Global Corporate Real Estate Guide - Taiwan

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*This chapter was last reviewed in July 2023.*

# Authors

# Real Estate Law

## What is included in the term “real estate”?

The term “real estate” includes the following:

Land

Buildings, structures and/or fixtures that are constantly or permanently affixed or appurtenant to land

## What laws govern real estate transactions?

The following are the main laws that govern real estate transactions:

Civil Code

Land Act (and its Enforcement Rules)

Regulation of the Land Registration

Construction Act (and its Enforcement Rules)

Condominium Administration Act Building Administration Division

Regional Planning Act (and its Enforcement Rules)

Urban Planning Act

Use Regulation for Non-Urban Land

Land Expropriation Act (and its Enforcement Rules)

Farmland Readjustment Act

Equalization of Land Rights Act (and its Enforcement Rules)

Land Tax Act (and its Enforcement Rules)

House Tax Regulation

Estate and Gift Tax Act (and its Enforcement Rules)

Income Tax Act

Tax Collection Act (and its Enforcement Rules)

Stamp Duty Act

Deed Tax Act

Consumer Protection Act

Fair Trade Act

## What is the land registration system?

In Taiwan, under the Civil Code, the types of rights to, or interests in, real estate are limited to those provided by statutory law or customary practice, and no new type may be created by agreement. Unless otherwise provided under law, certain acts such as inheritance, acquisition, creation, loss and change to rights to real estate shall be documented in writing and shall not become effective without registration with the competent authority. Furthermore, the registration of real estate rights made in accordance with related regulations shall have an absolute effect to any third party.

## Which authority manages the registration of titles?

The Ministry of the Interior is the highest regulatory authority for land registration. There is also a land administration unit in each local government. In practice, the land registration work is the responsibility of the land office under the county/city government.

## What rights over real property are required to be registered?

Ownership of land or building

Mortgage

Superficies

Real estate easements

Right of Dian (“Dian” (典權) is, by delivering a price, the right to use and collect profits on a real property of another person, and the ownership of such real property is acquired if the said person refuses to redeem)

Right to farming

Agricultural right

Other rights in rem created according to customary practice

(Optional – for precautious registration only) other claims that may restrict the ownership of a real estate

## What documents can landowners use to prove ownership over real property?

Land/building owners hold a land/building title deed affixed with the official seal of the registration authority and the title and signature of the chief of the authority to prove their ownership. Details of land/building registration may also be found in the land/building register transcript, which are public information and can be applied online with a fee.

## Can a title search be conducted online?

All registered records are available to the public online, and information about the ownership of real property can be searched for a fee. Land/building transcript applications can also be done online. Due to personal information protection, the title owner’s name and address will be redacted in these reports and transcripts, unless the application is submitted by the title owner him/herself or the local court.

## Can foreigners own real property? Are there nationality restrictions on land ownership?

Foreigners may acquire or create rights to land in Taiwan on the condition that:

the type of the land is not forbidden to be transferred to foreigners by the Land Act and related laws

reciprocity is extended to Taiwan citizens (i.e., Taiwan citizens are entitled to the same rights as the foreigners in their country according to a treaty or the law of their country) – note that there is a list of such permitted countries published by the competent authorities

the land is used for the purposes of self use, investment or public welfare

the designated usages, area and location of the land conform to the Land Act and related laws

the acquisition is approved by local government

## Can the government expropriate real property?

Property may be expropriated by the government based on authorization of laws and due procedure, but appropriate compensation must be paid.

## How can real estate be held?

Generally, real estate can be held through any of the following means:

Ownership

Lease

Borrow for use

Other contracts under which superficies, the right of Dian, right to farming or agricultural rights may be created

Occupancy (as a factual status/right)

## What are the usual structures used in investing in real estate?

Natural person

Legal entities

Trust

Registration of property under another’s name

## How are real estate transactions usually funded?

Most real estate transactions are funded by a person’s own capital and loans. Loans may be obtained from financial institutions such as banks, credit unions, insurance companies and farmers’ associations. In most cases, the subject of the transaction will be provided as the collateral for the loan. To provide the collateral, the borrower is usually required to mortgage the real estate in favor of the lender which will be registered as the mortgagee. There are, however, cases in which the real estate is placed in trust with a trustee acceptable to the lender. The loan rate may be floating or fixed. In general, the financial institution will ask the borrower to pay the costs and fees arising from the loan, including the due diligence fee, land registration agent’s fees and the statutory administration fee required for registration.

