Baker McKenzie.

GLOBAL CORPORATE REAL ESTATE

GUIDE

Global Corporate Real Estate Guide

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Foreword

Dear reader,

With ongoing volatility in the global economy and the growth of new real estate investors such as insurance companies and pension funds, the commercial real estate market has become much more competitive. Evolving regulatory requirements in key real estate markets and rapidly changing economic environments have made it more challenging for multinational companies and other investors to manage their real estate portfolios. On top of this, rising cost pressure, growth of co-working spaces, new leasing standards and technology advancements are forcing many companies to re-evaluate their corporate real estate strategy and operations.

We have created the Corporate Real Estate Guide with the belief that, whether you're an investor or an occupier, having up-to-date knowledge on real estate law in various jurisdictions is vital in decisions concerning your business.

This edition covers 41 jurisdictions across Asia Pacific, Europe, the Middle East and the Americas. The guide is intended to provide fundamental real estate information on each country's real estate laws, including its system of registration, and rules and common commercial terms related to acquisitions, disposals, leases, planning and environmental issues.

I thank all my colleagues across the globe for their contributions and expertise in compiling this guide, and I trust it proves a useful resource for you.

For questions, assistance or advice, I invite you to contact any of the local Baker McKenzie chapter authors referenced in the Guide.

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Global Corporate Real Estate Services

The complexity, risk and cost of managing a company's real estate interests can increase with each border crossed.

Baker McKenzie's real estate team operates fluently in this arena, bringing to these challenges the knowledge and experience needed to address varying real estate needs in a coordinated, cost-effective manner. Named by Euromoney as the Number 1 firm for Global Real Estate Legal Services for 9 consecutive years, we are the go-to-adviser for leading multinationals and we provide clients with a practical, efficient, centralized and project managed approach to cope with all their real estate needs wherever they are, or go. We also provide clients with in-house real estate training programs, access to our helpdesk for general inquiries, as well as legal alerts and other publications that keep clients up-to-date on industry trends.

Where we can help

- Global real estate policy: we work with clients in the preparation or review of their real estate policy to create a blue print of internal requirements and, to support effective management of both internal and external legal and other support teams.

- Property documentation: we assist with the preparation of globally consistent pro-forma documents, such as checklists related to a letter of intent or term sheet; suggested clauses for insertion in contractual documents; a description of preferred and fall-back positions on key issues (such as use, security, renewals and rent review, change in control and the like); and pro-forma reporting template for the legal team.

- Lease agreements: as the main focus of our Global Corporate Real Estate practice, our services cover the review, negotiation,

amendment, renewal, assignment or termination of lease agreements and of fit out agreements.

- Negotiations of special rights: these include, among many possibilities, rent-free occupation periods, design parameters, signage rights on external walls, rights to install facilities within common areas, repairs and renovations, options for renewal or early termination, subletting and assignment to third parties, turnover rental calculations, rent-review mechanisms, dispute resolution procedures.

- Real estate acquisitions, disposals or restructurings: our services cover all aspects of real estate M & A, for both owners and occupiers including drafting and review of all types of real estate documents in relation to owned property development; investment in single assets or portfolio; management and disposition of properties, sale leaseback structuring, real estate tax management; syndicating and structuring property ownership together with real estate management agreements and co- ownership agreements.

- Compliance and investigations: these services include conducting title checks and investigations of encumbrances and user restrictions; as well as review of compliance with real estate regulations, and the review of permits, health and safety and other occupancy regulatory constraints.

We advise clients on projects ranging from the acquisition and/or development of office and retail complexes, manufacturing and warehousing facilities, hotels, and commercial and residential leases. Our clients include investors, occupiers, manufacturers and developers, constructions companies, banks, embassies and international organizations.

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01 Argentina

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Any movable assets adhered to it
- Non-movable assets built on it

1.2 What laws govern real estate transactions?

Real estate transactions are governed by the Civil and Commercial Code. A New Civil and Commercial Code was passed and became in effect as of 1 August 2015. It introduced many new legal alternatives that can be used to structure a real estate development, especially in cases of the alternative of a surface right which before was only available for forestation and structuring of big commercial stores (shopping malls, residential condominiums, etc.) Registration issues are contained in Real Estate Public Registration Law No. 17,801 and in a number of provincial laws and regulations dealing with registration in those jurisdictions.

