the buyer to believe that the property is not in the anticipated condition, the buyer's duty to investigate the property is extended. Another factor that may call for an even more extensive investigation is e.g., if the seller informs the buyer of a suspected defect (however, the buyer is not obliged to investigate areas of the property when the seller has given guarantees about the area's condition and the guarantees are not too general in nature). The scope and extent of the buyer's investigation must be adjusted based on the property's age, price, condition, and area of use.

Seller's responsibilities

The seller has no general liability to disclose information, which corresponds to the buyer's duty to investigate. However, the seller may be liable to pay damages if they omit to inform the buyer of defects on the property if they were aware of the defects or should have been aware of them. Furthermore, the seller loses the right to invoke the buyer's negligence in terms of the duty to investigate, should the seller omit to inform the buyer about a defect to such extent that the omission can be considered dishonest conduct. The seller can also become liable if they provide the buyer with inaccurate guarantees about the property's condition. As mentioned above, general statements regarding the property cannot be considered guarantees. Finally, the seller is responsible for hidden defects during a period of ten years after the buyer's purchase. The responsibility for hidden defects only includes defects which could not possibly have been discovered during the buyer's investigation and applies regardless of whether or not the seller was aware of the defect in question.

Contractual representations and warranties

In terms of contractual representations and warranties, freedom of contract applies to the parties' responsibilities for the property condition. Therefore, they are free to divide their responsibilities irrespective of what is stated by law. One example could be that the seller disavows their responsibility for the property condition, in general or with respect to a specific function.

Some common warranties of the seller in indirect real estate acquisitions include that the seller has registered title to the property, that all buildings and objects on the property constitute property and building appurtenances and fixtures in accordance with applicable law, and that mortgage certificates have/have not been taken out on the property.

Mortgages and other usual guarantees adopted in financing assets

Mortgage deeds

Sweden has a system of mortgage deeds (pantbrev), which are executed upon hypothecation of real estates. Mortgage deeds can only be issued for entire real estates and not a portion of it. Additionally, buildings on the real estate cannot be subject to mortgage.

The property owner wishing to mortgage the real estate applies for mortgage with the Swedish Mapping, Cadastral and Land Registration Authority and receives a mortgage deed in return. The mortgage deed is then handed over to the creditor. The mortgage deed that was issued first will have priority over the mortgage deed which was issued second, the second over the third and so on. In other words, it is the time of registration and not the amount on the mortgage deed which determines the precedence. As the mortgages are being paid, excess-security (överhypotek) arises.

Second-hand mortgage

In case of excess-security in the already existing mortgage deeds on a property, one alternative is to apply a second-hand mortgage. A second-hand mortgage implies that security is taken in an already-existing mortgage deed rather than in a completely new mortgage deed in order to have better priority in case of e.g., the debtor's bankruptcy. It is also possible to combine a second-hand mortgage with a new mortgage deed as security for a loan.

When a real estate is subject to mortgage, stamp duty of 2% of the mortgage amount must be paid along with a registration fee to the Swedish Mapping, Cadastral and Land Registration Authority.

Lease of business premises: applicable laws/types/typical provisions

Types of tenancies

Sweden has different types of tenancies. The first concerns tenancy of buildings in whole or in part, being divided between (i) tenancy of dwelling units (bostadshyra), and (ii) tenancy of non-housing premises (lokalhyra). It is also possible to grant land for use in return for consideration in form of (i) commercial ground leasehold (anläggningsarrende), (ii) agricultural leases lägenhetsarrende). The different types of tenancies are regulated in the Swedish Land Code, Chapter 8–12.

Lease of non-housing premises

The relevant and most common alternative for companies wishing to lease premises for commercial purposes, depending on the nature of business, would be the lease of non-housing premises. Lease of non-housing premises is defined in Chapter 12 § 1 of the Swedish Land Code as the lease of "… a unit other than a dwelling unit", i.e., other than for housing accommodation. Indirect security of tenure applies to the lease of non-housing premises and arises after a period of nine months. In Sweden, the indirect security of tenure does not mean that the tenant has a right to renewal of the lease in the event of termination, but only a right to damages in the event of unjustified termination. When leasing non-housing premises, the parties also have more freedom to negotiate the terms of the lease especially regarding the condition and responsibility of the lease object.

The tenancy agreement must be drawn up in writing if the tenant or the landlord so requests.

Commercial ground leasehold

When a landowner grants their land with buildings in writing to a tenant with the purpose to continue some form of business activity, it is a commercial ground leasehold. Commercial ground leasehold is defined in Chapter 11 § 1 of the Swedish Land Code as "… land granted by leasehold for a purpose other than agriculture and the lessee is entitled, under the leasehold grant, to erect or retain, for commercial activity on the leasehold property, a building which is of more than minor importance for the conduct of activity." Common types of commercial leaseholds are land leased for gas stations, roadside restaurants, and wind turbines. Similar to leases of non-housing premises, indirect security of tenure applies to commercial ground leasehold.

Miscellaneous

Provisions contradicting those in the Swedish Land Code regarding leases of dwelling units and non-housing premises are of no effect against the tenant or a party entitled to enter into the tenant's stead, unless otherwise prescribed by the relevant legal provisions.

Legal permits applicable to construction or restructuring of assets

Building permits

A building permit (bygglov) is normally required for the erection of a new building or if adding on to an existing building by increasing the volume of the building in any direction (upwards, downwards, or sideways). Building permits are also required in the following situations:

- If the building is located within an area of a zoning plan, to change the appearance of the building by e.g., changing the color, cladding or roof material;
- When changing the building into an additional dwelling or premises for trade, craft, or industry, or to use the building for a substantially different purpose from which it has been previously used, e.g., by changing a dwelling into an office or a garage into a shop;
- When arranging, setting up, moving, or substantially altering certain facilities, e.g., walls and fences, storage, or material yards (such as permanent parking for cars, storage of boats or containers set up on site if not temporary), sports grounds, marinas, golf courses, radio and telecommunication masts and towers; or
- If in areas with zoning plans, to put up or change signs and floodlights.

Once a building permit has been granted, construction must commence within two years and must be finished within five years. Some building permits can furthermore be time-limited if only some of the criteria for building permits are met.

There are some exemptions to the requirement for building permits that apply to one- or two-family houses. For example, patios, canopies, outbuildings, walls, and planks can be built without a building permit and alterations to the façade can be made. Building permits are also not required for sheds (Attefallshus) of 30 square meters or less, for an extension of 15 square meters or less, or an additional dwelling in single-family houses. However, the building committee of the municipality must be notified of the measure.

Neighbors' consent and permission under the Environmental Code

As part of the process of notification to the building committees, consent of the neighbors might be required, and especially if an extension of a building will result in the building being closer than 4.5 meters from the boundary. Permission may also be required under the Environmental Code within a shoreline protection area, i.e., normally 100 meters from the sea, lake, or watercourse.

Environmental and energy

Environmental recommendations and guidelines

The Environmental Code (1998:808) (Miljöbalk) sets out the general framework for environmental protection and has a broad scope. More specific provisions are found in bylaws under the Environmental Code. Chapter 2 of the Environmental Code sets out the most important rules; the polluter pays principle, the precautionary principle, the product choice principle and the principles for recycling, management, and suitable activities. The rules apply for every operator of an environmentally hazardous activity from starting the activities and as long as the activities are ongoing. Besides material provisions, the Environmental Code also includes rules of supervision, sanctions, and provisions of different permits. Many activities may not be carried out until a permit has been granted.

In terms of environmental rules and codes, Fastighetsägarna, a trade association that works for a sustainable and functioning real estate market, issues several recommendations and guidelines on the area. They provide e.g., recommendations on how the property owners can structure their work on climate adaptation by identifying risks, critical properties, measures, and to follow up and develop an action plan. As part of Fastighetsägarna's effort to contribute to sustainability on the real estate market, they also provide, inter alia, tenancy agreement templates, which delegates ESG-related responsibilities between the tenant and the landlord. The template agreements can be bought for a fee of approximately SEK 80–100.

The property owner is responsible for ensuring that the property is maintained well and for implementing measures within the area of responsibility.

Energy requirements

The National Board of Housing, Building and Planning (Boverket) provides rules on energy conservation and thermal insulation properties. The rules are divided into three requirements, which are for the building to have good energy management, limited electricity use, and sufficient thermal insulation. They apply when building a new house, as well as in case of renovating, converting, or adding on to an existing property.

Certain buildings are required to have an energy performance certificate. These buildings are (i) buildings with a floor area of more than 250 square meters that are frequently visited by the public, (ii) buildings occupied by tenants, and (iii) buildings that are newly constructed or to be sold. By establishing the energy declaration, the building owner gets a good overview of the building's energy status and indoor environment. It also shows whether it is possible to use less energy without reducing the quality of the indoor environment, which in turn would save the building owner money. Energy performance certificates are valid for 10 years.

Direct taxes applicable

Stamp duty

Stamp duty must be paid when buying a real property or leasehold, as well as when a mortgage is taken on the property. For the purchase of properties, the stamp duty is calculated on the higher of the purchase price and the assessed value from the previous year. Stamp duty is 1.5% for private individuals, housing accommodations and municipalities. Stamp duty is 4.25% for legal entities such as limited companies, partnerships, and economic associations. Stamp duty is not payable in cases of inheritance of property or divorce.

Emerging markets and new asset classes in Sweden:

- We are still experiencing a trend in the transaction side where modern logistic real properties with long lease contracts are requested. We also note that land for own development within the logistic segment still is attractive.
- Compared to other countries, high-end office properties in attractive areas (CBD) are still in demand, and we are experiencing an increase in the market.
- The residential market is still attractive for rental properties, but the development of condominium flats projects has slowed down.

*By **Anna Persson,** Nordic Head of Real Estate*

Real Estate Law in Switzerland

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Overview of the Swiss Legal System

General introduction to the main laws governing the acquisition of real estate in Switzerland

As a civil law jurisdiction, Switzerland's real estate laws are primarily codified in federal statutes. The most important acts are the Swiss Civil Code (CC), the Swiss Code of Obligations (CO), the Federal Act on the Acquisition of Immovable Property in Switzerland by foreign non-residents (Lex Koller, formerly Lex Friedrich), the Debt Enforcement and Bankruptcy Act (DEBA), the Ordinance on the Land Registry (OLR), and the Federal Act on Second Homes (Lex Weber).

Art. 641 et seq. CC sets forth the general provisions governing property ownership, notably the object, acquisition, loss of real property, and the substance and limitation of real property, including provisions regarding condominiums. Leases are governed by art. 253 et seq. CO and the corresponding ordinance regarding the lease of housing and office space. The provisions of the Lex Koller restrict the acquisition of real estate in Switzerland by foreign non-residents and subject certain transactions to an obligation to obtain a permit. The DEBA contains provisions regarding the liquidation of real estate in debt enforcement procedures. The OLR regulates the organization and administration of the land registry.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions:

The acquisition of real estate in Switzerland by foreign non-residents is subject to statutory restrictions according to the Lex Koller.

Certain real estate transactions may, therefore, be subject to a permit. The following are considered foreign non-residents:

- Non-Swiss citizens;
- Companies domiciled abroad; and
- Companies domiciled in Switzerland that are controlled by non-Swiss citizens.

Acquisition of real estate is still possible without the need for a permit, in the following cases:

- Acquisition of real estate for a professional, commercial, or industrial activity (excluding the establishment, trade or letting of residential apartments);
- Citizens of the EU/EFTA who are resident in Switzerland (EU/EFTA permit B or permanent residency permit C);
- Other non-Swiss citizens who have the right of permanent residency (permit C) in Switzerland;
- Companies domiciled in Switzerland that are controlled by a person in one of the aforementioned categories;
- EU/EFTA commuters for a second home in the region of their place of work (EU/EFTA G), including nationals of the United Kingdom under certain conditions; and
- Primary residence for non-EU/EFTA national's resident in Switzerland, who do not have a settlement permit (C permit), but a long-term residence permit (B permit), and thereby, in principle, are not considered to be domiciled in Switzerland.

The execution of the Lex Koller is a cantonal responsibility, and the cantons determine the competent authority for granting any required permits. The granting of a permit is possible only for reasons specified in the Lex Koller or in the implementation law of the relevant canton. The approval of the acquisition of a holiday home by a non-Swiss citizen is subject to certain preconditions.

The Lex Koller was subject to a proposed legislative amendment that would have made the acquisition of strategic infrastructure by foreign non-residents subject to authorization and thus extend the Lex Koller from real estate to include energy infrastructure. It was also subject to a proposed legislative amendment to place a condition on nationals of non-EU or EFTA member states to dispose of the real estate within two years of their departure from Switzerland (as a condition for the acquisition of a main residence). However, the proposed amendments were rejected.

Nevertheless, the acquisition of residential premises by non-Swiss persons remains restricted while the acquisition of business premises is, as a rule, unrestricted under the Lex Koller if the premises are essential to operations.

However, the debate regarding the Lex Koller is expected to continue in the following years.

Real estate registry system

Structure of the real estate registries in Switzerland

The land registry is the register of all real estate lots and any rights and obligations attached to them (e.g., servitudes or encumbrances). The land registry is not one single register but is made up of (i) the daily register (in which all applications are registered upon receipt); (ii) the main book (i.e., all land registry folios taken together); (iii) the plans according to the official measurements, which describes the area a property occupies based on land surveys; (iv) the supporting documents (purchase agreements, servitude agreements, etc.); as well as (v) utility registers (register of creditors and register of owners). The Swiss land registry is organized according to real estate lots (so-called "real folio system," e.g., for every real estate plot there is a separate land registry file). For every lot it lists the properties, owners, special provisions, and liens. The respective owners can be identified by means of a utility register (register of owners).

The land registry is governed by two basic principles (i) entry; and (ii) publication. This means that all relevant information about a property is recorded in the public registry, making the information accessible.

This transparency ensures the security of property rights and facilitates real estate transactions.

In addition to the land registry, buyers may consult additional geo-data including:

- Survey data;
- Land registry plans (cadaster plans) based on official surveys;
- National geological data;
- Cadaster of ownership limitations and public law (OLPL-cadaster); and
- Cadaster of contaminated sites.

The land registry is under the supervision of the federal authorities. The cantons are responsible for the individual land registries, the definition of the districts, and administration. Thus, there is no federal land registry. The land registry is managed by individual land registries in the various cantons. In certain cantons there is only one land registry, while others have several, organized per political district or even several per district.

Compulsory registration

In principle, all privately owned land is registered in the land registry. As a rule, registration in the land registry is compulsory to affect the contractual obligations and close the transaction. The consequence of non-registration is that the property title remains with the seller. In addition, all rights relating to the property, including those that affect the public, must be registered in the land registry. In a few cases, the registration is merely a declaration, e.g., in the case of an inheritance of real property or in case of a company merger, the ownership will be acquired before the registration in the land registry. However, before the owner can dispose of the real estate property, the new owner needs to be registered in the land registry.

No rights of private ownership apply to public waters or to land not suitable for cultivation, or to springs rising therefrom, unless proof to the contrary is provided. Immovable property, which is not privately owned and is in public use is recorded in the land registry only if rights in rem attaching to such property are to be registered or if cantonal law provides for its registration.

Ownership rights

The land registry is assumed to be complete and correct, and everyone may rely on it in good faith. Thus, the registration in the land registry is subject to the principle of public faith (art. 973 para. 1 CC) and has a positive and a negative publicity effect. Positive publicity effect means that a bona-fide third party may rely on the legal appearance conveyed by the registration. The substantive legal position is not decisive.

Any person is entitled to obtain information from the land registry, such as the name and description of the immovable property, the name and identity of the owner, the form of ownership, and the date of acquisition. However, only a person showing a legitimate interest may consult the land registry or be provided with an extract.

Furthermore, the registered owner according to the land registry is deemed to be the legal owner entitled to dispose of the real estate. Negative publicity effect means that a third party is only bound by the encumbrances which are registered in the land registry. Encumbrances, which validly exist, but are wrongfully not registered in the land registry, lead to the loss of the respective rights. The respective canton is liable for any losses arising from the maintenance of the land registry.

Registration in a typical transaction

Registration is usually executed on a public deed of transfer and an application for the registration of the new owner. The seller (or the notary public in charge of notarizing the deed, respectively) generally makes the application.

The registration in the daily register is executed on the application day, i.e., the day on which the land registry receives the duly executed application. The internal review and control processes of the land registry start thereafter. The time from application to definite registration may vary depending on the canton, the time of year, and the workload of the registry. It may take between two weeks to several months. However, the effect in rem is independent from this duration, as it always refers to the entry date in the daily register (retroactive effect).

Role of the notary public in real estate transactions:

The notary public is in charge of drafting and notarizing the sale and purchase deed of the real estate, following its negotiation by the parties with the assistance of legal counsel. The notary is also obliged to make the parties aware of certain contractual arrangements, make sure they understand the content and consequences of such arrangements, and that they accurately reflect the resolutions of the parties.

The notary also has to make sure that nothing can prevent the sale and that all conditions are correctly met. For instance, the notary must ensure that the property being sold belongs to the natural or legal person which are presenting themselves as the sellers, and that the buyers have the right to buy the property in Switzerland (please refer to section 2 for the acquisition by a foreign non-residents).

The cantons determine which principles apply to the notarizations on their territory and how they should be organized. There are three main systems: The free trade notary's offices (e.g., in the cantons of Berne, Geneva, Basel-City and Ticino), the official notary's offices (e.g., in the canton of Zurich) and mixed forms (e.g., in the canton of Solothurn). The notary public fees are also subject to the respective laws of the cantons.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

General legal responsibility of the seller in real estate transactions

According to the CO, the seller is obliged to transfer the purchased real estate to the buyer free of any rights enforceable by third parties against the buyer. Furthermore, the seller is under a duty to act in good faith, which implies responding to questions of the buyer relating to the transaction truly and accurately. If the seller does not disclose important information or gives false information, they may be liable for misrepresentation.