## Who usually produces the documentation in real estate transactions?

In case the subject of the real estate transaction has a relatively small value, such as regular residence, a land registration agent prepares the relevant documents. If real estate of substantial value is involved, usually the lawyer for the buyer prepares the real estate purchase agreement.

## Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before the real estate was bought or occupied?

A person who registers the right to the real estate shall take the precedence. As such, if a relevant right has been registered against the real estate according to law, such as a mortgage, the subsequent owner will take title to the real estate (whether by purchase or inheritance) subject to the mortgage until such mortgage is discharged.

Also, the Civil Code provides that in case of a lease with a term of less than five years or that is notarized, even if a new owner purchases or inherits a real estate property, subsequently, it shall assume such existing lease as the landlord.

## Does a seller or occupier retain any liabilities relating to the real estate after they have disposed of it?

In disposing of real estate, a seller shall be liable to the buyer for warranty against defect according to law or contract, if any.

# Acquisition of Real Property

## What are the usual documents involved in such transactions?

Real estate purchase agreement

A due diligence report issued by a lawyer or consulting firm in case the real estate has a substantial value

An appraisal report if the transaction involves a listed company or foundation that is required to perform an appraisal before proceeding with the transaction

Application documents for registration in prescribed forms to be submitted to the competent authority

## What are the warranties given by a seller to a buyer?

A seller usually gives the following warranties in addition to customary warranties:

There is no dispute over the ownership and the real estate is sold to a single buyer only (i.e., no double-selling)

There is no lease agreement or any and all existing lease agreements have been disclosed

There are no quality defects such as sea sand building, radiation-contaminated reinforced bars or leaks – leaks are one of the most common building defects in Taiwan

The land is not contaminated and is not in breach of environmental protection laws

## When is the sale legally binding?

The purchase agreement, when signed, becomes binding on the parties to the agreement.

## When is title transferred?

The title will be transferred to the buyer upon completion of registration at the land administration.

## What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

Deed tax

Stamp duty

Statutory registration fee required for the transfer of title and land registration agent’s fee

Necessary due diligence fee, if any

Part of the commission payable to the broker, if any

The seller usually pays for the following:

Land value increment tax

Statutory registration fee required for deregistration of the mortgage and land registration agent’s fee

House tax, land value tax and utility fee prior to transfer of title

House and Land Transactions Income tax (subject to certain exemptions)

Part of the commission payable to the broker, if any

# Leases

## What are the usual forms of leases?

Base land lease (for building construction purpose)

Land lease (public / private land)

Building lease

Office lease

Plant/factory lease

Farm land lease

## Are lease provisions regulated or freely negotiable?

Based on the principle of freedom to contract, save for public lands or lands located in specific industrial parks that may be subject to related laws and regulations, the terms and conditions of a lease agreement may generally be freely negotiated and determined. There are certain laws or guidelines for template lease agreements that provide protections for the tenant, such as the cap of the total rent deposit. However, such protections generally do not apply to leases for business purposes.

## Is there a maximum term for leases? Can these be extended?

Unless the lease of land is for the purpose of construction of buildings, under Taiwan law, any lease may not exceed 20 years. Leases that exceed 20 years are deemed shortened to 20 years. Renewal clause in a 20-year lease agreement may be challenged, so the parties may need to re-enter into the lease agreement after the expiration.

## What are the usual lease terms?

Tenure

The usual term is one to two years for a residential lease and three to five years for an office lease. A right of first refusal upon expiration of the initial term is usually provided for in the agreement.

Other terms

The conditions for both parties to terminate the lease and the penalty clause regarding either’s default or non-performance, etc.

