Global Corporate Real Estate Guide - China

Acquisition of Real Property

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# What are the usual documents involved in such transactions?

For simple transactions, the parties typically sign a real estate sale and purchase contract, which is submitted to the local registry for title transfer registration. PRC national and local authorities have published model forms of sale and purchase contracts (in Chinese only) for reference by sellers and buyers.

For more complicated transactions, parties may also need to sign the following documents:

Framework or master agreement for the transaction

Release agreement for an existing mortgage

New mortgage agreement

Escrow agreement for down payment and stage payment

Estoppel certificates to be signed by tenants

Sub-deed of mutual covenants

Easement agreements

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

The seller of property is generally deemed by the law to have given warranties to the buyer that the seller has good title to the property being sold and that the property is not subject to adverse encumbrances.

For commercial transactions, the buyers usually will negotiate more extensive representations and warranties from the sellers to cover environmental matters, tenancy, tax, easements and other matters of concern to the buyer.

# When is the sale legally binding?

The general rule is that a sale and purchase contract for real estate will become legally binding upon due execution by the seller and the buyer. PRC law allows the parties to set conditions precedent for transaction closing and title transfer.

# When is title transferred?

Title will only be transferred from the seller to the buyer upon due registration of the transfer at the local registry.

# What are the costs usually shouldered by the parties?

A corporate buyer typically pays for the following costs in a sale and purchase of real estate:

Buyer’s agent’s fees

Its own legal costs

Due diligence costs for consultants who have prepared building condition reports, environmental assessments, valuation appraisals and real estate surveys

Due diligence costs for inquiries made to statutory and government bodies

Nominal fees for title registration

Deed tax of 3–5% of the transfer price

Stamp duty of 0.05% of the transfer price

A corporate seller typically pays for the following costs in a sale and purchase of real estate:

Seller’s agent’s fees

Its own legal costs

VAT and surcharge (the VAT rate is 11% of the transfer price with allowance for deduction of input VAT, or (i) if the corporate seller is a small-scale taxpayer, the VAT rate is 5% of the transfer price without deduction of input VAT; or (ii) if the corporate seller is a general taxpayer and the real estate project is an old project with construction permit issued on or before 30 April 2016, the seller can opt to adopt simple method VAT which is 5% of the transfer price without deduction of input VAT, and the surcharge is from 6–12% on payable VAT)

Land appreciation tax (at progressive rates of 30–60% on the taxable gains)

Corporate income tax (25% on net profit)

Stamp duty of 0.05% of the transfer price

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