In addition, the seller is liable to the buyer for any breach of warranty and for any defects that would materially or legally deny or substantially reduce the value of the real

estate or its fitness for the designated purpose. Such warranty is, however, in practice often contractually excluded (at least to some extent) in real estate transactions. Any agreement to exclude or limit the warranty obligation is void if the seller has fraudulently concealed the failure to comply with the warranty.

Contractual representations and warranties

Often, when older buildings are sold and/or in smaller settings, the liability is limited to the full extent admissible by law (i.e., the seller is liable only for willful intent and gross negligence).

In larger transactions, the following representations and warranties are often found, depending on the appropriate allocation of risk in the specific case:

- Title and rights in rem: The seller should warrant that they are the rightful owner and notably that there are no additional rights in rem other than those listed in the relevant extract from the land registry. Furthermore, liens of builder can be registered within a period of three months after they have finished their works. Thus, a provision should be included with regard to such liens due to works, which were commissioned by the seller (tenant or lessee, respectively), but were/will be registered after the change of ownership.
- Polluted areas: The restoration of polluted areas can involve a lot of time and money. Apart from thorough due diligence, the seller and purchaser should include a provision regarding the allocation of responsibility and cost in this respect, so both parties can consider this appropriately in their negotiations.
- Defects and repair work: The due diligence generally reveals various minor and larger defects. A list of these should be included in an annex to the deed. Institutional investors will also request a warranty that no additional open or hidden defects exist. This warranty can be modified in a way that the seller warrants that they are not aware of any further defects or that any defects apparent in the due diligence documentation are also considered to be known to the buyer. Furthermore, the parties can include provisions regarding the responsibility and cost allocation of repair works. Especially if third parties are involved, the assignment of rights with respect to defects and repair works can be tricky. In such cases, it generally makes sense for the seller to undertake to do and pay for the repair works or have them done by liable third parties.
- Lease agreements: The rental income is often the most important factor for institutional investors. Warranties should be included to the extent that the listed agreements exist, are not under notice, and no other lease agreements exist. Depending on the negotiating positions and interests of the parties' additional warranties with regard to the current rental income, the creditworthiness of the tenants, their payment practices, the service charge statements, as well as the rent guarantees will be included. Contractual representations and warranties.
- Conformity of the buildings with the applicable laws and construction permit(s): It can be overly complex for the buyer to assess the compliance of a building with the applicable laws and the construction permit. If the seller was involved in the construction, they will be aware of any issues in this respect and it may make sense to include a warranty to confirm, that (at least according to the knowledge of the seller) the buildings comply with the public and private requirements and are in line with the construction permit(s).
- Use of the property and land reserves: This may be especially important for foreign investors in the context of the Lex Koller. Apart from the current use of the property as a business establishment, it is equally important to make sure that there are no land reserves subject to the Lex Koller.
- Litigation and administrative procedures: Apart from any litigation with tenants and building authorities already mentioned, any litigation with construction companies, neighbors, and other parties should be covered. The extent of these warranties will depend on the negotiations between the parties.
- Taxes and fees: The buyer will generally ask for a warranty that all due taxes and fees in connection with the property have been duly and timely paid. The reason for this is that in many cantons, the communes have the possibility to enforce statutory mortgages typically with respect to real estate taxes and fees and, in certain cantons, even to other taxes such as income and net wealth taxes.
- Complete and correct due diligence documentation: A standard warranty clause in the context of

business transactions, which is also relevant to real estate transactions.

- Limitation of additional warranties: To avoid uncertainties, it is recommended to exclude any further representations apart from the items specifically listed. Another option is to refer to the subsidiary legal provisions with respect to further representations.
- The CC contains a statute of limitation of the new owner in the land registry. It also contains strict examination and notification requirements for the buyer. These deadlines and requirements can be amended by the parties. Notably, with respect to polluted areas, it may make sense to extend the deadline.

Mortgages and other usual guarantees for assets financing

Common procedures for a mortgage constitution

The establishment of a new mortgage certificate requires notarization and filing with the land registry. At the same time, there are no formalities in place for entering into a credit facility, subject to the self-regulatory standards for banks recognized as a minimum standard by the Swiss Financial Market Supervisory Authority (FINMA).

These guidelines concern the examination, evaluation, and processing of loans secured by real estate pledges. In particular, there are minimum requirements for mortgage financing.

For the purchase of a residential property for personal use, the individual seeking to obtain a bank credit must provide a minimum share of equity capital on the value of the collateral, not coming from the second pillar assets (advance payment and pledge) of at least 10%.

With regard to repayment, the mortgage debt must be reduced to two-thirds of the pledge value of the property within a maximum of 15 years. This amortization must be linear and begin at the end of each quarter at the latest 12 months after the payment.

For mortgage financing of investment properties, the minimum equity share of the collateral value is 25%.

With regard to repayment, the mortgage debt must be reduced to two-thirds of the property's pledge value within a maximum of 10 years. This amortization must be linear and begin at the end of each quarter at the latest 12 months after the payment.

Lender protection on a creditor execution

If the creditor's debt is secured by a mortgage, the pledged property is generally seized and sold at auction by the debt enforcement office (the respective foreclosure proceedings are governed by the DEBA and its respective ordinances). However, the lender and the borrower may also agree in the security agreement on the private realization of the collateral. In that case, there are no court proceedings to be initiated to realize the mortgaged property.

Mortgages have a certain assigned rank. In general, the claims based on mortgage certificates have a preference over unsecured or unprivileged claims.

Lease of assets and lease of business

Applicable laws

The lease of business premises is regulated in the CO and in the Ordinance regarding the lease of Residential and Business Premises. There is no separate act dealing with the lease of business premises only.

Types

There are several types of business leases. In practice, the main differentiator is whether the lease is fixed term or indefinite and whether the payments are fixed (including indexed) or fluctuating.

Typical provisions

- Business leases typically last for five or 10 years, often with an option for additional five-year period;
- The parties often agree on indexed rents based on the Swiss consumer price index;
- Subject to the landlord's approval, the tenant is entitled to sublet the premises;
- The tenant is often requested to provide liability insurance;

- In principle, an eventual change of control does not affect commercial lease agreements. In a merger, a lease agreement is transferred to the new entity by means of universal succession. However, the acquiring legal entity must secure claims of creditors involved in the merger, if requested by creditors, within three months after the merger becomes legally effective;
- The landlord is responsible for major repairs. However, depending on the lease agreement exceptions may apply; and
- Modifications to the premises are often allowed with prior approval by the landlord along the obligation to restore the premises to their original state by the termination of the lease.

Termination of lease agreement

As per art. 267 para. 1 CO, at the end of the lease, the tenant must return the business premises in a condition that aligns with its contractually designated use. If on the date of termination, the tenant does not voluntarily vacate the property, the lessor's only defense is to apply to the competent court to obtain the release of the leased premises.

Assessment of proceedings

The lessor's action for eviction can be subject to the summary procedure (clear cases), without a prior attempt at conciliation, if the factual situation is not disputed or can be proven immediately and the legal situation is clear (art. 257 of the Swiss Civil Procedure Code (CPC)). However, if the factual situation is disputed or cannot be proven immediately and the legal situation is not clear, either the ordinary procedure (art. 219 et seq. CPC) or the simplified procedure (art. 243 CPC) may apply.

In Geneva, however, the court may, on humanitarian grounds, stay the execution of the eviction order to the extent necessary to allow the tenant to be rehoused, when it is called upon to rule on the execution of an eviction order. However, this particularity does not apply to business premises, and eviction must take place without delay.

If the lessor suffers significant losses due to the inability to take back their premises after lease termination

If the tenant does not return the rented premises on time, they must pay the rent until it is returned. They are also liable for any damage caused to the lessor by the delay (art. 103 para. 1 CO).

Administrative permits applicable to construction or restructuring of assets

Swiss building laws and construction regulations, including zoning and planning, are adopted at all three levels of government (federal, cantonal, and communal). Reliable information on the use and occupation of land and buildings and on environmental regulations can be obtained from the respective authorities. Increasingly, this information is also available online. In general, a permit is required to construct, modify, demolish, or change the use of a building.

All construction, alteration, or demolition work must be reported to the communal authorities, which will decide whether it is subject to authorization. Also, people who have an interest can oppose a construction, alteration, or demolition work. The time and cost of obtaining these permits depends on the canton and commune concerned as well as if an opposition is filed which can considerably extend the duration of the procedure. The costs can vary from a few hundred to several hundred thousand Swiss francs.

The procedure for granting a building permit ensures that a construction project complies with the communal zoning plan as well as with legal and regulatory provisions (environmental protection, heritage conservation, safety and prevention, public health, etc.). It also makes it possible to preserve the public interest and the rights of third parties (e.g., neighbors) and to ensure that the applicant has the right to build.

Regarding second homes, the Lex Weber regulates the permissibility of building new homes together with changes to the structure and use of existing homes in communes with a proportion of second homes exceeding 20% (art. 1

Lex Weber). The Lex Weber also distinguishes between existing dwellings and new construction.

Existing dwellings are those that existed before 11 March 2012 or that had a building permit in force on that date. Such dwellings have a free use. They can be used as primary or secondary residences. The owner can therefore rent the property to someone who makes it their home without fear of losing its status as a secondary residence. Similarly, if the owner has occupied the property as a primary residence, they are not deprived of the possibility of selling it later as a secondary residence.

Such dwellings can be renovated, converted, and rebuilt without losing their status as existing dwellings. They may be enlarged by up to 30% of the main floor area, provided that this does not result in the creation of new second home units. If the extension exceeds 30%, the dwelling loses its status as an existing dwelling and thus can no more be used as a second home.

Regarding new constructions, as per art. 6 para. 1 Lex Weber, in communes in which the proportion of second homes exceeds 20%, no building permits may be granted for new second homes. If the proportion is less than 20% and, if granting a building permit would result in the commune having a proportion of second homes in excess of 20%, a building permit may also not be granted.

However, in communes with a proportion of second homes in excess of 20%, building permits may only be granted for new homes if they are, in particular, used as a principal home or as a home deemed equivalent to a principal home or as a home intended as managed tourist accommodation.

Environmental and energy – ESG rules and status of implementation

A comprehensive due diligence process is recommended prior to any real estate transactions, to identify potential risks and liabilities associated with the property. Such due diligence can be conducted by means of consulting the:

- Land registry;
- Land registry plans;
- Cadaster of ownership limitations under public law. Such a cadaster may not exist or be incomplete. In such a case, it is recommended to resort to construction documents available from building permit authorities; or
- Cadaster of contaminated locations.

Each canton has a public register of contaminated real estate called "cadaster of contaminated locations" (CCL). These registers are increasingly available online.

The CCL is based on the legacy liability cadaster (LLC) dating from the 1990s. Following examination and reassessment of LLC data, the CCL now lists:

- Waste deposit locations;
- Factory locations; and
- Incident locations.

The publicly accessible CCL contains information on:

- Whether a site is contaminated (without damaging or potential environmental impact);
- Potential detrimental effects of a site that warrant examination;
- Potential detrimental effects of a site that warrant monitoring; and
- Suspect sites requiring rehabilitation that are legally considered contaminated.

However, the fact that a property is not entered in the CCL does not necessarily mean that the property is not contaminated or polluted. In topographically questionable locations, we recommend consulting national geological data.

Properties listed in the CCL as being polluted, are subject to mandatory cleanup requirements.

Energy efficiency qualifications

The assessment and management of the energy performance of buildings are regulated at cantonal level. It is generally not mandatory for owners to perform tests.

The Federal Council (i.e., Switzerland's federal executive power) has put into place the "Energy Strategy 2050" which pursues the objectives set in the Energy Strategy 2007 by reinforcing them with new objectives. The measures take aim, in particular, at energy efficiency, renewable energies, phasing out nuclear power, and measures relating to electricity networks.

"Energy Strategy 2050" also contains measures for buildings, transport, and industry. Energy efficient technologies for the renovation of buildings and investment in renewable energies are being promoted, including waste heat recovery and the optimization of building utilities. The current system of subsidies will be replaced by a steering charge model.

Regarding buildings, "Energy Strategy 2050" aims to reduce the energy consumption of the Swiss buildings to 55 TWh by 2050. In addition, the Swiss electorate accepted the revised Federal Energy Act on 21 May 2017. The revision aims to reduce energy consumption, increase energy efficiency, and promote the use of renewable energy (as the "Energy Strategy 2050"). The revised version also prohibits the construction of new nuclear power plants. It is worth noting that the debate surrounding nuclear energy has resurfaced in recent years, with discussions intensifying in 2024.

To achieve the Paris Climate Agreement objectives, the Federal Council decided to reduce net CO2 emissions to zero by 2050. The building sector offers significant potential for reducing emissions and is essential for achieving this target. Buildings also account for a substantial portion of material consumption, waste generation, and environmental impact on society.

The Federal Act on the Protection of the Environment (EPA) also contains provisions regarding construction works and buildings. Lastly, the EPA provides that any construction or building measure which materially influences the environment need to undergo an environmental compatibility assessment.

Direct taxes applicable to sales

The acquisition of real estate or the majority of the shares in a Swiss real estate-rich company may be subject to a real estate transfer tax of up to 3.3%, depending on the canton of the real estate location (e.g., 3% in Geneva, 0% in Zurich or Schwyz). The tax is typically payable by the buyer. The buyer and the seller are often jointly and severally liable for the tax. Contractual agreements are possible with respect to the internal allocation of the tax burden. As advised, the tax laws in certain cantons foresee a lien on the property to secure the transfer taxes.

The gain realized (either directly or indirectly) in a real estate transfer is subject to tax:

For corporate ordinary taxed entities:

- 8.5% on the income after taxes on federal level;
- Between 12% and 21% on recaptured depreciations depending on the canton where the real estate is located and the same tax rate for real estate capital gains in cantons that apply the dual tax system (currently 17 cantons); and
- In the cantons (currently nine) that apply the monistic tax system, a separate tax on real estate capital gains is imposed. The progressive tax rate depends on the period of the real estate ownership, gain realized, and the location of the real estate. For instance, the real estate capital gains tax rate in the canton of Zurich varies from 25% to 50%, and from 0% to 50% in the canton of Geneva.

For individuals owning real estate as business assets, the same treatment as for legal entities typically applies. However, on the items that are subject to income taxes the progressive tax rates for individuals would be applied. Individuals who own real estate as private assets can benefit from a tax-free capital gain on a federal level, provided the said individual is not deemed a real estate dealer for tax purposes.

On a cantonal level, the real estate capital gains are in all cantons subject to a separate real estate gains tax (same treatment as for corporate entities with real estate in cantons that apply the monistic system).

In addition, for individuals owning real estate as private assets, Federal Act on Direct Federal Taxation (LIFD), requires the payment of a tax based on the property's rental value (art. 21 para. 1 lit. b LIFD). This is considered a notional rent, reflecting the income the owner would receive if they were renting out the property. This tax applies to property owners who do not live in or use their property regularly (do not live there/only visits it two-to-three times a month/second homes). The tax aims to compensate the economic benefit that the landlord derives from the property, as they do not have to pay rent. At the cantonal level, such tax rates cannot be below 60% of the local market rents. It is worth noting that there is a growing movement to abolish this tax, with both the Council of States and the National Council (i.e., the Swiss chambers of parliament) voting in favor of its elimination in 2021, respectively 2023. As a potential trade-off, maintenance costs (as described here below) will no longer be deductible. The legislation is currently under review to address remaining differences between the two parliamentary chambers.

In addition, although the owner supports a tax on the rental value of the property, the owner can deduct several charges from this tax, such as interest (mortgage interest/interest on construction credits), and maintenance costs of the property in question.

Transfers of real estate are, as a rule, excluded from value added tax (VAT). However, there are two situations where VAT can apply:

- Optional taxation: The buyer can waive the VAT exemption, provided that the real estate is not used for private purposes. Thus, the buyer will be able to reclaim Swiss input VAT on the purchase price (currently 8.1%); and
- Transfer of going concern (TOGC): A notification procedure if the building is not exclusively used for private residential purposes.

The seller and buyer always need to consider the impact of the selected VAT method. Special attention has to be given to all capitalized input VAT that was paid for opted purchases in the past, for construction work and for major renovations. In case of a change of the model, refund or repayment need to be considered. Furthermore, detailed documentations have to be factored in such transactions.

Lastly, the buyer and seller are jointly liable for Swiss income tax on brokerage fees paid to a foreign (non-Swiss) broker involved in the transaction. The tax liability is limited to 3% of the purchase price for direct federal taxes. Such thresholds also exist for cantonal tax purposes, but the percentage varies from canton to canton. In the canton of Zurich, the tax liability for cantonal/communal taxes is also limited to 3%. In the canton of Geneva, the tax liability for cantonal taxes amounts to 5% on the first CHF 500,000 (US$568,810*) and 3% above that up to CHF 4,000,000 (US$4,550,480*) and 2% above that, excluding tax.

*According to the 10 December 2024 exchange rate.