1.3 What is the land registration system?

All provinces maintain a registry system where ownership can be verified and through which interests in land are registered. Any acquisition, conveyance or any other act involving interests in real property must be performed, transferred or assigned by means of a public deed to be granted by the notary public appointed by the parties to such effect. The notary public shall then register the public deed with the Real Property Registry (Registro de la Propiedad Inmueble) of the jurisdiction in which the real estate is located.

1.4 Which authority manages the registration of titles?

The Real Property Registry of the jurisdiction in which the real estate is located manages registration under Law 17,801 as amended.

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

The Real Property Registry registers any real rights. No personal rights are subject to registration except for certain exceptions.

- Ownership and co-ownership
- Usufruct
- Easements
- Mortgages
- Surface rights
- Trusts
- Leasing

1.6 What documents can land owners use to prove ownership over real property?

Land ownership may be proven using a title deed of ownership that must be registered with the real property registry of the jurisdiction in which the real estate is located. A report from the Real Property Registry may also be requested to provide evidence on the status of the property.

1.7 Can a title search be conducted online?

No. It is not possible to conduct a title search online.

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

Yes. Nevertheless, any transaction involving real estate located within a security area (specifically designated by law) shall need prior authorization from the National Commission for the Security of Border Areas (the "Security Commission"). In general terms, security areas are those areas along the borders, either terrestrial or maritime, and areas around military or civil buildings that are considered important for national defense.

Beginning December 2011, Law 26,737 imposed the following limitations to foreigners' acquisition and possession of Rural Land:

- Foreigners may own a limit of 15% of the Argentine rural areas
- Foreigners (individuals or legal entities) of a same nationality may not own more than 30% of the above percentage
- The land owned by the same foreign person should not exceed 1,000 hectares in total in the core area of Argentina or equivalent in other areas
- Foreigners cannot purchase rural land if it contains any kind of permanent water within the land or at any border
- Foreigners are required to obtain a certificate from the Registry of National Rural Land as a condition precedent to acquiring Rural Land

Rural Land is defined as any land located beyond the urban areas. The reference made to foreign ownership mainly includes the following:

- Foreign individuals residing or not residing in Argentina
- Legal entities of which 51% of the corporate capital belongs to foreigners or if there is any sort of control by a foreigner on the legal entities

There has been debate in relation to some paragraphs of the law that do not seem to have been definitely settled as to the exact scope and reach of the above rules. In fact, Government Decree 820/16 introduced certain clarifications and interpretations of the law that have been also subject to debate.

1.9 Can the government expropriate real property?

Yes. Expropriation consists of taking privately owned property by the government under eminent domain. Argentine law (ie, National Expropriation Law No. 21,499), provides for a special and compulsory procedure that shall be preceded by the enactment of a law establishing public purposes for the expropriation of the land and serving the owner a notice. The government shall pay proper compensation to the real estate owner. A number of provinces have enacted their own expropriation laws for real property located in these provinces.

1.10 How can real estate be held?

Generally, an interest is held by any of the following:

- Ownership-co-ownership
- Lease or leasing
- Free lease (comodato)
- Trust
- Surface right

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

- Branches of foreign companies
- Stock corporations (with certain new legal structures available such as simplified stock corporations or sole shareholder corporations)

- Limited liability companies
- Real estate trusts

1.12 How are real estate transactions usually funded?

It very much depends on the transaction itself. It may be funded through loans (guaranteed by a mortgage on the real estate) granted by financial institutions. However, since around the year 2000, many real estate developments have obtained funding through the implementation of trusts where an offer is made by the developer to potential investors before the construction work starts and those investors pay installments until the construction is finished. This has been the manner to compensate for the lack of loans available in the Argentine market. This has started to change since 2016 as a result of government public policies that are promoting the granting of loans to developers and end consumers. This has slowly started to generate new investments.

As regards the inflow and outflow of funds to and from Argentina, these used to be heavily regulated by means of exchange control regulations. However, this has radically changed and there are currently mainly no restrictions.

1.13 Who usually produces the documentation in real estate transactions?

This will depend on the type of transaction. It is usual to see the execution of an offer (reserva) to the owner and then a preliminary sale and purchase agreement (boleto de compraventa), while the public notary obtains all reports from the Real Property Registry and is ready to grant the transfer title deed, which will be later registered with the Real Property Registry.

In case no preliminary sale and purchase agreement is executed, the parties may directly request the transfer title deed to be granted. In case the preliminary sale and purchase agreement is executed, between 25% and 30% of the purchase price is paid to the seller. Please note that this

alternative needs review because of the impact it may have under current exchange control regulations.

1.14 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?

Yes. Under Argentine law, the owner of real estate shall be liable for the propter rem obligations. This concept refers to obligations in which the debtor is determined on the basis of the relationship that it has with the real estate (eg, owner). In other words, propter rem obligations are those that "follow" the real estate. Under this scenario, the owner of real estate shall inherit liability for matters relating to the real estate, even if they occurred before acquisition (eg, municipal fees, taxes or water services).

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

Yes. Under Argentine law, the seller shall, in principle, retain liabilities relating to latent or hidden defects (vicios redhibitorios or vicios ocultos) and any breach of the warranty of good and marketable title to the real estate (garantía de evicción).

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Offer (reserva)

  Often, the transaction is triggered by the purchaser making an offer through a "reserva," which is a small amount of money that is left generally to a real estate broker to get the property out of the market. In general, real estate brokers provide counsel to purchasers on the type, location, prices and availability of real estate in the market, and collect a fee for those services. The seller usually grants authorization to the broker for marketing and offering the property.

- Preliminary purchase and sale agreement (PSA) (boleto de compraventa)

  The PSA is a type of contract used for purchasing real estate property. The PSA is usually executed after successful negotiations, which may have included the execution of a reserva. Although not legally necessary, the PSA may be the first agreement executed between the purchaser and seller directly in relation to the acquisition of the property.

- Public deed (escritura pública)

  The public deed determines the definitive transfer of title to the property and will enable the purchaser to register the transfer with the Real Property Registry. Generally, all terms and conditions originally included in the PSA will also be included in the public deed, and once the latter has been executed, it will supersede the PSA. Usually, the parties agree that the public deed will be executed within a period of 30–45 days from the execution of the PSA. The issuance of the public deed must be performed by a notary public (escribano público) appointed by the purchaser and finally determines the closing date. The time between the PSA and the granting of the public deed is necessary for the notary public to obtain a report from different authorities such as the Real Property Registry and the municipal government. In some provinces, a survey of the property is mandatory before executing the public deed.

- Real estate certificates issued by real estate registries

  Real estate certificates are deemed the official record of title ownership jointly with the public deed. These certificates are usually requested by public notaries on two different moments of the transaction having different effects:

- Before executing the PSA, it is advisable that the purchaser asks a notary public for a title report and a certificate of general prohibitory injunction to sufficiently acknowledge the legal situation of the seller and ownership of the land. Such title report issued by the Real Estate Registry will provide details of any liens or encumbrances such as mortgages, garnishments, and the like, that may affect the real property.

- After the execution of the PSA but before the execution of the public deed, a certificate shall be requested by the notary public to block any registration over the real estate generally for 15 days, depending on the jurisdiction where the property is located. Such certificate contains complete details of the real property in relation to the existence of liens, encumbrances, or any and all other rights which may affect it. Please note that, once the public deed has been executed, its registration shall be filed with the Real Property Registry before the expiration of the previously mentioned certificate. In addition, a title search should be conducted by the notary public before the execution of the public deed.

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

As real estate acquisitions in Argentina are performed based on a procedure that emphasizes formalities established by law and involves public agencies, individuals and documents (real property registries, notary public, certificates), these reports constitute a guarantee themselves as public documents.