## Are there instances where tenants may demand an extension of the lease?

No, unless the parties agree beforehand that the tenant has the right for extension of the lease.

## On what grounds may a lease be terminated?

A landlord can generally terminate the lease under the following conditions:

The rent has been overdue for at least two months and so the lease can be terminated on the ground of rent default

The premises are used in violation of law, including where hazardous substances are stored or otherwise threatening public safety

The premises are subject to provisional seizure or provisional injunction if the tenant is insolvent or proven to be experiencing financial difficulties and thus unable to perform its obligations under the lease agreement.

## Must rents be paid in local currency?

No. There is no special regulation on this.

## Is rent paid on a monthly basis? Is it required to be paid in advance?

Rent is paid on a monthly basis in principle, but other arrangements are also acceptable.

## How is rent reviewed? Are there limits to the increase in rent?

On the basis of the parties’ agreement and no related limit under the law.

## What are the basic obligations of landlords and tenants?

Landlords are usually required to repair and maintain the structure of the property.

Tenants, on the other hand, are usually required to do the following:

Pay rent on time

Keep the property in good order

Inform the landlord if repairs are needed and give the landlord access to the property to carry out repairs

Give the landlord access (often by appointment) for inspections and landlord’s work

## What provisions or restrictions typically apply to the transfer of the lease by the tenant? May a tenant sublet the leased premises?

According to the Civil Code, no transfer of lease or sublease is allowed without the landlord’s permission.

## What happens in the event of destruction of the leased premises?

Generally, it is agreed in the lease agreement that the tenant is entitled to rent abatement for the destruction if the destruction is not attributable to the tenant. If as a result of the destruction the premises can no longer serve the purpose of the lease, the tenant may terminate the lease or be exempted from rental payment until repairs are completed.

The tenant is not entitled to terminate the lease and is liable to pay damages if the destruction is attributable to the tenant.

## Who is usually responsible for insuring the leased premises?

This depends on the purpose of lease and the parties’ agreements. Normally, insurance related to the spaces inside the leased premises will be borne by the tenant.

## Will the lease survive if the owner sells the leased premises?

Where the lease term is less than five years or the lease has been notarized, the lease will survive and therefore the new owner will become the landlord, even if it purchases or inherits the premises after the execution of the lease.

## Will the lease survive if the leased premises are foreclosed?

In the event a creditor who has a mortgage over the leased premises enforces it against the leased premises by application to the court due to failure of the owner to perform its obligations owed to that creditor, the court will remove the leasehold and preclude the tenant from occupying the premises if the lease was executed after the mortgage was created, or was executed before the mortgage was created but more than five years has passed without notarization or it has always been without notarization.

However, if the lease is executed before the mortgage is created and has a term of less than five years or is notarized, the court will indicate no handover after the auction in the auction notice, which means that the court will not preclude the tenant from occupying the premises.

# Planning and Environmental Issues

## Who has authority over land development and environmental regulation?

The county/city government is, in principle, responsible for the implementation and monitoring of land use and environmental regulations.

## What environmental laws affect the use and occupation of real estate?

Environmental Impact Assessment Act

Soil and Water Conservation Act

Soil and Groundwater Pollution Remediation Act

## What main permits or licenses are required for building or occupying real estate?

For the legal use of building, Building Permit and Occupancy Permit

For occupying real estate, no specific permit is required

## Can an environmental cleanup be required?

Generally, an environmental cleanup may be required where authorities discover soil pollution on relevant land.

## Are there minimum energy performance requirements for buildings?

No particular requirement.

## Are there other regulatory measures that aim to improve the sustainability of newly constructed and existing buildings?

Following the revision of the Building Technical Regulations to include the chapter of “Green Building” in mid-2012, some local governments have adopted local regulations implementing detailed green building requirements for new public buildings and certain new private buildings.

Also, it is worth noting that the Ministry of Economic Affairs is proposing revisions to the Renewable Energy Development Act setting out new requirements regarding renewable energy for electricity consumers meeting certain criteria. Some city/county regulations have implemented the relevant requirements and offered related subsidies for installing renewable energy facilities.

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