Emerging markets and new asset classes in Switzerland:

- A major international organization is planning a complete renovation of its historic headquarters in Geneva. The project is expected to last two and a half years. The work includes renovating the facades, upgrading the security systems, completely redesigning the service areas and the 1,200 workstations, and modernizing the technical equipment and installations. The project aims to preserve the historical heritage while offering a high architectural quality. In addition, the renovated building will have to meet strict sustainability requirements.
- Two new four-story buildings for biopharmaceutical production and research, as well as for life sciences and other sectors, will be constructed in Lausanne. The new buildings will be built according to the Minergie standard, with the aim of obtaining certification for compliance with the British BREEAM standard. The construction work, which will start at the end of summer 2022, will take approximately two and a half years.
- To meet the population's demand and to preserve the canton's agricultural zone, 12,400 new units of accommodation of all types for people of all ages and social conditions, notably housing and residences for students and the elderly, will be built in the area of la Praille, les Acacias and les Vernets, in Geneva. In addition, nursery schools for children, restaurants, shops, cultural facilities, creative spaces, a large eight-hectare park and two rivers will be created and developed.
- By 2030, the university district in the city of Zurich is set to undergo major changes. The Swiss Federal Institute of Technology Zurich will renovate its canteen and its multi-purpose building under the Polyterrasse, as well as the main building and the forecourt. In addition, a new hospital will be built as well as a teaching and research center. Finally, the streets, bicycle paths and green spaces will be redeveloped.
- The “Zurich Neugasse Project” foresees that an addition to the city will be built on an area larger than four football pitches in the middle of Zurich. Different offers in terms of housing, workplaces and public spaces must be created. This will benefit not only the neighborhood, but also the entire city of Zurich.
- The “ZIMEYSAVER project” in Geneva concerns the industrial zones of Meyrin, Satigny, and Vernier, and has an estimated potential of 10,000 new jobs by 2030. This project covers more than 380 hectares and should enable the development of genuine business districts that are competitive for companies and pleasant to live in for employees, users, and local residents. It integrates the principles of industrial ecology that encourage companies and local communities to make better use of land and surfaces by optimizing infrastructure, equipment, and resources.
- The areas between Zurich's main railway station and Altstetten are among the last major development areas in the city of Zurich. With the upcoming transformation of the SBB workshops, the 42,000 square meters site is to be transformed from an industrial facility into an attractive location for business and industrial innovation companies and start-ups, as well as a cultural venue. Under the name “Werkstadt Zürich,” a lively area for work and leisure will be created over the next 20 years, which will grow together with the adjacent quarters to form a new urban space.

By **Paul de Blasi,** Partner, Deloitte Legal Leader Switzerland and Head of Deloitte Private, Romandie

Real Estate Law in Taiwan

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Overview of the Taiwanese Legal System

General introduction to the main laws that govern the acquisition of assets in Taiwan – real estate rights

Regulations governing real estate in Taiwan

The acquisition and ownership of real estate in Taiwan are primarily governed by several key pieces of legislation, including the Civil Code, the Land Act, and the Regulations of the Land Registration. These laws establish the legal framework for the rights, obligations, and procedures related to real estate transactions in Taiwan.

- The Civil Code: This serves as the fundamental legal basis for property rights and contracts in Taiwan. It sets out the general principles for the creation, transfer, and protection of real estate rights;
- The Land Act: This law provides specific regulations regarding land ownership, utilization, and transfer, including the rights of foreign nationals to acquire land in Taiwan under certain conditions; and
- The Regulations of the Land Registration: These regulations detail the processes and requirements for the registration of land and property, ensuring that ownership and other rights are formally recognized and enforceable.

Non-formal requirements for real estate contracts

In Taiwan, the formation of a real estate sale and purchase agreement is not subject to any formal requirements, meaning that the contract does not need to be in any specific format to be legally binding. However, to effectuate the transfer of real estate rights, a written agreement is required, and certain formalities must be observed. Specifically, these transactions require proper documentation and registration with the appropriate authorities to be legally effective.

Mandatory registration for transfer or creation of real estate rights

The transfer of real estate rights, including ownership or the establishment of encumbrances, must be registered to be legally recognized. The registration process is essential to ensure the validity of the transaction and to protect the rights of the parties involved. Without registration, any transfer or creation of real estate rights is not enforceable against third parties.

Independent ownership of buildings

In Taiwan, buildings are recognized as independent objects of ownership, separate from the land on which they are constructed. This means that the ownership of a building can be transferred independently of the land, provided that the legal requirements for such a transfer are met, including proper registration.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Use of real estate brokers

In Taiwan, it is common practice for both buyers and sellers to engage the services of real estate brokers when conducting real estate transactions. These brokers facilitate the negotiation and execution of contracts, provide market insights, and assist with the necessary paperwork. Their involvement helps to streamline the process and ensure compliance with legal requirements.

Methods of purchasing real estate (presale and existing buildings), performance guarantees/price trust

Real estate transactions in Taiwan typically involve either presale properties (properties sold before construction is completed) or existing buildings. When purchasing presale properties, buyers are usually required to enter into a presale contract and may be asked to provide performance guarantees or place the purchase funds in a trust account. These guarantees protect both parties by ensuring that funds are safeguarded by a third party institution, which manages payments and necessary fees. For this purpose, it is always advisable to be assisted by an attorney specialized in the matter. Once all contractual obligations are met, the remaining funds are released to the seller, thus minimizing risk for both parties. For existing buildings, the transaction is more straightforward, with the buyer and seller directly transferring ownership upon the execution of the sale contract and the registration of the transfer.

Restrictions on foreigners

Foreign nationals are generally allowed to purchase real estate in Taiwan, provided they are from countries that grant reciprocal rights to Taiwanese citizens. Additionally, there are specific restrictions outlined in Articles 17-20 of the Land Act. These articles impose limitations on the acquisition of certain types of land, such as agricultural land, forest land, and lands within designated areas of military importance. Foreigners may face additional restrictions or requirements when attempting to purchase these types of properties.

Real estate registry system

Mandatory registration system

Taiwan operates under a mandatory registration system for real estate transactions. This system requires that all changes in property rights, including ownership transfer and the creation of encumbrances, must be officially registered with the relevant authorities to be legally effective. This ensures that all real estate transactions are properly documented and recognized by law.

Substantive examination

The registration process in Taiwan involves a substantive examination by the registration authorities. This means that the authorities thoroughly review the application and supporting documents to verify the validity and legality of the transaction before approving the registration. This examination process helps to prevent fraudulent transactions and protect the rights of the parties involved.

Registration as a constitutive requirement for property rights

In Taiwan, the principle of "registration as a constitutive requirement" applies to real estate transactions. This means that the transfer of property rights or the establishment of encumbrances is only legally valid upon registration. Without registration, the transaction has no legal effect, even if the parties have signed a contract.

Public credibility of registration

The real estate registration system in Taiwan provides public credibility. Once a transaction is registered, the registered rights are presumed to be accurate and enforceable against third parties. This principle ensures the reliability of the registration system and provides legal certainty for real estate transactions.

Public disclosure of the registry

The real estate registry in Taiwan is open to the public, allowing any interested party to access the registration records. This transparency helps to inform potential buyers or other stakeholders about the current status of property rights, thereby reducing the risk of disputes or conflicts over ownership.

Issuance of title deeds post-registration

Upon completion of the registration process, the authorities issue title deeds or other relevant documentation to the rightful owner. These documents serve as official proof of ownership and are crucial for asserting property rights in legal or financial matters.

Liability for damages by the registration authority

The registration authorities in Taiwan are responsible for ensuring the accuracy and legality of the registration process. If an error or omission occurs during the registration process that causes damage to a party, the affected party may seek compensation from the registration authority. This provision helps to maintain trust in the registration system and ensures accountability.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

Warranties against defects

In Taiwan, the concept of warranties against defects is a key element in real estate transactions. Under the Civil Code, the seller is obligated to ensure that the property being sold is free from defects that would impair its value or usability. If such defects are discovered after the transaction, the seller may be held responsible for providing remedies to the buyer.

Conditions for establishing liability for defects

For the seller's liability for defects to be established, certain conditions must be met. These include the existence of a defect at the time of the transfer of ownership, and the buyer's lack of knowledge about the defect at the time of purchase. The defect must be significant enough to affect the property's value or the buyer's intended use of the property.

Obligations of the buyer regarding defects

The buyer is required to inspect the property upon delivery. If any defects are discovered, the buyer must notify the seller within a reasonable time. Failure to do so may result in the buyer losing the right to claim any remedies for the defects. This obligation is in place to ensure that the seller is informed of any issues as soon as possible and can take appropriate action.

Obligations of the seller regarding defects

The seller is obligated to address any defects that are discovered and reported by the buyer. This may involve repairing the defect, reducing the purchase price, or, in some cases, rescinding the contract altogether. The seller's obligations are intended to protect the buyer's interests and ensure that the property meets the agreed-upon standards.

Rights of the buyer under warranties against defects

If defects are found, the buyer has several rights under the warranties against defects. These include the right to request repairs, demand a reduction in the purchase price, or rescind the contract if the defect is severe. The buyer may also seek compensation for any losses incurred as a result of the defect.

Statute of limitations for defect claims

The buyer's right to claim remedies under warranties against defects is subject to a statute of limitations. In Taiwan, the buyer generally has five years from the date of delivery to make a claim. If the defect is discovered after this period, the buyer may lose the right to seek remedies from the seller.

Exemptions from warranties against defects

There are certain situations where the seller may be exempt from liability under warranties against defects. For example, if the buyer was aware of the defect at the time of purchase or if the defect was so obvious that it should have been discovered during a reasonable inspection, the seller may not be held responsible. Additionally, if the buyer agreed to waive the warranties against defects in the contract, the seller's liability may be limited or excluded.

Mortgages and other usual guarantees adopted in financing assets

Meaning, effective requirements, scope of guarantee, and priority of mortgages

In Taiwan, a mortgage serves as a security interest granted over real estate to secure the repayment of a debt or the performance of an obligation. The effectiveness of a mortgage depends on specific requirements, including the execution of a mortgage agreement and its registration with the appropriate land registration office. The scope of the guarantee typically includes the principal amount, interest, penalties, and other related fees. The priority of mortgages is determined based on the order of registration; earlier registrations take precedence over later ones, which is critical in determining the rights of multiple creditors.

Conventional mortgages and maximum amount mortgages

When engaging in real estate transactions, understanding the differences between conventional mortgages and maximum amount mortgages can guide investors and homebuyers in choosing the most suitable financing options based on their specific needs and the nature of the property being acquired.

- Conventional mortgages: Defined by a fixed loan amount stipulated in the mortgage agreement, these mortgages are secured against a specific property with a clear, predetermined debt. Ideal for standard real estate purchases where property value and financing needs are stable and predictable; and
- Maximum amount mortgages: Offering flexibility in transactions where financing needs may vary, these mortgages set a ceiling on the possible loan amount but do not fix the actual loan amount at the contract's signing. Especially advantageous for development projects or commercial transactions with variable costs.

Each mortgage type serves different strategic purposes in real estate transactions, making it essential for buyers, investors, and developers to carefully consider their financial planning and project requirements when selecting a mortgage type.

Lease of assets and lease of business

Main regulations

The leasing of assets and business premises in Taiwan is primarily governed by the Civil Code and the Land Act. These laws provide the framework for leasing transactions, detailing the rights and responsibilities of both landlords and tenants to ensure fair and legal operation of leases.

Formal contracts

In Taiwan, lease agreements for real estate with a duration exceeding one year must be formalized in writing to be legally binding, as stipulated by Article 422 of the Civil Code. If the lease is not formalized in writing, it is considered a lease of indefinite duration. This provision ensures that longer-term leases are documented clearly to avoid potential disputes over the lease period and the obligations of the parties involved.

Landlord's obligations to maintain and repair

Landlords are required to maintain the leased property in a condition suitable for the agreed use and must carry out necessary repairs to fulfill this obligation. This ensures that the property remains functional and safe for the tenant's use throughout the lease term.

Tenant's duty of care

Tenants are obliged to take good care of the leased property. This includes a responsibility to prevent any damage or deterioration beyond normal wear and tear and to inform the landlord promptly of any urgent repair needs.

Subleasing

Tenants may sublease the property to a third party only with the landlord's consent. This requirement is designed to give landlords control over who is using their property and to ensure that the subtenant is suitable and reliable.

Sale does not break lease

According to Article 425 of the Civil Code, the sale of a leased property does not terminate the lease.

This provision protects tenants from eviction due to property sale, ensuring continuity and stability for tenants who have lease agreements in place.

Rent payment and termination

Rent is to be paid at the times agreed upon in the lease, and either party may terminate the lease under conditions specified in the lease or as provided by law. This includes procedures for early termination and the consequences of breach of contract.

Term of lease

The lease term can be either fixed or indefinite, with specific regulations governing the termination, renewal, and extension of each. Fixed-term leases automatically end at their agreed expiration date unless renewed, while indefinite leases continue until terminated by notice from either party.

Leasing of land for building houses

Tenants who lease land to build houses have a right of first refusal to purchase the land if the landlord decides to sell. This right is designed to give tenants security and the opportunity to retain the land they have developed.

Administrative permits applicable to construction or restructuring of assets

Land use zoning

In Taiwan, land is categorized into urban and non-urban areas, each governed by specific zoning regulations. These regulations, outlined in the Urban Planning Act and the Regional Plan Act/Spatial Planning Act, define the permissible uses of land within different zones, including residential, commercial, and industrial purposes. The zoning laws also determine the building coverage ratio and floor area ratio, which dictate the extent of building area relative to the land area. These factors are crucial in planning and executing construction projects as they directly influence the design and feasibility of a building.

Types of building licenses

Building activities in Taiwan are regulated by various licenses to ensure compliance with safety standards, zoning laws, and building codes. According to Article 28 of the Building Act, building licenses are classified as follows:

- Construction license: This license is required for new construction, extension, reconstruction, or repair of buildings. It ensures that the project complies with urban planning regulations, zoning laws, and building codes. The license is mandatory before any construction work begins and includes checks for safety measures and environmental impacts;
- Miscellaneous license: A miscellaneous license is needed for the construction of minor or non-standard works, which often include temporary structures of smaller installations. This license ensures that even smaller projects comply with relevant regulations;
- Usage license: Once construction is complete, a usage license is required to legally occupy the building. This license confirms that the building adheres to approved plans and meets all necessary safety standards and regulations, such as fire safety, structural integrity, and accessibility. This license is also required when the use of the building is altered; and
- Demolition license: This license is needed for the lawful demolition of buildings. It ensures that the demolition process complies with safety standards and regulations, minimizing impacts on neighboring properties and handling debris in a regulated manner.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

Environmental impact assessment

In Taiwan, certain development activities require an environmental impact assessment as outlined in the "Standards for Determining Specific Items and Scope of Environmental Impact Assessments for Development Activities" established under Article 5, paragraph 2, of the Environmental Impact Assessment Act. Articles 25 to 27 specifically mandate environmental assessments for new urban area developments, high-rise buildings, and the demolition and redevelopment of old urban areas.

These assessments evaluate potential environmental impacts to ensure that developments are sustainable and comply with environmental standards.

Pollution-related regulations

Various laws govern pollution control related to construction projects:

- Air Pollution Control Act, Management Regulations for Construction Project Air Pollution Control Facilities, and Regulations Governing the Collection of Air Pollution Control Fee: These regulations mandate measures to prevent and control air pollution during construction. Builders are required to implement specific management practices and may need to pay air pollution control fees before commencement of construction;
- Waste Disposal Act: This act regulates the disposal methods, inspection, reporting, transportation, and tracking of construction waste, ensuring its proper handling, and promoting recycling; and
- Water Pollution Control Act: This law sets standards for wastewater treatment facilities in buildings and the quality of discharged water, ensuring that construction does not adversely affect water resources.

Green Building initiatives

Taiwan promotes green building practices through several regulations and standards:

- Chapter 17 "Green Building Criteria" of the Building Technical Regulations: This chapter stipulates requirements for site greening, water conservation, energy saving in buildings, and the reuse of rainwater and miscellaneous drainage;
- Ministry of the Interior's "Green Building Label and Building Energy Efficiency Labeling Application Review, Approval, and Usage Guidelines": The Green Building Label is based on the Building Research Institute's EEWH (Ecology, Energy Saving, Waste Reduction, and Health) system, which evaluates buildings across nine indicators. Furthermore, the Building Energy Efficiency Assessment and Labeling System, initiated in 2022, assesses the energy efficiency of a building's envelope, air conditioning systems, and interior lighting. This system aims to promote nearly zero-carbon and net-zero buildings, aligning with modern sustainability goals; and
- Renewable Energy Development Act: On 21 June 2023, a new regulation was passed, requiring installation of photovoltaic systems in new constructions, additions, and renovations of certain sizes, unless exempted due to insufficient sunlight or other specified conditions. The effective date has yet to be announced.

Direct taxes applicable to sales

In Taiwan, one of the most significant tax systems for real estate transactions is the consolidated house and land tax (CHLT), which was introduced on 1 January 2016. The CHLT marks a major reform in how real estate sales are taxed. Under this new system, both the land and the building are taxed together based on the actual sale price, replacing the older system in which only the building was taxed for transaction income, and the land was taxed separately through the land value increment tax (LVIT).

Consolidated house and land tax

The CHLT aims to create a more equitable tax system, taxing real estate gains based on the property's actual sale price. The tax rates under the CHLT system vary according to the duration of ownership:

- Properties held for less than two years are subject to a tax rate of 45%;
- Properties held between two and five years are taxed at 35%;
- Properties held for more than five years but less than 10 years are taxed at 20%; and
- Properties held for more than 10 years benefit from a lower tax rate of 15%.

The introduction of CHLT also addresses the speculative real estate purchases by imposing higher tax rates for properties sold within a shorter time frame. This discourages short-term property flipping and helps to stabilize the real estate market by encouraging longer-term ownership.

Land value increment tax

Alongside CHLT, the LVIT continues to apply. LVIT is levied on the increase in the value of the land over time. The government assesses the value of the land, and the tax rate ranges from 20% to 40%, depending on the level of appreciation. This tax is paid by the seller and is particularly important in cases where the land value has significantly increased during ownership.

Deed tax and other taxes

Other relevant taxes in real estate transactions include the deed tax, which is levied at 6% of the government-assessed value of the building. This tax is payable by the buyer. Additionally, stamp duty, charged at 0.1% of the transaction price as stated in the sale and purchase agreement, is also paid by the buyer.

For buildings, the value added tax (VAT) applies at a rate of 5% on the sale price. This tax is typically the responsibility of the seller.

Additional considerations

The implementation of the CHLT system helps streamline tax payments and makes the process more transparent. By taxing both land and buildings together based on actual sale prices, the government has managed to reduce discrepancies that existed under the previous system, where undervaluing properties for tax purposes was more common. Furthermore, the higher taxes on short-term property holdings help to limit speculative activities in Taiwan's booming real estate market, encouraging more stable and long-term investments.

Tax obligations must be settled before the title transfer is completed, and both the buyer and the seller should ensure that any outstanding taxes, including land value and house taxes, are paid in full.

Latest developments in Taiwan, and areas to focus on in the future:

- Urban renewal initiatives: Taiwan is intensifying its urban renewal efforts, which is crucial due to the high frequency of earthquakes and the substantial number of aging buildings. The Urban Renewal Act has been amended to streamline processes that allow local governments to demolish dangerous buildings and offer incentives for rebuilding old structures. This legislative change aims to facilitate faster and more effective urban renewal projects, ensuring safer living conditions and better utilization of urban spaces.
- Legislative updates to attract foreign investment: Taiwan continues to revise its laws to attract more foreign investment by simplifying property purchase processes for foreigners and reducing restrictions on foreign ownership, thus enhancing economic ties and global cooperation.
- Promotion of affordable housing: The Taiwanese government is actively increasing the supply of affordable housing. Recent measures approved by the Executive Yuan aim to reserve specific percentages of land for social welfare housing projects in special municipalities and other regions. The goal is to construct one million social welfare housing units by 2031 to meet the housing needs of disadvantaged and young people.
- Focus on Green Building and sustainability: The emphasis on sustainable development is stronger than ever, with policies aimed at integrating green and smart technologies into new constructions. These initiatives are designed to ensure buildings are energy-efficient and environmentally friendly, further contributing to Taiwan's goals of sustainability and reduced environmental impact.
- Smart city initiatives: Taiwan is actively advancing its smart city initiatives under the "Digital Nation and Innovative Economic Development Program" and the "Forward-looking Infrastructure Development Program," as facilitated by the Ministry of Digital Affairs. These efforts aim to enhance digital governance and public services across sectors such as healthcare, transportation, and agriculture, with the goal of integrating innovative technologies like AI to improve efficiency and public engagement. Additionally, Taiwan is expanding its reach through international collaborations, including partnerships within the ASEAN Smart Cities Network and new initiatives with the EU to promote sustainable urban development. These international efforts focus on utilizing advanced technologies to further enhance urban infrastructure and services, demonstrating Taiwan's commitment to becoming a leader in global smart city development.

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Real Estate Law in Thailand

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Overview of the Thai Legal System

General introduction to the main laws that govern the acquisition of assets in Thailand – real estate rights

In Thailand, the main legislation that provides legal basis for the legal rights relating to real estate is the Land Code as amended and the Civil and Commercial Code (CCC). Rights over real estate can be acquired either by operation of law or by contract. Rights relating to immovable property or property rights over real estate are divided into five categories:

- Ownership/co-ownership: Under the CCC, the owner of the real estate perpetually has the right to use and dispose of it and acquire its fruits; they have the right to follow and recover it from any person not entitled to detain it and have the right to prevent unlawful interference with it. This is an absolute right which is capable of being transferred by means of executing written evidence and registration with the competent authority;
- Usufruct: Land may be subject to a usufruct in which the usufructuary has the right to use, possess, and manage land of another person;
- Superficies: The right of superficies is the right to own, upon or under the land, buildings, structures, or plantation, which are situated on the land owned by another person;
- Habitation: The right of habitation is the right to occupy buildings owned by another person as a dwelling place without an obligation to pay rent; and
- Servitude: A right attached to land/property for the benefit of another immovable property, known as "easement" in English law. The owner of the servient land/property is bound for the benefit of the dominant property to suffer a certain act affecting the servient land/property, or to refrain from exercising rights derived from ownership of the servient land/property.

Apart from the aforementioned rights, a person has the right to possess real estate under the law by renting the property. This right is a personal right which cannot be enforced against a third party, except in cases when the title of the rented land is transferred to another person. The lessee is not authorized to sublet or transfer this right to another person without the consent of the lessor. Written evidence signed by the liable party is required to enforce the lease agreement. For leases with a term exceeding three years, written agreement, and registration of the title deed with the competent authority are required, otherwise it can only be enforced for three years.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

In general, foreigners, including individual and corporate entities, are not eligible to own land under Thai law unless specifically exempted. Nonetheless, foreigners can acquire the right to own the buildings and structures on land owned by Thai nationals.

Additionally, foreigners are permitted to own up to 49% of the aggregate unit space of a condominium under the Condominium Act B.E. 2522 (A.D.1979), as amended. Foreigners who are entitled to hold ownership in a condominium in accordance with the Condominium Act have to satisfy any of the following requirements:

- Foreigners allowed to have residence in Thailand under immigration law;
- Foreigners allowed to enter Thailand under the Investment Promotion Act;
- Corporates as stated in Section 97 and 98 of the Land Code, e.g., companies with registered shares held by foreigners of more than 49% of the registered capital, companies as stipulated in Section 97 holding shares of more than 49% in other companies as stated in Section 97, and registered under Thai law;
- Corporates which are deemed as foreign under the Announcement of the National Executive Council No.281 dated 24 November 1972 and have been granted a promotion certificate under the Investment Promotion Act; and
- Foreigners who have brought foreign currency into Thailand or can withdraw money from a Thai Baht account of a person with a residence outside Thailand or can withdraw money from a foreign currency account.

Foreigners who have brought in money for investment in Thailand are entitled to own land up to 1 Rai (1,600 square meters) for residential purposes if they comply with certain requirements as stated in the relevant ministerial regulation and are granted permission by the Minister of Interior.

Pursuant to the Investment Promotion Act, B.E. 2520 (A.D.1977) as amended, a company with a majority foreign shareholders, which is granted investment promotion from the board of investment, is eligible to apply for permission to own land, to use the land for carrying out their business for which the investment promotion is granted but is subject to the condition that such land needs to be disposed of when the company no longer uses it for running its business.

According to the Industrial Estate Authority of Thailand Act, B.E.2522 (A.D.1979) as amended, companies with majority foreign shareholders may be permitted to own land located in an industrial estate for the operation of their business under certain factors set by the governor of the Industrial Estate Authority of Thailand.

In addition, majority foreign owned companies that are granted concession by the Minister of Energy may acquire an ownership right over the land area on which the concession is granted.

Real estate registry system

Under the CCC, the transfer of ownership in real estate executed through a commercial transaction requires registration with the relevant Land Office. Failing to register renders the transaction void. A transfer fee at the applicable rate calculated based on the price of the land needs to be paid upon the transfer of title.

A lease with a term of more than three years needs registration, otherwise it can be enforced for three years only, according to the CCC. In executing the registration of a lease, the parties to the lease are required to pay a fee of 1% of the total rental fee for the entire lease term.

Pursuant to the CCC, the registration of the mortgage is mandatory, otherwise the transaction will be void. To register the mortgage, the registration fee of 1% of the mortgage amount but not exceeding ฿200,000 (US$5,860 - 30 August 2024 exchange rate), will be levied on the parties to the transaction.

Failure to register security interests or encumbrances will not void the transaction between the parties, but they will not be enforceable against third parties.

The registration of an ownership, a leasehold, or encumbrance, ensures that priority of right over the property resides with the registering party.

Notary role in the real estate transactions

The closing of the conveyance of title and lease can be done either by the presentation of all parties to the contract, or their representatives who are authorized by the power of attorney, at the Land Office to execute the registration and pay fees and taxes. If the power of attorney is held outside Thailand, notarization of the power of attorney is required.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

General legal responsibility of the seller in real estate transactions

- The seller is obliged to execute the registration of the sale agreement with the relevant authority;
- It is the seller's responsibility to deliver the property as specified in the sale contract to the buyer;
- Unless it is stipulated in the sale contract, the seller is liable if the property appears defective causing a reduction in value or if the fitness for its ordinary purpose or for purposes of the contract is impaired; and
- Unless it is stipulated in the sale contract, the seller is held liable if a disturbance is caused to the peaceful possession of the buyer as a result of a third party holding a right over the property sold at the time of the sale or due to the seller's fault.

Contractual representations and warranties

- The seller is the legitimate owner of the property;
- The seller agrees that the property is free from all types of encumbrances or any other existing rights over the property held by the third party. The law on hire of property states that in case when the ownership of the real estate is transferred, the transferee is bound by the lease contract entered into by the transferor and the lessee. There are covenants typically given by the seller when the property is subject to lease, including indemnities against defaults, no renewal or amendment of the current lease without the consent of the buyer, no third-party liability, etc.;
- The seller agrees that no investigation, action, suit, or proceedings are pending before any court or by any governmental body that seeks to restrain, prohibit, or otherwise challenge the sale of the property;
- A typical seller's covenants would include warranties for compliance with environmental laws and the absence of claims, and indemnities against breach thereof; and
- A typical buyer's covenants would be compliance with environmental laws and indemnities for claims against the seller.

Remedies for breach of these clauses include claims for contractual breach against the defaulting party by taking court action and making a claim for damages. For this reason, it is always advisable to obtain assistance from legal counsel in the drafting and negotiation of the contract.

Mortgages and other usual guarantees adopted in financing assets

In Thailand, security interest in immovable property is limited to the mortgage. Mortgages are used to create a lien on real estate to secure indebtedness. The mortgagor assigns a property to the mortgagee as security for the performance of an obligation without delivering the property to the mortgagee.

A contract of mortgage is valid and enforceable only if it is executed in writing and registered with the competent official. The registration fee at the rate of 1% of the amount of mortgage, but not exceeding THB 200,000 (US$5,907.3*) is payable. There is a stamp duty payable at the rate of one baht (US$0.02954*) for every THB 2,000 (US$59.073*) with a maximum amount of THB 10,000 (US$295.365*). Mortgages can be transferred by means of registration with the Land Office, together with payment of a registration fee and stamp duty as stated before.

From 2 January 2024 to 31 December 2024, according to the Announcement of the Ministry of Interior, transfer of real estate which is a residential building, categorized as a single house, a semi-detached house, a townhouse, a commercial building, or land with such a building, with a purchase price and an appraised value of not more than THB 3 million (US$88,609.5*) will receive a reduction in transfer of ownership fee from 2% to 0.01%, and a reduction in mortgage registration fee from 2% to 0.01%. To qualify for the reduced rates, the sale and mortgage must be registered at the same time, and the buyer must be a natural person with Thai nationality.

Pursuant to the CCC, a mortgage over land does not extend to buildings built upon such land by the debtor after the date of the mortgage unless it is stipulated to that effect in the contract. A mortgage over buildings built or constructions made upon or under the land of another person does not extend to such land and vice versa.

With regards to the enforcement of the mortgage, prior to enforcing a mortgage, the lender must serve a written notice to the debtor requesting the debtor to perform their obligation within a reasonable amount of time which must be 60 days or more counted from the date the debtor has received the notice. If the debtor fails to comply with the notice, the lender may initiate a court proceeding requesting an injunction ordering the mortgaged property to be seized and sold via public auction.

Moreover, when the debtor has mortgaged a property to secure a performance of obligation by another person (third party), the lender is required to notify the debtor within 15 days from the date the notice is served to the third party. If the lender fails to comply with this requirement, the debtor cannot be held liable for the outstanding interest and compensation owed by the third party, as well as encumbrances that are accessories of the debt, all of which takes place after the end of the 15-day period.

Apart from enforcement of the mortgage through sale by public auction, the CCC provides ground for enforcing the mortgage via claim for foreclosure of the mortgage which is conditional on the satisfaction of the following elements: there are no other registered mortgages or preferential rights over the property in question; the debtor has failed to pay interest for five years; and the debtor has satisfied the court that the value of the property is less than the amount owed.

Lease of assets and lease of business

Under the CCC, Thai nationals and foreigners (with appropriate license) have the right to lease the land on which the lessee has the right to occupy and use the leased property for a limited period of time - no more than 30 years. The lease can be renewed for a period of no more than 30 years. The lease is enforceable only if the lease is executed in writing and signed by the liable parties. However, if the parties contracted a lease term of more than three years, or for the life of either the lessor or lessee, a written agreement and registration with the competent authority are required, otherwise it can be enforceable for three years. As stated earlier, the leasehold is not discharged upon the transfer of the title of the land; the new owner of the land is bound to the original lease by the lessee.

Pursuant to Hire of Immovable Property for Commerce and Industry Act, B.E.2542 (A.D.1999), foreign investors in large-scale investments with a long investment period are authorized to lease the land for no more than a 50-year term.

Administrative permits applicable to construction or restructuring of assets

The main pieces of legislation that govern the construction or modification of buildings, and land use in each zone are the Building Control Act, B.E. 2522 (A.D.1979) as amended, and the Town and City Planning Act, B.E.2518 (A.D.1975) as amended. The detailed regulation concerning land utilization in different zones can be found in ministerial regulations promulgated under the aforementioned acts.

The Building Control Act establishes a minimum standard to be met in order that the authorization for construction, modification, or destruction of buildings or structures can be granted by the relevant governmental authority. The minimum standard, which encompasses the prescribed standard for designing the building, ensures that the buildings and human-made disasters fulfill the objective of the Act in which the safety of the building's users and those living in the surrounding areas can be sustained.

The Town and City Planning Act is a law that regulates the permissible utilization of property. Under this Act, the permissible land use in each area will depend on variable elements, such as geography, environmental, social, and economic conditions of each area.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

Polluted land

Under the Enhancement and Conservation of the National Environmental Quality Act, B.E.2535 (A.D. 1992), companies running designated businesses which have a high potential of causing environmental pollution, for example a hotel with a number of rooms exceeding 80; an office building with the internal area of more than 10,000 square meters; mining; petroleum plant; steel industry; the production of cement, will be required to prepare an Environmental Impact Assessment (EIA). In addition, businesses which are likely to have a serious effect on the quality of the environment, natural resources, as well as the health of communities, such as petrochemical industry; coal-fired power plants; metal melting, etc., will be required to prepare an Environment and Health Impact Assessment (EHIA).

Energy efficiency qualifications

The Building Energy Code is standard criteria for the design of newly constructed buildings or modified buildings for energy conservation, which comprises the Energy Conservation Promotion Act and the corresponding set of by-laws, sets the compulsory requirements and procedures for energy conservation in buildings with the purpose to promote efficiency of energy consumption in buildings. The Building Energy Code stipulates mandatory requirements for the minimum performance of the building envelope system, lighting system, air-conditioning system, renewable energy system, water heating appliance, and whole building energy. This completely applies to new, very large commercial buildings i.e., educational institutions, office buildings, theaters or entertainment buildings, department stores or shopping centers, service buildings, public assembly buildings, hotels, hospital, condominium buildings with a total usable floor area of 2,000 square meters or more.

Direct taxes applicable to sales

Corporate income tax

The corporate income tax of 20% of net profits is payable for capital gains from the transfer of the property. Generally, corporate entities have to pay the corporate income tax (20% of net profits) calculated on capital gains from the sale of the property. However, small and medium-sized entities, i.e., companies with a maximum paid-up capital of THB 5 million (US$147,683*) and total revenue from sales of goods and services no more than THB 30 million (US$886,095*) in a fiscal year, with net profits no more than THB 3 million (US$88,609.5*), are subject to a lower rate of 15%.

Withholding tax

A corporate withholding income tax of 1% of the gross proceeds from the transfer is payable on the transfer of immoveable assets. The transferee is obliged to withhold this tax and remit the same to the competent official at the time of registration of rights and juristic acts. This 1% is regarded as an advance tax payment that can be used by the transferor as credit against the corporate income tax payable. Rental payments are subject to a 5% withholding tax.

Specific business tax (SBT)

The specific business tax is imposed on the transfer of immoveable property at 3.3% of the selling price or the price as appraised by the Land Department, whichever is greater.

Stamp duty

For a transfer of immoveable property, a stamp duty of 0.5% of the selling price or the price as appraised by the Land Department, whichever is greater, is payable. The stamp duty will be exempt if the SBT has been paid for the transfer. Stamp duty at 0.1% is payable on the lease of immovable property.

Emerging markets and new asset classes in Thailand:

Accommodation market overview

Despite the challenges posed by rising household debt, interest rates, and loan rejection rates, the Thai real estate market has shown resilience. While these issues are particularly affecting lower-priced units, with rejection rates reaching 60-70%, the impact is also spreading to higher price ranges. Overall, loan issuance is at its lowest in six years. However, the government's measures to support the market and the market's adaptability are reasons for cautious optimism. The overall direction of the housing market 2024 remains uncertain, but the market's resilience is a positive sign.

Condominium

The Thai condominium market saw a surge in Q1 2024, with a 14.9% increase in units offered and a 25.9% rise in total value. Developers focused on the middle-upper market due to declining purchasing power, which also presents an opportunity for growth. Demand for high-rise condos in tourist areas like Chonburi, Chiang Mai, and Phuket is strong, driven by foreign buyers. Prices for existing condos are expected to remain stable, while new launches may see price increases due to rising costs. This market growth potential is a promising sign for potential investors.

Office

The Thai office building market faces challenges due to oversupply and declining occupancy rates. Despite increased demand in 2023, it has not kept up with new supply. This has benefited tenants. There is a growing trend towards sustainable and ESG-compliant office buildings, with businesses prioritizing work-life balance.

Hotel

The Thai luxury hotel market shows signs of recovery with increased investments and lending. Over 10,000 new hotel rooms are expected by 2024. Thai tourism is booming, with domestic trips reaching 200 million by 2025. Hotels focus on sustainability and technology to meet customer needs and address labor shortages. Investments are expanding into key tourist provinces, and occupancy rates are expected to exceed 70%.

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Overview of the Dutch Legal System

General introduction to the main laws that govern the acquisition of assets in The Netherlands – real estate rights

In the Netherlands, the main relevant legal code governing the purchase and sale of real estate is the Civil Code. The Civil Code comprises several books. Its most relevant books governing the purchase and sale of real estate are:

- Book 3: Real estate law in general;
- Book 5: Rights in rem;
- Book 6: General part of contract law; and
- Book 7: Specific contracts, such as purchase agreements, lease, and construction contracts.

The government regulates the use of real estate. Environmental rules are established at the national level under formal laws. Local governments decide on zoning and planning regulations as well as on the acquisition of permits.

Under the Money Laundering and Terrorist Financing (Prevention) Act (in Dutch: Wet ter voorkoming van witwassen en financieren van terrorisme, or WWFT), the Dutch law implementing the European Union (EU) directive 4AMLD, the civil law notary is obliged to conduct a client screening and to investigate the origin of money. If a civil law notary suspects money laundering of criminally obtained money in order to finance terrorism, the civil law notary is obliged to report this to the relevant authorities.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

A real estate transaction results in the transfer of the right of ownership. In the Netherlands, ownership is the most encompassing right known in its legal system. An owner may do almost anything with their property within the limits of the law. However, an owner must take the interest of third parties into consideration, and the law therefore includes provisions limiting their powers. It is possible to transfer parts of the ownership to another person or to give another person certain rights to what one owns. Such rights are referred to as proprietary rights, and such rights derive from a more comprehensive right. Proprietary rights remain vested on the real estate in case the real estate is transferred to another owner. This also means that it may be the case that real estate is purchased encumbered with a proprietary right.

The following are proprietary rights:

Leasehold (erfpacht)

Leasehold means that someone has the right to hold or use a piece of land owned by another person. The leaseholder pays an amount to the owner of the land, the so-called ground rent (erfpachtcanon). If a leasehold is issued, a building may be owned by someone other than the owner of the land. It is the norm in Amsterdam that real estate stands on land issued on leasehold

Right of superficies (recht van opstal)

Right of superficies is the right to own or acquire buildings and/or structures and/or vegetation in, on, or over another person's (real) property.

Easement (erfdienstbaarheid)

An easement is the right to use a piece of land (plot), even if you are not the owner. It may also mean that the owner of a piece of land (plot) is not allowed to do something.

Therefore, while an easement may involve tolerating or refraining from an action, it can never involve a duty to do something.

Usufruct (vruchtgebruik)

Usufruct is a right to use another person's real estate and 'enjoy the fruits' of doing so. These fruits can be anything from actual fruits, such as apples from an apple tree to someone living in the house of another.

Mortgage (hypotheek)

The right of mortgage is a security right vested on (real) property which is linked to a loan. The owner of the real estate may establish this mortgage right on the real estate for the benefit of a legal entity (such as a bank) or person and is usually a condition for granting the loan. If the borrower fails to meet their (payment) obligations, the lender may foreclose on the real estate. Once the real estate has been sold, the lender (such as a bank) may recover its claim against the proceeds of the real estate in priority to all other creditors.

Besides purchasing real estate (by means of an asset deal), it is possible to acquire real estate by purchasing shares of the entity that owns the real estate (share deal). In a share deal, the purchaser acquires (the shares of) a legal entity, while under an asset deal, the assets and liabilities acquired can be transferred directly to the purchasing legal entity.

Most real estate transactions (whether assets or shares) start with a letter of intent (LOI), usually granting parties a specific term of exclusivity, during which the buyer has the time to do their due diligence. The LOI ensures that parties do not accidently enter into a binding contract. In the Netherlands, a binding contract is formed when parties agree upon the essentials of the transaction. For real estate, these essentials are, in general, the object and price of the transaction.

The terms of the deal will be recorded in a purchase agreement, including any conditions precedent (CPs), payment structure, transfer date, etc.

At this stage, therefore, legal assistance can be of fundamental importance.

The last step in any transaction is the transfer of the ownership title by a civil law notary. The involvement of a civil law notary is a procedural requirement that needs to be fulfilled; without it the transaction is void.

From a civil law perspective, there are generally no restrictions on ownership or occupation by foreign entities.

Real estate registry system

The Land Registry (het kadaster) is the public register in which the rights with regard to immovable property (i.e., real estate, ships, aircraft, topography, and coordinate points) are recorded.

For each plot, the Land Registry records the deed of delivery, and/or the right of superficies, and/or the right of mortgage, including other rights in rem (as also mentioned in the deeds of delivery).

The Land Registry also records whether the plot includes a monument and whether the plot is subject to any public law restrictions.

The Land Registry contains information dating back to 1832 and details of the current ownership and, if available, any previous transfers.

The ownership recorded in the Land Registry is seen as the legally accurate representation of ownership. An acquiring party needs no further confirmation of ownership.

Civil law notary's role in the real estate transactions

Without the involvement of the civil law notary (notary), no transfer of ownership of real estate or the establishment of a right in rem is possible.

The notary draws up the deed of delivery and the mortgage deed, if any, and has the parties involved sign those deeds in its presence. Afterwards, the notary will register the aforementioned deeds in the Land Registry.

The notary is obliged to screen the parties involved in the transaction in accordance with anti-money laundering laws.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

The seller of real estate must be the owner of the real estate and have power of disposal. For example, the real estate may not be subject to any seizure.

The seller has an obligation to provide information during a transaction. Under this obligation the seller is obliged to notify the buyer of any defects the real estate may have and the nature of these defects. If the defects are obvious and the buyer can see them, no obligation exists for the seller to separately mention the defects.

It is the obligation of the seller to provide a valid energy label for the real estate. An energy label indicates a building's energy efficiency and which energy-saving measures could still be implemented. From 2023 onwards, every office in the Netherlands larger than 100 square meters will be required to have at least an energy label C. With regard to 'utiliteitsgebouwen' such as hospitals, schools etc., an energy label F will most likely be applicable as from 2027 onwards.

Furthermore, the sale and delivery of real estate requires a purchase agreement. The seller is obliged to fulfil the obligations imposed on them and the guarantees given by the seller in the purchase contract.

Mortgages and other usual guarantees adopted in financing assets

When purchasing real estate, it is common to take out a loan from a bank or other lender. To secure repayment of the loan, a mortgage may be established on the real estate. If the borrower does not repay the loan, the bank can sell the real estate and recover the loan from the proceeds.

Even in the event of the borrower's bankruptcy, a mortgage right offers a high degree of security for recourse. "Ordinary" creditors are paid from the estate in proportion to their claims. But the lender of the mortgage is allowed to foreclose on the real estate outside of the bankruptcy.

A mortgage deed must be signed before a civil law notary. The notary must then ensure that the deed is registered in the land register.

When loans are acquired for the financing of projects, most arrangements require the pledging of all future cash flows derived from the project, ensuring the loans are redeemed before any other payments are made.

Lease of assets and lease of business

In the Netherlands, real estate rental can be divided into three regimes: residential real estate, 290 business premises, and 230a business premises. These 'names' are derived from the clauses in the Dutch Civil Code where the respective regimes can be found.

Residential real estate

A tenant of a residential real estate has rent protection, unless one of the statutory grounds for termination applies. This means that the landlord cannot terminate the rental agreement of a residential real estate without reason. The landlord can only terminate the agreement on the grounds specified by law.

The lease of an independent accommodation (zelfstandige woonruimte) must be agreed upon for an indefinite period of time. Furthermore, the rent level must be determined based on a number of points attributed to the dwelling. Also, existing rent levels may be adjusted if the dwelling does not score a certain number of points.

290 business premises

A 290 business premises involves a building, or part thereof, that is rented out for the purpose of running a retail business, a restaurant or pub, a take-away or delivery service, or a craft business. The premises rented out must have a place accessible to the public for the direct supply of goods or services. Hence, business premises where customers can physically buy, or order things fall under the 290 regime. Hotels and campsites also fall under this regime.

The tenant of a 290 business premises has relatively high tenant protection. This is reflected, among other things, in

the term of the agreement. The first term is for five years, and without notice, it is automatically extended by another five years. In addition, the termination options of the lease are limited. Both landlord and tenant can only do so at the end of the agreed term. A notice period of at least one year applies. A contract of indefinite duration can be cancelled at any date (taking into account the payment term). In all cases, termination by the landlord is only possible if they state the reason(s) for termination. This does not apply to the tenant.

230a business premises

If a leased real estate does not fall under the residential real estate or 290 business premises regime, the 230a regime applies. Examples of 230a business premises are office spaces, factories, storage spaces, and showrooms.

The tenant of a 230a business premises has considerably less legal protection than the tenant of a 290 business premises. The rental period, for example, is free of form and can therefore be entered into for a limited period. However, in the event of termination by the landlord, the tenant may extend their stay by invoking their eviction protection, for example, they need time to move to another business accommodation. This period is capped at three years after the date on which the notice of eviction has been issued.

It is important to know that in rental law, the sale of real estate does not affect the rental contract. When the real estate changes hands, the new owner becomes the landlord of the tenant.

Administrative permits applicable to construction or restructuring of assets

With the introduction of the Environmental and Planning Act (Omgevingswet), several significant changes have been made to the procedures regarding real estate development. It is not possible to develop every kind of real estate at every location. Each location has a zoning plan (omgevingsplan), which specifies the permitted uses for that particular area. A zoning plan may also contain rules on building percentages, building heights, and other construction regulations. If someone wants to transform or develop real estate in a way that deviates from the zoning plan, an amendment to the plan or an extensive zoning permit is required. But, even if an intended construction project is in accordance with the zoning plan, a zoning permit is almost always required. In that case, a regular procedure for the zoning permit must be followed.

Under the Environmental and Planning Act, procedures have been simplified and are more integrated, meaning that all aspects of the living environment can be included in a single zoning permit application. When applying for a zoning permit, the municipality assesses the building or conversion on the basis of, among other things, the Decision on Building and Living Environment (Besluit bouwwerken leefomgeving or Bbl), the zoning plan, and the municipal policy rules for external appearance. These documents outline what is and is not allowed on the site and whether the design fits within the framework set by the municipality.

Applications for a zoning permit involve costs and take a certain amount of time. A zoning permit that has been granted may be subject to objections by other parties. Depending on the kind of permit, any court proceedings consist of either one or two instances.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

A lot is happening in terms of ESG laws and regulations, especially at the EU level. This will primarily affect sizeable real estate organizations, which will need to adapt to these new requirements and demonstrate compliance with stringent sustainability criteria. The European Commission's Action Plan for Financing Sustainable Growth represents a significant step forward in aligning financial flows with sustainable development goals. Released on 7 March 2018, the action plan aims to transform the financial sector to support sustainable, inclusive growth. It focuses on three primary objectives:

- Reorient capital flows towards sustainable investment to achieve sustainable and inclusive growth;
- Mainstream sustainability into risk management; and
- Foster transparency and long-termism in financial and economic activity.

This comprehensive strategy encompasses several key instruments, including the EU taxonomy, Corporate Sustainability Reporting Directive (CSRD), Sustainable Finance Disclosure Regulation (SFDR), Corporate Sustainability Due Diligence Directive (CSDDD), and Enhanced Transparency Requirements. Each of these components work together to foster a more resilient, sustainable financial ecosystem. As these regulations come into force, large real estate companies will be at the forefront of this transformation, driving forward the agenda for sustainable growth in the sector.

EU taxonomy

The Taxonomy Regulation was published in the Official Journal of the European Union on 22 June 2020 and entered into force on 12 July 2020. It establishes the basis for the EU taxonomy by setting out four overarching conditions that economic activity must meet to qualify as environmentally sustainable. These conditions have been further updated to include:

- Significant contribution: The activity must make a significant contribution to at least one of the six environmental objectives;
- No significant harm: It must do no significant harm to any of the other environmental objectives;
- Minimum social safeguards: It must comply with minimum social safeguards; and
- Technical screening criteria: It must comply with the technical screening criteria set by the EU.

Corporate Sustainability Reporting Directive

On 21 April 2021, the Commission adopted a proposal for a Corporate Sustainability Reporting Directive (CSRD), which amends the existing reporting requirements of the Non-Financial Reporting Directive (NFRD). This regulation mandates organizations to report on non-financial indicators (ESG topics).

CSRD reporting became mandatory from 2024 for large companies that meet at least two of the following three requirements:

- 250 employees;
- €40 million in revenue; and
- €20 million in balance sheet assets.

Additionally, from 2024, the scope of CSRD has been extended to include listed small and medium-sized enterprises (SMEs), though they will have slightly simplified requirements to ease the transition.

Sustainable Finance Disclosure Regulation

Effective from 10 March 2021, the regulation on the provision of information on sustainability in the financial sector (SFDR) applies. This regulation enables the comparison of green investments and attracts financing for transition.

The regulation requires investment funds to report on their sustainability at both the entity and product levels. This allows investors to compare different funds based on their sustainability. The categorization remains:

- Article 6: Non-sustainable investments must report that they are not sustainable;
- Article 8: Investments that promote environmental or social characteristics but do not have sustainability as their core objective; and
- Article 9: Investments that have sustainable investment as their objective.

Corporate Sustainability Due Diligence Directive

The Corporate Sustainability Due Diligence Directive (CSDDD) was adopted in 2023. This directive mandates that companies must carry out due diligence concerning their operations and supply chains to identify, prevent, mitigate, and account for adverse human rights and environmental impacts. Key requirements include:

- Human rights: Companies must ensure that their operations and those of their suppliers respect human rights, including labor rights.
- Environmental impact: Companies must identify and mitigate significant environmental risks associated with their operations and supply chains.
- Reporting and accountability: Companies must report on their due diligence processes and findings and be accountable for their impacts.

The directive applies to large EU companies and non-EU companies with substantial operations in the EU.

Enhanced Transparency Requirements

The Enhanced Transparency Requirements, updated in 2023, aim to improve the reliability and comparability of ESG ratings and benchmarks. Key elements include:

- Disclosure obligations: ESG rating agencies must disclose their methodologies, data sources, and the rationale behind their ratings;
- Standardization: Introduction of standardized metrics and criteria for ESG ratings to ensure consistency and comparability across different providers; and
- Regulatory oversight: Enhanced regulatory oversight to ensure the integrity and transparency of ESG ratings and benchmarks.

These requirements are designed to provide investors with more reliable information to make informed investment decisions and to hold companies accountable for their ESG performance.

The Netherlands' role

The Netherlands continues to be closely involved in developing and adopting EU legislation, often leading the way in implementation. Dutch companies are expected to fully comply with the EC's guidelines, and additional national measures may be introduced to further strengthen ESG commitments.

Direct taxes applicable to sales

Indirect tax on Dutch real estate transactions

Asset deal

In principle, the delivery of real estate in the Netherlands is value added tax (VAT) exempt. If the real estate qualifies as 'building land' or the real estate has been taken into use for the first time ultimately two years ago, the supply of the real estate is VAT taxable.

If real estate is transferred together with the existing lease agreements and the lease agreements are continued by the buyer, the transfer may qualify as a transfer of going concern (TOGC). As a result of the TOGC regime, a transfer is considered out of scope for Dutch VAT purposes and does not trigger Dutch VAT.

Share deal

If real estate is transferred through a share deal (i.e., the buyer acquires the shares in a real estate company), the supply of the shares is either not subject to Dutch VAT or VAT exempt

Dutch real estate transfer tax on real estate transactions

Asset deal

In general, Dutch real estate transfer tax (RETT) is levied on the acquisition of the legal and/or beneficial ownership of real estate located in the Netherlands or certain rights in rem with respect to such real estate.

For commercial real estate, Dutch RETT is levied at 10.4% on the purchase price (or the fair market value of the real estate, if higher) and is payable by the purchaser.

Share deal

RETT is also levied on the acquisition of shares or similar rights in real estate companies if, in general, the acquirer obtains at least one third of interest in a real estate company. A company qualifies as a real estate company in case its assets consist of real estate. assets for 50% or more and, at the same time, are located in the Netherlands for 30% or more (assets test) and these assets as a whole are held mainly for the purpose of exploitation or trading of these assets (purpose test).

General

There are several exemptions for Dutch RETT. The main one deals with specific real estate transactions involving newly-built properties and building land.

Emerging markets and new asset classes in The Netherlands:

The current Dutch real estate market remains highly dynamic. The demand for and shortage in residential real estate continues to be high, which also applies to prime office locations and logistics centers.

Due to the growing population and slowdown in construction, the housing shortage is expected to further increase in 2024. In the Netherlands there are several reasons for the delay in construction such as the shortage of land, building materials, construction workers and most of all granted building permits. Realizing positive project development returns Is harder driven by increased interest rates, higher construction costs and increased regulations. In addition, environmental and climate issues play a key role in housing construction. The Dutch government is struggling to meet nitrogen emissions targets (in Dutch referred to as the "stikstofcrisis"), which had led to restrictions on construction projects resulting in fewer building permissions granted.