Although the parties could agree on including representations and warranties related to the transaction, the Argentine Civil and Commercial Code establishes two warranties that the seller shall grant the buyer, which are present in all purchase and sale agreements:

- Title and right of possession (evicción) – guarantees the right and title over the property. The seller shall:
    - Refrain from affecting the transferred rights
    - Defend the purchaser should third parties claim rights in relation to the real estate
    - Indemnify and hold the purchaser harmless from any costs, damages and losses related thereto.
- Latent or hidden defects (vicios redhibitorios) – such warranties are deemed to be included in the PSA unless expressly excluded by the parties. Customarily, these warranties are included in real estate transactions and guarantees the use of the property and covers defects, which have to be hidden, important and existing at the time of the purchase. Depending on the seriousness of the defect, the purchaser will be able to terminate the agreement or ask for a price reduction.

2.3 When is the sale legally binding?

Parties are bound as soon as they execute the PSA. Although the PSA works partially as a preliminary agreement to the further and definitive transfer of title to property performed through the Public Deed, it makes the sale binding between the parties. In fact, should the seller breach contract, the buyer has the option to request that the public deed such document be granted by the court.

Registration of the real estate property makes the transfer valid against third parties.

2.4 When is title transferred?

Argentina's legal system requires that the transfer of title to real property, as well as any other interest thereto, be mandatorily made through a

public deed issued by a notary public or by public officers (eg, in certain judiciary proceedings, a court may grant the title to the property). Thereafter, the notary public will register the public deed with the Real Property Registry corresponding to the jurisdiction where the real estate is located. Registration makes it valid against third parties.

2.5 What are the costs usually shouldered by the parties?

As per the new Civil and Commercial Code. the buyer pays for the following:

- Notary public's fee (customarily between 1% and 2% of the purchase price plus 21% VAT)
- Broker's commission (usually 4% of the purchase price)
- 0.5% stamp tax unless otherwise agreed upon (stamp tax may vary depending on the jurisdiction where the real estate is located — stamp tax is calculated by reference to the purchase price)

The seller pays for the following:

- All costs and expenses related to the title search (0.2% of the purchase price)
- Certificates issued by the Real Property Registry
- Tax settlement of the real property
- Broker's commission (usually 1.5–3% of the purchase price)
- 0.5% of stamp tax unless otherwise agreed upon — stamp tax is calculated by reference to the purchase price

3. Leases

3.1 What are the usual forms of leases?

- Commercial leases

  The usual forms for commercial leases are agreements including provisions freely agreed on by the parties based on the New Civil and Commercial Code of the Argentine Republic. A "lease standard form" does not exist in the Argentine market.

- Residential leases

  The usual forms for residential leases are agreements including provisions freely agreed on by the parties based on the New Civil and Commercial Code of the Argentine Republic. A "lease standard form" does not exist in the Argentine market.

3.2 Are lease provisions regulated or freely negotiable?

Generally, lease provisions are freely negotiable between the parties. However, there are certain provisions that are deemed to be public policy (such as the provisions related to the minimum term of a lease) and therefore cannot be ignored or altered by the parties to a lease agreement.

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

The maximum term of a lease according to the New Civil and Commercial Code is 20 years for residential and 50 years for commercial leases.

3.4 What are the usual lease terms?

Most of the residential leases are for a two-year term and commercial leases for three years (the minimum term required by Argentine law is now two years as per the New Civil and Commercial Code).

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

Only if such right is recognized by tenants in the corresponding lease agreement and the landlord ignores or denies this right – there are no other instances where tenants may demand an extension of the lease.

3.6 On what grounds may a lease be terminated?

Any of the parties can terminate the lease when the other party breaches the terms of the lease.

Additionally, a tenant may terminate a lease after the first six months of that lease by giving prior written notice to the landlord and by paying: (i) a penalty of one-and-a-half month's rent if termination occurs during the first year of the lease; and (ii) a penalty of one month's rent if termination occurs thereafter.

This right is only given to the tenant. The landlord cannot terminate the lease earlier for no reason.

3.7 Must rent be paid in local currency?

The parties to a lease are free to set rent payments in foreign currency. The New Civil and Commercial Code establishes that payment when agreed in foreign currency can be paid by the debtor in local currency. This new amendment has already generated great debate and there seems to be a general understanding that the parties may decide not to apply this provision in commercial dealings.

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

The parties to a lease may freely establish the way of payment. Most rent is paid monthly in advance, within the first five days of the month. As a result of high inflation, some parties have lately agreed to pay rent six or 12 months in advance. There are some conditions that should be met for

advance payments to be valid against third parties (eg, that the owner is not under a reorganization procedure or bankruptcy).

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

Indexation is prohibited in Argentina. However, the parties to a lease usually include different mechanisms to adjust the rent to mitigate the adverse effects of the devaluation of the Argentine currency.

The most typical mechanism is to establish at the execution of the lease different increasing rents for different periods (years) of the term of the lease. Also, it is common to see the parties review rent periodically (yearly being the most typical), deferring to independent real estate brokers to set up the rent if the parties do not reach an agreement on the level of new rent.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Keep the lessee free from any claim or action from any third party
- Reimburse the tenant the amount of the guarantee deposit if no damages to the property were made and there are no unpaid services left upon termination of the lease agreement
- Pay the tax levied on real estate and extraordinary expenses of the building
- Pay/reimburse the tenant for any damages to the property arising from structural defects

The following is usually required of tenants:

- Use the leased premises according to the purpose for which it is rented

- Support all costs related to all reasonable and necessary repairs to properly maintain the leased premises
- Pay the rent services and utility bills on time
- Notify the landlord of the existence of any claim, and/or appropriation or illegal use of the leased premises by any third party as soon as possible
- Return the leased premises at the expiration or termination of the lease
- Deliver to the landlord a guarantee deposit upon the execution of the lease agreement (typically, one month's rent) to cover any damages to the property upon termination of the lease agreement

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

A lease agreement may be freely sublet or assigned unless a clause expressly stating its prohibition is included in the text of the agreement. The New Civil and Commercial Code indicates that landlord may oppose. This will generate some debate.

Generally, lease agreements contain a provision restricting the right of the tenant to assign it, usually stating that a prior written consent of the landlord shall be obtained.

In addition, the Argentine Civil and Commercial Code establishes that the prohibition to sublet the leased premises implies the prohibition to assign the lease and vice versa.

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

The Argentine Civil and Commercial Code establishes that the lease shall be terminated if the premises are totally destroyed by an act of God. If the premises are partially destroyed, the rent may be reduced accordingly.

If the premises are damaged or destroyed due to causes attributed to the tenant, then the tenant may be liable for repairs or replacement. In case of fire, Argentine Civil and Commercial Code expressly states that it is the landlord who will be charged with damages unless provided otherwise in the agreement, even in cases of force majeure.

3.13 Who is usually responsible for insuring the leased premises?

Leasing regulations do not include insurance requirements. However, the parties to lease agreements usually include clauses establishing that the tenant is obligated to open an insurance policy covering the leased premises against damages caused by fire, flood, earthquake, etc., and for third party liability.

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

Lease agreements survive the sale of the leased premises and are binding upon the new owner.

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

Lease agreements survive if the leased premises are foreclosed and the foreclosure was ordered by the corresponding court and registered with the Real Estate Public Registry prior to the date of the lease agreement.

If a foreclosure is the result of a prior lawsuit over the leased premises, the lease will not survive at the option of the creditor.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Development of both urban centers and non-urban lands is regulated by municipal authorities, though provincial and federal agencies have special intervention on environmental and public service matters.

Urban centers are usually divided in areas with particular regulations regarding usage (home, office, etc.) and building (height, sight, etc.) parameters. Consequently, real estate projects must be approved by the city authority on a case-by-case basis as well as provincial and federal agencies when the project is subject due to its nature to said jurisdiction.

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

Federal and provincial governments regulate environmental issues. Federal government sets minimum standards (water usage, air pollution, etc.) and prospective operative conduct (waste management, etc.) per area. Provinces must respect these standards and regulate on operative conducts according to the general spirit set forth by the federal law.

The following are regulated primary environmental areas:

- General land usage provisions (Civil and Commercial Code)
- Water usage
- Forestry protection
- Air usage
- Fauna protection
- Hazardous waste, industrial waste and domiciliary waste

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

To start any urban project, it is necessary to obtain a plan approval from the municipal agency in charge of real estate development activities.

The Argentine environmental system provides for a complex structure ordered per regulative area and per jurisdictional location. This implies that

each norm will define the administrative body charged with the provision of authorization, which might require cumulative procedures.

The typical licenses or authorizations required include general project approval by the environmental agency in the jurisdiction (federal, provincial or municipal) delivered through a positive environmental impact statement (Declaración de Impacto Ambiental), and approval of the construction's plumbing by the provincial water management agency.

4.4 Can an environmental cleanup be required?

Environmental cleanup shall be required in any real estate project according to environmental laws in Argentina.

4.5 Are there minimum energy performance requirements for buildings?

There are no federal regulations regarding minimum energy performance requirements for buildings. There might be local regulations at the municipal level.

The only regulation on energy performance refers to the compulsory usage of low-consumption lamps. national regulatory authority for energy

There are also regulations of the National Regulatory Authority for Energy (Ente Nacional Regulador de la Energía) designed to promote lower usage of electricity by setting forth penalties to users with increased electricity consumption compared to that of the previous year.

In addition, the federal government restricts the use of electricity to certain industrial companies upon detecting a shortage of available electricity in the market.

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

The Federal Energy Agency promotes efficient energy usage conduct through national programs. These programs are obligatory for public buildings and voluntary for private properties. These are created to define and recommend prospective measures suitable for occupational construction.

02 Australia

1. Real Estate Law

1.1 What is included in the term "real estate"?

Under Australian law, the term "real estate" includes the following:

- Land
- All improvements (ie, buildings and structures) and fixtures to the land

1.2 What laws govern real estate transactions?

Under the Australian federal system of government, real estate transactions are governed by the laws of each individual State or Territory making up the Commonwealth of Australia. These laws consist of a combination of common law and legislation, which vary slightly between these jurisdictions, although they are all based on English property law principles.

1.3 What is the land registration system?

There are four systems of land ownership and title registration in Australia: "Old System Title," "Torrens Title," "Crown Land Title" and "Native Title." The vast majority of commercial and residential land in Australia is held under the Torrens Title system.

Old System Title (or common law title) was the title system in force before the introduction of the Torrens Title system in 1863. Old System Title is based on original documentation forming a chain of title that traces the ownership of the property back to a good "root of title" (or at least for a specified period of time). These documents must be examined every time the property is sold or dealt with. With a few exceptions, the majority of the remaining Old System land is rural land or land that has been rarely transferred or dealt with and therefore has not undergone the conversion procedure to Torrens Title land.

The Torrens Title system operates on the principle of "title by registration" (giving indefeasibility of title to the registered holder of an interest in land). Torrens Title gives priority by registration under which a registered proprietor of an interest in land holds their interest subject to prior registered interests, but free from all unregistered interests (subject to limited exceptions). Torrens Title is a "State" guarantee-based system of title ownership and no separate title insurance is required to support the ownership of land interests.

The third type of land is Crown Land, which is land held by a particular State or Territory of the Commonwealth so that it can better control the use of the land (for example, as a reserve or subject to a pastoral lease). Crown Land is often involved with mining and rural land acquisitions and can be the subject of Native Title claims.

Native Title is the term used in Australian law to describe the rights afforded to aboriginal people that have derived from their traditional laws and customs that are recognized by the common law. The recognition of those rights is comparatively recent although the rights themselves existed prior to the European settlement of Australia. If, at the time of settlement of Australia, any aborigines or aboriginal groups had rights to unalienated Crown Land under their laws or customs, and have continuously enjoyed those rights, they exist despite the Crown's sovereignty that came with the European settlement of Australia.

1.4 Which authority manages the registration of titles?

Each State and Territory has its own land titles registry or authority which manages the registration of titles. Each registry has its own rules, requirements and forms.

There is a separate Commonwealth register for Native Title claims.

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

While there is no legal requirement that interests in land are registered, the central premise of the Torrens Title system is that for a legal right or interest to exist, that interest must be registered. This makes registration of interests in land usually essential to establish rights and to enforce claims against third parties.

As a result, all States and Territories provide for the registration of most forms of interests in land including the following:

- Freehold title
- Leasehold title (in most States and Territories although there may be some exemptions for shorter-term leases)
- Mortgages
- Easements
- Restrictive covenants
- Caveats

1.6 What documents can land owners use to prove ownership over real property?

Under the Torrens System, registration of an interest in land is conclusive evidence of title except in certain limited cases such as fraud. Land ownership may be proved through production of the certificate of title supported by a current title search from the relevant state or territory land registry. However, it is not always mandatory for a certificate of title to be issued for a property and, therefore, in some cases a title search may be sufficient where a certificate of title is not issued depending on the State or Territory jurisdiction involved.

In the case of an Old System Title (which is now very limited), ownership may be proven by reviewing a series of original documents comprising a chain of title over many years to establish a good "root of title" to the property, together with evidence of registration of these documents in a separate deeds register to establish priority.

1.7 Can a title search be conducted online?

Generally, title searches can be conducted online across all States and Territories. Searches of the Torrens Title system are available to the public for a small fee and usually include information on ownership as well as any encumbrances, and other rights or interests affecting the title in question.

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

Foreign investment in Australian real estate is subject to certain controls. Foreign citizens and companies can acquire real property in Australia but notification to and pre-approval by the Foreign Investment Review Board (FIRB) is compulsory for the acquisition of wide range of interests in real property. This also extends to foreigners acquiring securities in an Australian company or trust that owns land.

Foreign real estate investment covers investment in residential real estate, commercial real estate, accommodation facilities and as well as urban land corporations and trusts (that is, the trust or corporation holds more than 50% of its assets in certain land). In particular, there are strict controls on the foreign acquisition of vacant land and residential property.

Separate controls apply for the acquisition of non-urban or rural and agricultural land by foreign interests.

Certain acquisitions of commercial property do not require notification or pre approval under the Foreign Acquisitions and Takeovers Act 1975 and supporting 2015 Regulations. However, foreign investors need to carefully determine if their proposed acquisition is affected by these laws in each

instance. Current exemptions can include transactions involving an interest in "developed" commercial property valued below AUD 57 million or AUD 1,134 million for investors from a range of countries including the USA, Japan, South Korea, Singapore, Chile and New Zealand (noting these figures are indexed annually). If a notification or approval is required, application fees will apply and presently range from AUD 2,000 to AUD 101,500 depending upon the transaction. Proposals for the acquisitions of developed commercial real estate are normally approved. All acquisitions of Australian real estate by a foreign government interests always require separate notification and approval.

1.9 Can the government expropriate real property?

The Commonwealth Government and each of the State and Territory Government have enacted laws that deal with the compulsory acquisition of land and acquisition by agreement with land owners. As a general rule, the relevant government may compulsorily acquire land for proper public purposes. Legislation dealing with compulsory acquisition of land generally entitles the land owner and others with legal interests in land to a right to fair compensation. The amount of compensation is usually determined by considering the market value of the land and certain other matters, such as any special value of the land to the person on the date of the acquisition and any loss attributable to severance of the acquired land from other land in the possession of the respective owner.

1.10 How can real estate be held?

Generally, an interest in real estate is held under one of the following forms of title:

- Freehold
- Leasehold
- Strata Title

- Crown Land
- Native Title

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

The major types of investment vehicle used in Australia by both residents and non-residents are the following:

- Companies, including branch offices of foreign companies
- Joint ventures (incorporated or unincorporated)
- Partnerships
- Trading trusts
- Discretionary trusts
- