Global Corporate Real Estate Guide - Taiwan

Real Estate Law

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# 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.

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