The conurbation of the Randstad (Amsterdam, Utrecht, Rotterdam, The Hague) remains the most sought-after region. However, investors are increasingly setting their sights on other urban areas such as Arnhem-Nijmegen, Twente, Groningen, and Zwolle. Knowledge of the local practices in these areas, local and national regulations, terms and conditions of Dutch banks and other debt providers, and a network of real estate parties remain essential for successfully doing business in the Dutch real estate market.

Furthermore, new trends and challenges have emerged in 2023 and 2024. Rising interest rates and inflation have increased financing costs, making some investors more cautious. Additionally, sustainability and ESG criteria have become increasingly important in real estate investments, driven by both regulations and market demand. This has led to an increased demand for sustainable buildings and renovations.

Areas outside the Randstad are seeing a rise in popularity due to better affordability and improved infrastructure, which enhance the attractiveness of these regions for both residents and businesses. The Dutch government continues its efforts to address the housing shortage through construction initiatives and by stimulating transformation projects, although the effects of these efforts will only become apparent in the longer term.

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Overview of the Turkish Legal System

General introduction to the main laws that govern the acquisition of assets in Türkiye – real estate rights

The right to property is recognized and protected by Article 35 of Constitution of Republic of Türkiye. This right may be restricted due to public interest. Article 35 does not limit the right to property to Turkish citizens but extends it to all individuals, stating; "Everyone has the right to property and inheritance."

In addition to the constitution, The Turkish Civil Code (in Turkish: Türk Medeni Kanunu) regulates immovable property in detail Articles between 704 and 761.

The freedom of contract and transactions between private parties are mainly regulated under the Turkish Code of Obligations (Türk Borçlar Kanunu). Although these three laws serve as the main legal frameworks for real estate transactions, several other regulations are consulted and applied for more specific matters.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

In recent years, a frequently discussed topic in Türkiye is real estate transactions involving foreigners. Foreign nationals can obtain Turkish citizenship by purchasing real estate of a certain value, making Türkiye an attractive option for many investors. The legal basis for this regulation is Article 35 of the Land Registry Law (Tapu Kanunu). The relevant article provides:
"Real persons of foreign nationality who are citizens of the countries designated by the President may acquire immovable property and limited real rights in Türkiye. The total area of immovable property and limited real rights of an independent and permanent nature acquired by real persons of foreign nationality shall not exceed 10% of the area of the district subject to private property and shall not exceed 30 hectares per person across the country. The President is authorized to double the amount that may be acquired per person across the country."

This grants significant authority to the president, facilitating the acquisition of citizenship through real estate investment by foreigners.

The Regulation on the Implementation of the Turkish Citizenship Law (Türk Vatandaşlığı Kanununun Uygulanmasına İlişkin Yönetmelik) also includes a regulation regarding the value of the real estate. Article 20 of the regulation outlines the exceptional methods of acquiring Turkish citizenship, the documents required for the application and the procedural requirements. Under this regulation, foreigners who are confirmed by the Capital Markets Board to have purchased real estate investment fund participation shares or venture capital investment fund participation shares worth at least US$500,000, or the equivalent in foreign currency, and hold them for at least three years, are eligible for Turkish citizenship.

Real estate registry system

The General Directorate of Land Registry and Cadaster is the authorized body for land registration in Türkiye. Its responsibilities include maintaining accurate land registries, registering, correcting, monitoring, and archiving property data. The land registry is governed by the Turkish Civil Code and other relevant statutes and regulations.

The following categories are registered as immovable property,

- Land;
- Independent and permanent rights; and
- Independent sections subject to condominium ownership.

The land registry consists of five primary and four secondary registers. The primary registers are the book of land registers, condominium registry, journal, official documents (official deed, court decision and others) and plans. The secondary registers are deed index, register of corrections, public medium property register, and title deed inventory book. According to regulation, the land registry is accessible to all individuals with a legitimate interest, allowing them to review documents and request copies. Nevertheless, some difficulties can be encountered in practice.

The registration in the land registry is constitutive in terms of immovables and is mandatory for the acquisition of the right. The rights registered in the land registry are transferable to third parties and inheritable.

Real estate transactions between parties must be registered in the land registry to be valid. Likewise, registration is also required for the use of real rights. The registration made in the land registry is under the protection of the state; and individuals who suffer damages due to any inaccuracy may claim compensation from the state.

Notary role in the real estate transactions

The validity of immovable property transactions in Türkiye is subject to condition of official form. Transactions that are not made in accordance with the official form will not be valid. These transactions must be conducted before a notary public or in the land registry offices. Recently, notaries have assumed a significant role in the sale of immovable property, in addition to the duties traditionally performed by land registry offices.

Following recent amendments, notaries have been granted greater authority in the realm of real estate transactions. In 2023, with the amendment to the Notary Law (Noterlik Kanunu), notaries have become also authorized to perform transactions related to immovable transaction contracts in person. As a result, upon an application by the owner for the transaction of immovable property submitted to the notary online, the notary may request the relevant documents from the registry, determine the rights associated with the property, and identify any issues that may impede the transaction.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

The seller is liable for the defects that the immovable property might have upon sale. Turkish Law of Obligations have detailed provisions regarding liability for defects Articles between 219 and 231 for the seller. First and foremost, the seller is liable for any discrepancy between the promised and delivered product, regardless of whether it constitutes a defect. It can be a difference in attribute or contrary to declared quantity or any economical, legal, or material defect, that significantly reduces the value or utility of the property for its intended purpose. The seller will be liable although s/he is not aware of the defect. Any agreement that seeks to exclude the seller's liability for defects is void.

The seller is also liable to guarantee against seizure of the property. If, after the sale, a third party claims part or all of the property due to a right that existed at the time of the sale, the seller will be liable. However, if the seller has informed the buyer of this issue at the time of sale, the seller may be released from liability unless they assumed the risk. If the seller conceals the third party's right, any agreement to exclude or limit liability will be null and void.

Mortgages and other usual guarantees adopted in financing assets

Under the Turkish Civil Code, there are three methods for creating pledges on immovable property. The first and most commonly used method is the mortgage, which will be examined in greater detail. Another method is the mortgaged bond of debt, which establishes a personal claim secured by the property. Lastly, an annuity bond may

be established on agricultural land, residential properties, or land suitable for construction. Following an assessment by the land registry office, the annuity bond is registered at a value not exceeding three-fifths of the immovable property's assessed value. These bonds are issued by linking them to negotiable instruments.

The most important security that a creditor holds over a debtor is the right of mortgage. To secure a valid claim, the creditor may request that the debtor to establish a mortgage over immovable property. A fundamental requirement for the creation of a mortgage is that the immovable property must be duly registered in the land registry. The mortgage can only be constituted through registration in the land registry and must adhere to the prescribed official form. Additionally, a mortgage may only be established on a specific valid claim concerning a particular immovable property, and the amount must be expressed in Turkish currency. If the claim or the property is not specified, the right to mortgage cannot be exercised.

The mortgage also puts liability on the debtor. The debtor is responsible for preventing any actions that may reduce the value of the immovable property. If the debtor fails to prevent such actions, the creditor may seek a court order prohibiting them. At the same time, the creditor has the right to take measures and claim the cost incurred in cases, where there is an undue delay.

Lease of assets and lease of business

Lease agreements are comprehensively regulated under the Turkish Code of Obligations. While lease agreements may be applied in a broad range of areas, a separate section with more detailed regulations is specifically provided for residential and roofed workplace leases.

The provisions governing residential and roofed workplace leases are applicable to contracts with a term exceeding six months.

Unless otherwise agreed, expenses arising from the use of the property are borne by the lessee. Once the lease agreement is concluded, no modifications may be made to the detriment of the lessee, except for adjustments to the rent. Lessees may be required to provide a deposit not exceeding three months' rent. Rent increases are valid if they do not exceed the average rate of change in the consumer price index for the previous 12 months. In the event that the parties have not agreed on a rent increase ratio within the scope of the contract and are unable to reach a mutual decision on the rent adjustment, they may petition the court to determine the rent increase on their behalf. The judge considers the condition of the leased property, and that the amount does not exceed the rate of change according to the 12-month averages in the consumer price index of the previous lease year. The lease amount determination lawsuit may be initiated under the following two circumstances:

- If the lease agreement lacks a provision concerning rent increases for renewed terms; or
- In lease agreements with a duration exceeding five years, or those renewed after five years, a lawsuit may be brought at the end of every subsequent five-year period, irrespective of whether a clause concerning rent increases exists within the agreement.

In the event of contract termination, the lessor is prohibited from terminating the lease agreement without a valid reason prior to the expiration of the 10-year lease term. Should a valid reason exist, the lessor may terminate the contract by providing written notice at least 15 days before the contract's expiration. If the lessee fails to vacate the property by the agreed-upon date, the lessor may initiate enforcement proceedings within one month. Termination may also be sought through litigation under the following conditions:

- If the lessor is obliged to use the leased property for themself, their spouse, their children, their descendants, their ascendants, or other persons that they are legally obliged to take care of due to the need for a residence or a workplace; and
- If substantial repair, extension, or alteration of the leased property is necessary for the purpose of reconstruction or construction and the use of the leased property is impossible during these works.

In the case of fixed-term contracts, it may terminate the contract at the end of the term, and in the case of indefinite-term contracts, it may terminate the contract by filing a lawsuit within one month starting from the date to be determined by complying with the termination period and the periods stipulated for the notice of termination in

accordance with the general provisions regarding the lease.

In lease relationships terminated regarding personal or family needs, it is prohibited to lease the immovable property for three years without just cause to anyone but the former lessee initially.

In the event of substantial repair, extension, or alteration of the leased property, the lessor is obliged to notify the former lessee once the immovable is ready to use. The former lessee has the right to priority in renting the property with its new condition and new rent amount. The lessee must respond within one month following the notice. The lessor who rents out their immovable property without notice, is obliged to pay compensation to their former lessee, no less than one year's rent paid in the last rental year.

In the instance that the immovable property is sold, the new owner is obliged to use the leased property for themself, their spouse, their children, their descendants, their ascendants or other persons that they are legally obliged to take care of due to law, the lease agreement may be terminated by the new owner by filing a lawsuit, provided that the lessee is notified in writing within one month from the date of the purchase.

Administrative permits applicable to construction or restructuring of assets

Construction works in Türkiye are regulated by the Planned Areas Zoning Regulation (Planlı Alanlar İmar Yönetmeliği), which is administered by the Ministry of Environment, Urbanization, and Climate. Construction cannot commence without obtaining a building license. If substantial modifications to the existing structure are desired, a new license is required.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

Türkiye has made significant strides in the realm of ESG practices. For instance, Article 10 of the Environmental Law (Çevre Kanunu) regulates the Environmental Impact Assessment (EIA) process for institutions, organizations, and enterprises that may cause environmental harm as a result of their planned activities. Without obtaining an EIA certificate from the Ministry of Environment, Urbanization, and Climate Change, these enterprises will not be granted the necessary approvals, permits, or incentives; nor can investments be initiated, or projects tendered.

Furthermore, the Turkish Constitution underscores the importance of individual quality of life by affirming that "Everyone has the right to live in a healthy and balanced environment." In support of this constitutional right, the Communiqué on the Expansion of the Use of Green Cement with Low Carbon Emission in Public Tender Contracts (Kamu İhale Sözleşmelerinde Düşük Karbon Emisyonuna Sahip Yeşil Çimento Kullanımının Yaygınlaştırılmasına İlişkin Tebliğ), published in the Official Gazette No. 32491 on 16 March 2024, sets out incentives aimed at promoting the use of green cement in public tenders, effective from 1 January 2025.

Direct taxes applicable to sales

Real estate transactions in Türkiye are subject to taxation. The tax is calculated based on the declared value of the real estate at the time of sale, with a title deed fee of 4% payable on the declared value. Additionally, if the real estate is sold within five years of purchase, the transaction is considered a "capital gains increase" and is subject to a separate taxation.

Latest developments in Türkiye, and areas to focus on in the future:

- Leasing has become a prominent issue in Türkiye. Due to inflation, particularly in major cities, and the disproportionate rent increases between lessors and lessees, several regulations have been introduced in recent years. For example, until recently the residential rent increase rates had been capped at 25% until 1 July 2024, which, given the rate increases below the consumer price index, has resulted in a significant disparity in prices between existing and new tenants. Further regulatory measures are expected to be introduced in this regard.
- As Türkiye is prone to earthquakes, urban transformation has gained increasing importance in recent years. The aim for the coming years is to renew older buildings, particularly those located in high-risk areas.
- Green and sustainable projects, which are becoming increasingly significant on a global scale, are also expected to see growth in Türkiye.

By **Ceren Savaşcı,** Manager, Deloitte Legal Turkey

Real Estate Law in Ukraine

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Dmytro holds PhD degree in law. Being an attorney-at-law, he has been a member of the Ukrainian Bar Association since January 2007, a member of tax and legal committees of the American Chamber of Commerce and European Business Association in Ukraine, and expert councils of the Ministry of Infrastructure of Ukraine on aviation and water transport.

Dmytro leads the infrastructure industry group at Deloitte Ukraine, which consists of over 20 cross-functional professionals representing varied experience with a focus on complex infrastructure projects. He has established a series of expert round tables and “infrastructure talks” with businesspeople and state officials who have visionary positions on the development of the Ukrainian infrastructure and shaping the future of the industry.

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Anton is a senior legal manager and has over 14 years of professional experience in the field of corporate and contractual law, privatization, investment, private and public partnership, legal support for M&A transactions, IPO, international law, and arbitration.

Anton also has experience of working in the legal department of the State Property Fund of Ukraine (SPFU), where he has represented the interests of the state in privatization cases, legal due diligence and legal support for M&A transactions, IPO (including IPO of private coal mining company on WSE) and provided legal advice to multinational and Ukrainian companies in relation to investment projects. Anton has also provided legal support to the SPFU within the Land Bank project, which is a transparent market for leasing state-owned agricultural land used by state-owned agrarian enterprises.

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Mykhailo is a legal manager and has 15 years of experience in corporate and commercial law. He advises domestic and international clients on corporate law, contract law and on litigation issues, as well as represents clients' interests in different kind of cases in Ukrainian courts. Mykhailo has considerable experience in support of M&A deals and legal due diligence of real estate.

Between 2022-2023, Mykhailo participated in a series of four webinars on the urgent issues of documenting and assessing war-related damages and losses, including possible further steps for compensation.

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Anastasiia is a senior legal associate and has more than seven years of professional experience. She has experience in legal due diligence of companies working in different spheres, land plots, non-performing loans, etc. Her experience includes analyzing companies and their assets, particularly real estate holdings. She is proficient in working with state registers such as the State Register of Real Property Rights and the State Land Cadastre. Anastasiia also specializes in banking, financial, and corporate law.

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Anastasiya is a legal associate with three years of professional experience, specializing in investment, banking, finance, corporate, and tax law. She has gained significant experience during legal support of alternative investments, particularly in real estate sector. Anastasiya has successfully advised foreign clients on the obtaining of land plots for industrial development in Ukraine. Her experience also includes collaborating closely with local authorities to facilitate and attract foreign investment.

Overview of the Ukrainian Legal System

General introduction to the main laws that govern the acquisition of assets in Ukraine – real estate rights

The Constitution of Ukraine is the main law that stipulates that the procedure for acquiring private property rights is determined following the procedure provided by law.

The two key statutory acts that directly regulate this issue in Ukraine are the Civil Code of Ukraine dated 16 January 2003 (CCU) and the Land Code of Ukraine (LCU) dated 25 October 2001.

The CCU contains general rules and requirements for real estate transactions and stipulates that such sale and purchase agreements must be in writing and subject to notarization.

At the same time, the process of acquiring land plots is also regulated by the LCU, which imposes certain additional legal restrictions on the acquisition of land plots.

There are also several laws regulating the acquisition of real estate rights in Ukraine, including:

- The Law of Ukraine "On Guaranteeing Property Rights on Real Estate Objects to be Constructed in the Future" dated 15 August 2022 – this law defines the specifics of civil turnover of objects that are under construction and future real estate objects. It is aimed at guaranteeing property rights to such objects;
- Law of Ukraine "On State Registration of Property Rights to Real Estate and Their Endowments" dated 1 July 2004 – this act governs state registration of property rights to real estate (e.g., ownership, lease rights) and their encumbrances and is aimed at ensuring the recognition and protection of such rights by the state; and
- Law of Ukraine "On Mortgage" dated 5 June 2003 establishes the specific rules and procedure for mortgaging real estate property (including land).

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

The most common acquisition structure that is usually applied in real estate transactions in Ukraine is through a real estate purchase and sale agreement, which must be in writing and notarized form. The requirements for the written form are set out in the CCU itself, while the requirements for notarization are set out in a separate Law of Ukraine "On Notaries" dated 2 September 1993.

Another acquisition structure is the purchase of a company that owns certain real estate assets via a share purchase agreement (SPA). An SPA shall be concluded in writing and signed by both parties. There is no legal requirement to notarize such an agreement. However, at the request of one of the parties, it may be notarized. It should be also noted that the conclusion of an SPA is a legal basis for acquiring the share. However, such an SPA does not automatically transfer shares from the shareholder to the acquirer. To transfer the share, the parties should conclude an act of acceptance and transfer of share (Act). Thus, the moment of transfer of the shares is the date of the Act signing. Important note, the signatures on the Act should be notarized by a Ukrainian notary and the Act should be drawn up on a notarial letterhead.

Another important acquisition structure is the acquisition of assets via investment agreements. Investment agreements are agreements concluded between the

developer and the investor, which fix the conditions for investing funds or other values in the investment object. The subject of the investment contract is the investor's obligation to contribute a certain amount of funds, and the developer undertakes to transfer a specific investment object. property objects and property rights can be objects of investment activity. Since each project is unique, contracts do not have a standard template and require an individual approach.

It is always advisable, therefore, to seek assistance in the negotiation and drafting of contracts from attorneys experienced in the field.

It is worth emphasizing that Ukraine has certain restrictions on the purchase of agricultural land by foreign nationals. The LCU currently prohibits the acquisition by foreigners of this type of real estate. A decision to allow the sale of land to foreigners can only be made by referendum. In addition, the LCU does not grant the right to own any land in Ukraine to Ukrainian companies with 100% foreign investment, stipulating that only Ukrainian legal entities that have been founded by Ukrainian individuals or legal entities may own land in Ukraine.

In addition, during martial law in Ukraine, notarial acts are prohibited at the request of persons who have ties with the aggressor state – Russian Federation. Therefore, if such a person applies to a notary to execute a real estate sale and purchase agreement, they will be denied. Persons with ties to the aggressor state are considered to be:

- Citizens of the Russian Federation, except for those who legally reside in Ukraine;
- Legal entities established and registered in accordance with the laws of the Russian Federation;
- Legal entities established and registered in accordance with the laws of Ukraine, in the ownership or participation of which the ultimate beneficial owner, member, or participant (shareholder) is a citizen of the Russian Federation or the Russian Federation with a share in the authorized capital of 10% or more; or
- Legal entities established under the laws of a foreign state, in which the ultimate beneficial owner, member, or participant (shareholder) is a citizen of the Russian Federation or the Russian Federation with a share in the charter capital of 10% or more.

Therefore, before the sale and purchase of real estate, it is necessary to check who the actual owner is.

Moreover, as of now there is a ban on concluding sale and purchase agreements regarding real estate located in territories of Ukraine, on which hostilities are (were) conducted or temporarily occupied by the Russian Federation. The list of such territories is created and regularly updated by the Cabinet of Ministers of Ukraine based on the current situation in the country.

Real estate registry system

Several state registers in Ukraine help ensure transparency of real estate transactions. The main ones are the State Register of Real Property Rights (SRRPR) and the State Land Cadaster (SLC).

The SRRPS is a unified information system that combines data on all real estate objects in Ukraine and their rights to them. The register contains information about the owners, users (who are not owners), the grounds for registration of rights, and restrictions or encumbrances on these rights, such as pledges or arrests. The extract can be obtained both online with use an electronic qualification signature and offline at an office of the Administrative Services Centre. It takes up to one hour to receive an extract, and the cost of the extract is about €1.

The SLC is a specialized electronic database containing information on all land plots in Ukraine. This registry is essential for any land transactions: sale, purchase, lease, or donation. For investors and buyers of land plots, an extract from the SLC is a necessary document to confirm the legality of the transaction and to check the condition of the land plot. The SLC provides electronic services, including land plot extracts, through its official website. A notification of the document's readiness will be sent to the customer's email. The finished document can be obtained online or at the nearest office of the Administrative Services Centre. It takes up to one hour for online and one day for paper form after the application is submitted to generate an extract from this register, and the extract cost is about €3.5.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

In real estate transactions, one of the most important aspects is the contractual representations and warranties provided by the seller. Protection of buyer's rights and transparency of real estate transactions is a priority in Ukraine. For example, the following seller's responsibilities in real estate transactions can be identified:

Detection of defects

The CCU provides that the buyer has the right to claim connection with defects in the goods that were discovered during the warranty period. If no warranty period is established for immovable property, the buyer has the right to claim defects in such immovable property within a reasonable period, but not more than three years from the date of transfer of the immovable property to the buyer, unless a longer period is established by the contract or law.

Establishment of land easements

A land easement is the right to restricted use of another's land plot, which does not deprive the owner of the right to own, use, or dispose of it. Establishing a land easement may affect a real estate transaction, especially if the easement was established before the conclusion of the contract. In such a case, the seller is obliged to inform the buyer of the existence of the easement, as it may affect the buyer's decision to purchase the property.

Encumbrances and restrictions on land rights

The Law of Ukraine "On State Registration of Real Property Rights and Encumbrances" provides that encumbrances are restrictions or prohibitions on the disposal and use of real property established by law or contract. The seller is obliged to inform the buyer of all existing encumbrances, such as mortgages, arrests, or other restrictions that may affect the buyer's rights after the transaction.

A will with a condition

A will with a condition can have a significant impact on the rights to real estate. If the seller has received property under a will with a certain condition, he or she must fulfil this condition before he or she can freely dispose of the property. This is also important to consider when entering transactions to avoid legal complications in the future.

Mortgages and other usual guarantees adopted in financing assets

Mortgages are one of the most common forms of security for the fulfilment of obligations in the real estate sector. The main law governing relations related to the granting of mortgages as a form of security for the performance of obligations is the Law of Ukraine "On Mortgage."

A mortgage grants the creditor (mortgagee) the right to satisfy its claims at the expense of the mortgaged property if the debtor (mortgagor) fails to fulfil its obligations.

The mortgage may not be established in favor of other entity than the creditor under the primary obligation. The mortgaged property may not be alienated without the consent of the mortgagee. In practice, the list of actions that is prohibited to perform without the mortgagee's consent is specified in the mortgage agreement.

The mortgage can be established by the separate agreement or by including the relevant provisions to the agreement on primary obligation. In both cases, agreement shall be notarized, and the mortgage shall be registered with the SRRPR. The mortgage will be registered by the notary simultaneously with the notarization of agreement.

In addition to mortgages, other types of security for liabilities, such as pledges, sureties, and guarantees, may be used in asset finance. They also provide for certain rights for the creditor in relation to the debtor's property but may differ in terms of the scope and nature of the rights and the conditions for their exercise.

Lease of assets and lease of business

Real estate leasing in Ukraine is one of the key spheres of the real estate market. In Ukraine, real estate leasing is regulated by the CCU, the Law "On Lease of State and Municipal Property," and the Law "On Land Lease," as well as several other regulations.

The following peculiarities should be noted concerning different types of real estate:

Lease of a building or other structure

A lease agreement for a building or other capital structure must be concluded in writing and is subject to notarization if the term of the agreement exceeds three years. Lease agreements for state-owned or municipally owned property are subject to notarization if concluded for a term exceeding five years. Rights to use real estate arising under a lease agreement for a term of three years or more are subject to state registration. This process ensures legal protection for tenants and helps prevent disputes over the right to use.

Lease of a land plot

The regulatory acts governing relations related to the lease of land plots are the LCU, the CCU, and the Law of Ukraine "On Land Lease." A land lease agreement may include not only the land itself, but also objects located on it, such as buildings, structures, and water bodies. A land lease agreement is concluded in writing and may be notarized at the request of one of the parties. It is worth noting that by leasing a building or capital structure, the lessee also obtains the right to use the land plot on which the object is located, as well as the adjacent territory necessary to achieve the purpose of the lease. This is an important aspect, as it provides the lessee with access to the full use of the facility, including infrastructure and communications.

Land Bank

Ukraine also has a special market for the lease of state agricultural land called the Land Bank. It provides that land used by state-owned agricultural enterprises can be leased through an online auction on the Prozorro.Sales platform. The introduction of the Land Bank helps to avoid corruption schemes, creates fair conditions for all market participants, and ensures transparency of the lease process. These state-owned lands are managed by state operators.

Leasing real estate in Ukraine is a complex procedure that requires a careful approach to concluding an agreement and compliance with all legal formalities. Understanding these aspects will help foreign investors and tenants avoid misunderstandings and ensure a sound legal basis for their real estate transactions in Ukraine.

Administrative permits applicable to construction or restructuring of asset

In Ukraine, the process of construction or restructuring of real estate is regulated by governmental authorities to ensure compliance with construction norms, environmental standards, and general urban planning policy.

The main regulatory acts governing the process of obtaining permits for construction or restructuring of real estate are the LCU, the CCU, the Law of Ukraine "On Regulation of Urban Development," and the Law of Ukraine "On the List of Permits in the Field of Economic Activity."

The State Inspection of Architecture and Urban Development of Ukraine (SIAUD) is the regulator in this area. The SIAUD is coordinated by the Ministry of Community and Territorial Development of Ukraine.

Permits for the start of construction works are divided into two types:

- Notification of commencement of construction works: This document is required for less complex projects, such as the construction of residential buildings, cottages, garden houses, and small commercial facilities, such as offices or warehouses. Such buildings are usually classified as CC1, which implies a lower level of responsibility and risk.
- Permission to start construction work: This document is required for more complex projects, such as apartment buildings, industrial buildings, shopping centers, etc. These objects are classified as objects with medium (CC2) and significant (CC3) consequences or are subject to an environmental impact assessment by the Law of Ukraine "On Environmental Impact Assessment", which means a higher level of responsibility and potential consequences.

Obtaining these documents from the SIAUD is a prerequisite for legal construction works.

The procedure for obtaining these documents depends on the type and size of the facility.

Administrative permits applicable to the construction or restructuring of assets are a key element of the construction regulatory framework in Ukraine. These permits provide the legal basis for legitimate development and reconstruction and ensure that projects comply with applicable standards.

Finally, it is important to emphasize the importance of getting all the documents right before starting construction or restructuring assets. This not only avoids legal problems but also ensures that the facility will meet all regulatory requirements and become a reliable investment asset for the future.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

Ensuring environmental sustainability and responsibility in the energy sector is one of the key aspects of modern policy in Ukraine.

One of the main components of environmental regulation in Ukraine is the control of air pollutant emissions. According to the law, any company that uses stationary sources of emissions is required to obtain an emission permit from the local executive authority for ecology and natural resources. This permit is issued only if the established environmental safety standards are not exceeded, and the relevant requirements for technological processes are met. To obtain an emission permit, a company must make an inventory of its emissions and prepare relevant documents justifying the number of emissions. These documents must comply with the requirements of the state sanitary rules for air protection. Only after a positive conclusion of the state expert examination can a company expect to receive a permit. Failure to comply with legal requirements can lead to severe sanctions, including fines and suspension of operations. Thus, the responsibility of businesses to comply with environmental regulations is not only a legal obligation but also a prerequisite for their sustainable development.

Ukraine's energy sector is also actively developing, particularly in the area of renewable energy sources, such as solar and wind power, which is an important part of the environmental component of ESG. The Law of Ukraine 'On the Electricity Market,' which establishes the framework for the functioning of the energy market, provides for the development of green energy and stimulates investment in renewable energy sources, which helps to reduce environmental impact.

Currently, Ukraine is actively working on the implementation of international ESG standards, which contributes to the investment attractiveness of the energy sector and its resilience to environmental challenges.

Direct taxes applicable to sales

According to the Tax Code of Ukraine, seller of real estate should pay PIT or CIT depending on its tax status.

In addition, sell of real estate can be subject to value added tax (VAT). However, there are two main exclusions that are exempt from VAT:

- The sale of a land plot free of buildings; and
- The first sale of a newly built or reconstructed living premises.

The owner of real estate should pay property tax. The stake of this tax is to be established by the local authorities but cannot be larger than 1.5% of minimal wage per one square meter per year.

The owners of land plots should pay land tax, which depends on the specific of land plot, however this cannot be more than 3% of its normative valuation per year.
The owners of real estate and land plots are exempt respectively from property or land tax if their real estate was destroyed as a result of Russian aggression or located in the temporarily occupied territories or territories nearby the frontline.

Latest developments in Ukraine, and areas to focus on in the future:

Despite the real estate market shortage because of Russian military aggression, there are a few developments on the market for the last two years:

- Acquisition of Parus business center in Kyiv – one of the largest business centers in the city downtown.
- The state authorities confiscated one of the biggest trade centers in Kyiv – Ocean Plaza from its Russian-related owners with the aim to sale in future.
- The EBRD has committed to making a 35% equity investment, or US$24.5 million, in the M10 Lviv Industrial Park project.

By Mykhailo Koliadintsev, Manager, Deloitte Legal Ukraine

Real Estate Law in Uruguay

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Javier is a lawyer who specializes in corporate and M&A, banking, financial and securities law, data privacy, compliance, and new technologies. He has more than 16 years of experience in corporate advice.

He has been ranked in Chambers and Partners (Band 3 – Banking & Finance) and The Legal 500 as Next Generation Partner (Banking & Finance).

Overview of the Uruguayan Legal System

General introduction to the main laws that govern the acquisition of assets in Uruguay – real estate rights

Uruguay has a well-established regulatory framework for real estate transactions, aimed at ensuring transparency, protecting property rights, and fostering investments in the sector. The country has no restrictions on foreign ownership of real estate, allowing both residents and non-residents to freely purchase property. However, all real estate transactions must be conducted through public deeds signed by a notary public, and properties must be registered in the public land registry, which guarantees ownership and provides a secure legal basis for property transactions.

In addition to these general rules, Uruguay's real estate market is regulated by laws that provide specific protections for both buyers and sellers. These include tax obligations, such as property transfer taxes and ongoing real estate taxes, which must be complied with to ensure the legality of transactions. Furthermore, real estate projects and developments are often subject to local municipal regulations, zoning laws, and environmental impact assessments, which ensure sustainable urban development while protecting property values and community interests.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

In Uruguay, the most commonly used acquisition structure in real estate transactions involves the direct purchase of property by the buyer through a public deed signed before a notary. This process ensures the legal validity of the transaction and the protection of the buyer's rights. In many cases, transactions include a prior verification of the property's title, the existence of encumbrances, and compliance with urban and tax regulations, which is advisable to carry out with the assistance of attorneys specialized in the matter.

As for restrictions, Uruguay does not impose significant limitations on the acquisition of real estate by foreigners. Both residents and non-residents can acquire property under the same conditions as Uruguayan citizens

Real estate registry system

Uruguay has a robust real estate registry system designed to ensure legal certainty and transparency in property

transactions. All real estate properties must be registered in the National Real Estate Registry, which is responsible for recording property ownership, transfers, and any encumbrances or liens that may affect the property. This system provides an official and public record of all real estate transactions, ensuring that property titles are clear and reliable.

The registry system is vital for both buyers and sellers, as it offers protection by preventing fraudulent sales and ensuring that the buyer acquires a legally valid title. Before any real estate transaction is finalized, a notary must conduct a thorough search of the registry to confirm that the property is free of encumbrances or other legal issues. This process guarantees the accuracy of the ownership and any potential claims on the property, making the system a cornerstone of the country's real estate legal framework.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

In real estate transactions in Uruguay, the seller assumes various legal responsibilities related to contractual representations and warranties provided to the buyer. These obligations aim to ensure transparency and legal security throughout the purchase process, protecting both buyers and sellers while preventing potential future disputes.

Among other, the seller is obligated to guarantee that they are the legitimate owner of the property and that there are no liens, encumbrances, or pending legal actions that may affect the title. This guarantee is crucial, as the buyer relies on the assurance that the property is free from any legal burdens. In Uruguay, the notarization process requires a notary to verify these aspects before finalizing the transaction, which reinforces legal security.

Mortgages and other usual guarantees adopted in financing assets

In Uruguay, mortgages are one of the most common forms of guaranteeing financing in real estate purchases. A mortgage is a real right granted by the buyer to the lender as a guarantee for fulfilling payment obligations. In case of the debtor's default, the lender has the right to enforce the mortgage, allowing them to recover the loaned amount through the sale of the property.

In addition to mortgages, there are other common guarantees used in asset financing in Uruguay. These include pledges, generally applied to movable property, and trust guarantees, where assets are transferred to a trust to secure a debt. These forms of guarantees provide additional security to lenders and allow the debtor to access better financing conditions.

Lease of assets and lease of business

In Uruguay, the leasing of real estate is a common practice regulated by the Civil Code and the Urban Lease Law. This type of contract allows one party (the lessee) to use a property owned by another (the lessor) in exchange for a monthly payment. Lease agreements can cover both residential and commercial properties, and they are subject to specific regulations, such as minimum contract duration, renewal clauses, and the rights and obligations of both parties. Additionally, the law provides protection to the lessee in situations involving renewal or eviction, ensuring a balanced legal framework for both parties.

Administrative permits applicable to construction or restructuring of assets

In Uruguay, construction or restructuring of real estate requires obtaining various administrative permits, which are essential to ensure compliance with urban planning and safety regulations. The process begins with applying for a construction permit from the corresponding municipal government, which must approve the plans and verify that the project complies with local building and zoning codes. This permit is mandatory for both new constructions and significant structural modifications to existing properties.

In addition to the construction permit, other specific permits may be required, such as environmental or heritage authorizations, depending on the location of the project and its impact. For example, if the construction is located in a historic or protected area, additional permits from competent authorities will be necessary to preserve the cultural heritage. Furthermore, regulations mandate inspections during and after the construction to ensure

compliance with approved conditions and that the property is safe and habitable upon completion.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

In Uruguay, environmental and energy regulations have gained significant importance, aligning with global trends towards sustainability and social responsibility. The country has a range of laws and regulations aimed at mitigating the environmental impact of real estate projects and promoting the efficient use of energy resources. These regulations include environmental impact assessments for certain developments, requirements to meet energy efficiency standards, and the preservation of protected natural areas.

Direct taxes applicable to sales

In Uruguay, the sale of real estate is subject to several direct taxes that must be paid by the parties involved in the transaction. One of the main applicable taxes is the personal income tax (IRPF) or the corporate income tax (IRAE), depending on whether the seller is an individual or a legal entity. This tax is levied on capital gains from the sale of the property, calculated as the difference between the selling price and the inflation-adjusted acquisition value.

Another relevant tax is the property transfer tax (ITP), which is typically paid by both the buyer and the seller and is calculated as a percentage of the property's fiscal value. Additionally, other municipal or departmental taxes, such as the property contribution tax, must be up to date in order to proceed with the sale. These taxes ensure that transactions are conducted legally and transparently, guaranteeing compliance with fiscal obligations.

Real Estate Law in Venezuela

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Overview of the Venezuelan Legal System

General introduction to the main laws that govern the acquisition of assets in Venezuela – real estate rights

The legal basis of real estate property in Venezuela is based on the Constitution of the Bolivarian Republic of Venezuela of 1999, as well as on various laws and regulations that regulate the acquisition, registration, transfer, use and disposal of real estate in the country.

The main legal instruments governing real estate in Venezuela are the Constitution of the Bolivarian Republic of Venezuela (1999), which establishes the general framework of property rights. Article 115 of the Constitution guarantees the right to private property and establishes that every person has the right to the use, enjoyment, and disposal of his or her property. Property is subject to the contributions, restrictions, and obligations established by law for purposes of public utility or general interest. In the same way, the Law of Public Registry and Notaries regulates the system of public registration of documents related to real estate, essential for the legal certainty of real estate transactions. It ensures the publicity, opposability, and priority of rights in rem over real estate.
The Urban Land Act also regulates matters relating to urban land ownership and the regularization of land tenure in cities. The Venezuelan Civil Code contains relevant provisions on property and asset rights, purchase and sale contracts, mortgages, and other contractual and civil liability aspects related to real estate. The Organic Law on Urban Planning establishes the basis for urban planning and land use, including zoning and the regulation of construction. The Law Against Eviction and Arbitrary Eviction of Housing seeks to guarantee the stability of housing and restricts the conditions under which evictions can be carried out. The Housing and Habitat Law seeks to ensure the right to housing and establishes the framework for public policies on housing and urban development.

The political and economic context of Venezuela can influence the application of these laws. Additionally, the National Superintendence of Registration and Notaries (SAREN by its Spanish acronym) and the National Land Institute (INTI) are important government entities in the process of land registration and administration, with which the necessary and mandatory formalities and processes for the acquisition and transfer of such rights must be registered.

Acquisition structure usually applied in real estate transactions; restrictions – if any – applicable to foreigners or to specific areas of the country or others, in real estate acquisitions

Acquiring property in Venezuela involves a number of legal and financial steps. In general terms, the typical process for the acquisition and/or transfer of this right in Venezuela consists of the following:

Property research and selection/price negotiation and agreement

- Look for properties that fit the needs and budget of the buyer;
- Visit the properties of interest and select the one you wish to acquire;
- Negotiate the sale price with the seller or its representative; and
- Once the price has been agreed, an offer to purchase document is made.

Legal review and documentation

We recommend verifying the ownership and legal status of the property in the corresponding Real Estate Registry. Subsequently, apply to the corresponding municipal office for a municipal solvency document to ensure that there are no property tax debts. Finally, obtain a technical report of the property if necessary.

Signature of the purchase option document

This contract sets out the terms and conditions of the sale, including the price, form of payment and the date of the final sale, usually a percentage of the price is paid as a deposit and commitment to the trade.

Financing management (if necessary)

If a mortgage loan is required, you must go to a financial institution to apply for it, this process may include the appraisal of the property and the approval of the credit.

Preparation of the definitive purchase-sale document

When the steps described above are certain, the final purchase and sale document is drawn up, which must be drafted by a lawyer; This document must contain all the details of the operation, as well as the property, and comply with the established legal requirements.

Payment of taxes and duties

After the notarization of the transfer of the property before the corresponding registry office, the real estate transfer taxes and other possible taxes and fees associated with the purchase must be paid, considering that the payment of some of the taxes may constitute necessary requirements in the processing of the transfer or acquisition of the property.

Signing of the purchase-sale document before a notary public

Both parties sign the purchase-sale document in the presence of a notary public, in order for the notary to publicly attest to the quality of the contracting parties, to subsequently register the transfer of ownership.

Land Registry

The notarized purchase-sale document must be registered with the corresponding Subordinate Registry Office, this step is crucial for the transfer of ownership to be official and for the buyer to acquire the legal rights to the property.

Change of services and direct debits

Finally, once the property is in the name of the buyer, the change of ownership of the basic services and the direct debits will have to be carried out, if necessary.

This is a general process and may vary in specific details depending on the region in Venezuela. Our recommendation is to hire the services of a lawyer or a real estate agent who is well-versed in local laws and procedures to ensure that the entire process is done correctly.

Real estate registry system

In Venezuela, the real estate registration system is carried out through the Subordinate Registry Offices, which are dependencies of the Autonomous Service of Registries and Notaries (SAREN). These offices are responsible for the registration and control of all legal acts involving real estate, such as purchases, sales, mortgages, donations, adjudications, among others.

To register real estate in Venezuela, the following steps must generally be followed:

- Drafting of documents: The purchase-sale document or any other act to register must be drafted, this is usually done with the help of a lawyer;
- Application for registration: The interested party must submit the document to the Subordinate Registry Office corresponding to the jurisdiction where the property is located;
- Document review: The registrar reviews the documents submitted to ensure that they meet all legal and tax requirements;
- Payment of registration fees: The registration fees and the corresponding taxes must be paid. The costs may vary depending on the value of the property and the type of legal act to be registered;

- Document registration: Once the documents have been reviewed and the payments made, the registrar proceeds to register the legal act in the registry books; and
- Issuance of registered documents: The registrar issues a certified copy of the document already registered, which serves as legal proof of the registration of the legal act.

It is important to note that the process may vary depending on the specific nature of the legal act and any additional requirements that may arise during the registration process. In addition, the registration system in Venezuela has faced challenges including bureaucracy, slow processes, and the need for modernization.

Legal responsibility of the seller in real estate transactions – contractual representations and warranties

The legal liability of the seller in Venezuela in real estate transactions is mainly governed by the Civil Code, the Horizontal Property Law, and other regulations that may apply depending on the specific nature of the transaction. Below are some of the most relevant aspects regarding the seller's liability in the context of a real estate transaction:

Property title

The seller must have a valid title deed and be legally empowered to sell the property, it is their responsibility to ensure that the property is free of encumbrances and liens that may affect the transaction.

Declaration of hidden defects

The seller is responsible for any hidden defects that the property has and that have not been reported to the buyer before the sale; If hidden defects are discovered after the sale, the buyer might have the right to sue the seller for repair or compensation.

Duty of information

It is the seller's obligation to inform the buyer of any relevant situation sellers know about the property that may affect the purchase decision, such as pending litigation or limitations on the use of the property.

Regulatory compliance

The seller must ensure that the property complies with applicable planning and building regulations, failure to comply may result in penalties or the need for adjustments or demolitions.

Purchase and sale agreement

The purchase and sale contract must comply with all the required legal formalities and be registered with the corresponding real estate registry office, the seller must provide all the necessary documentation for this process.

Delivery of property

The seller must deliver the property in the conditions agreed in the contract, any discrepancy between what was agreed and the condition of the property on delivery may result in liabilities for the seller.

Payment of taxes and debts

The seller is responsible for the payment of real estate taxes until the date of sale and must ensure that there are no outstanding debts that could affect the transaction.

It is important to note that both buyers and sellers often seek legal advice during real estate transactions to ensure that their rights and interests are protected and that all legal obligations are met, so we recommend consulting with an up-to-date legal professional on the laws and regulations in force in Venezuela to obtain accurate and detailed information on the legal responsibilities in a real estate transaction.

Mortgages and other usual guarantees adopted in financing assets

Mortgages and other collateral are legal instruments used to ensure compliance with an obligation, usually in the context of financing or loans. Some of the most common guarantees in asset financing in Venezuela are described below:

Mortgage

It is a security interest that is created in real estate, without dispossessing the debtor of it. The mortgage must be registered in the corresponding Subordinate Registry Office for its validity against third parties; In the event of default by the debtor, the creditor may apply to a court for foreclosure of the mortgage in order to obtain payment of the debt with the proceeds of the sale of the mortgaged property.

Non-possessory pledge

It is a guarantee that falls on movable property, such as equipment, inventory, accounts receivable, among others. It allows the debtor to maintain possession of the asset, but this is affected by the guarantee of the obligation. Like the mortgage, it must be registered for its enforceability against third parties.

Bail

It consists of the obligation assumed by a third party (guarantor) to fulfil the debtor's obligation if the debtor fails to do so. It is a contract by which the guarantor commits himself to the creditor.

Antichresis

Although less common, it is the delivery of a real estate property to the creditor so that the creditor can be collected with the results of said asset, the outstanding credit, with the debtor maintaining ownership of it.

Assignment of rights

Economic rights of contracts can be assigned as collateral. For example, future receivables under a lease may be assigned to the creditor as collateral.

Floating warranty

It is used to guarantee obligations with a set of debtor's assets, which can change (such as inventory or accounts receivable).

It is important to note that each of these guarantees must comply with certain legal formalities for their validity and effectiveness, such as the drafting of contracts, registration, and notification to third parties. Additionally, in the Venezuelan economic and legal context, it is crucial to consider factors such as political and economic stability, inflation, and changing legislation, which can affect both the valuation of guarantees and the possibilities of enforcing them.

Lease of assets and lease of business

Asset and business leasing in Venezuela is a contractual arrangement through which one party, known as a lessor, grants the right to use an asset or business to another party, called a lessee, for a specified period of time in exchange for a payment or series of payments.

Lease agreements can be of various types and encompass different assets, such as real estate, vehicles, machinery, equipment, and other tangible property. In the business context, they can also refer to the lease of a company or an operating business unit.

In legal and fiscal terms in Venezuela, the legislation that regulates leases is the Commercial Code and the Real Estate Leases Law for commercial use, among other applicable regulations. In addition, asset and business lease agreements must comply with the provisions of the Civil Code regarding the form and the rights and obligations of the parties.

The aspects to consider in the leasing of assets and businesses in Venezuela are the following:

- Lease agreement: It must be clearly drafted, specifying the conditions, terms, duration, amount of the rent, responsibilities of the parties and any other relevant clauses;
- Rights and obligations: The lessor has the obligation to deliver the property in a condition that serves the use for which it has been leased, while the lessee must use

the property as agreed and make the agreed payments;

- Lease duration: The duration of the contract must be agreed upon by both parties and may be for a fixed or indefinite period, subject to renewal;
- Costs and taxes: Payments may be taxable, and both the landlord and tenant must be aware of their tax obligations. In Venezuela, the applicable tax could be the value added tax (VAT), among others;
- Dispute resolution: It is important to establish in the contract the mechanisms for dispute resolution, which may include arbitration or mediation;
- Applicable law: In case of international business or parties of different nationalities, the law applicable to the contract must be defined; and
- Registration: Some types of leases may require registration with competent authorities for their validity against third parties.

It is essential that both landlords and tenants are advised by legal professionals to ensure that their lease agreements comply with all applicable legal and tax regulations in Venezuela.

Administrative permits applicable to construction or restructuring of assets

Real estate assets are subject to a series of permits and regulations that must be complied with to carry out any project of this nature. The regulations may vary depending on the region and/or municipality, as well as the type of construction, some of the permits and general procedures usually required are the following:

- Building Permit: Granted by the mayor's office or the corresponding municipality, this permit is essential before starting any work. To obtain it, the project plans must be submitted, which must be endorsed by a registered engineer or architect;
- Zoning Certificate: This document indicates that the intended use of the construction is in accordance with the land use plan of the area where the land is located;
- Environmental Impact Assessment: Depending on the scope of the project, it may be necessary to conduct an Environmental Impact Assessment (EIA) and obtain approval from the Ministry of People's Power for Ecosocialism (formerly known as the Ministry of the Environment);
- Firefighters' Permit: This is required to ensure that the design of the project complies with fire safety standards;
- Urban property tax: A payment that is made in some municipalities for the use of public space for construction;
- Habitability Permit: Once the work is completed, it is necessary to obtain a permit that certifies that the building is suitable for habitation;
- Land Registry: The property must be registered in the corresponding Public Registry to legalize the construction or restructuring carried out; and
- Permit for Connection of Services: For services such as electricity, water, and sewer, permits must be obtained from utility companies.

It is important to note that this list is not exhaustive and may vary depending on the local laws and regulations in the corresponding municipalities and municipalities. In addition, the legal and administrative process in Venezuela can be complex and subject to change, so it is always recommended to consult with a lawyer or a professional specialized in the matter.

Environmental and energy – ESG (environmental, social and governance) rules and status of implementation

In Venezuela, as in other Latin American countries, the application of ESG standards is still an ongoing process. In the Venezuelan context, characterized by significant economic and political challenges, the incorporation of these practices may face additional obstacles. However, it is important to note that Venezuela, like other countries, is a signatory to various international agreements that promote environmental sustainability and social responsibility.

The status of ESG enforcement in Venezuela is varied, and due to the country's political and economic situation, there may be a more limited focus on the implementation of these practices compared to other nations in the region. State-owned and some private companies may have programs and policies in line with ESG standards, but the

lack of a consolidated regulatory framework can make it difficult to assess their true scope and effectiveness.

Companies looking to align with ESG criteria in Venezuela could focus on the following areas:

Environment: Practices that seek to minimize environmental impact, such as waste management, emission reduction, biodiversity conservation, and energy efficiency;

Social: Aspects related to the well-being of workers, social inclusion, the impact on local communities and respect for human rights; and

Governance: Transparency in corporate governance, ethical business practices, compliance with applicable laws and regulations and the implementation of anti-corruption policies.

In Venezuela, ESG standards could be more prominent in the private sector, especially in those companies that seek to attract foreign investment or that are listed on international stock exchanges, where ESG criteria are increasingly important to investors.

Direct taxes applicable to sales

In Venezuela, direct taxes are not usually applied to sales directly; instead, sales are generally subject to indirect taxes. However, it is important to understand the tax structure to have a complete view.

Direct taxes are those levied on the income or assets of natural or legal persons. In Venezuela, the main direct tax is the income tax (ISLR). This tax applies to income obtained by natural or legal persons resident in the country, as well as to certain income obtained by non-residents that come from Venezuelan sources.

The sale of real estate in Venezuela is subject to various direct taxes, among which the following stand out:

- Income tax (ISLR): This tax is applied to the profit obtained from the sale of a property. The capital gain is determined by the difference between the sale price and the adjusted cost of the property. For individuals, the rate varies and can reach up to 34% depending on the amount of the gain, while for legal entities, the rate is 34%. There are deductions and allowable costs that can modify the taxable base;
- Advance payment of income tax: In cases of alienation of real estate or rights over the same, an advance tax of 0.5% calculated on the price of the alienation shall be paid, whether the alienation is made in cash or on credit. This advance payment shall be credited to the amount of the tax resulting from the definitive tax return for the corresponding fiscal period;
- Real estate transaction tax: Some municipalities may impose a tax on real estate transactions. The percentage varies according to the respective municipal ordinance;
- Registration fees: At the time of formalizing the sale of a property, it is necessary to pay the registration fees before the corresponding Public Registry office. The associated costs are variable and depend on the value of the property and the applicable rate in each registration; and

Tax on large financial transactions: The property purchase payment may be subject to this tax., currently if the payment is made in legal currency in Venezuela (Bolivar) the tax rate to be applied is 0%, but if the payment is made in a foreign currency other than legal course, a 3% tax rate is applied on the amount paid.

Latest developments in Venezuela, and areas to focus on in the future:

Latest developments

- The real estate market in Venezuela has experienced a significant decline in recent years due to the economic and political crisis that has affected the country; Inflation and the shortage of financing are two of the main factors that have affected the development of the sector. In addition, restrictions on property buying and selling operations, such as the need for government authorization for property transfers, have constrained the real estate market.
- Despite the current difficult situation, there are some opportunities for those who want to invest in real estate in Venezuela, one of them is the possibility of acquiring properties at low prices, due to the fact that the economic and political situation of the country has decreased the demand for properties, which has led to a decrease in prices.
- There are some trends that are emerging in the real estate sector, such as the increase in the demand for low-cost housing, due to the difficult economic situation that the country is going through. People are looking for more affordable and accessible options in terms of purchase or rental prices.
- Another trend that has been observed in the real estate market in Venezuela is the increase in demand for properties in rural and semi-rural areas. This is because urban areas are becoming more saturated and property prices in these areas are higher.
- There has also been an increase in rental demand, especially in large cities such as Caracas, Maracaibo, and Barquisimeto.
- Another emerging trend in Venezuela is the emergence of new business models in the real estate market with coworking spaces. These business models have emerged as a response to the needs and demands of an ever-changing real estate market.

Areas to focus on in the future

- Affordable housing: The search for solutions for affordable housing can be a priority, given the need to improve access to housing for the population.
- Property rehabilitation: Investing in the renovation and improvement of existing properties could be key to revitalizing urban areas and improving quality of life.
- Sustainable developments: Sustainability is a global trend in real estate, with a focus on energy efficiency and minimizing environmental impact.
- Infrastructure investments: Improving infrastructure can increase property values and attract more investment to the country.
- Digitalization of the real estate market: The implementation of technologies such as blockchain for real estate transactions and the use of digital platforms for property management may be a growing trend.

Advice to investors

Investors interested in the real estate market in Venezuela should keep the following tips and recommendations in mind:

- Know the laws and regulations applicable to the real estate market in Venezuela. It is important to know the laws and regulations that govern the real estate market in the country to avoid legal problems in the future.
- Have the advice of professionals with experience in the Venezuelan real estate market to make informed decisions and minimize risks.
- Diversify investments in the real estate market. By investing in different types of properties or in different geographical areas, minimizing risk and maximizing profit potential.

Be prepared to face some challenges along the way. Due to the current situation of the real estate market in Venezuela, investors may face some challenges along the way, such as lack of financing and legal restrictions. It is important to be prepared to face these challenges and to have long-term patience

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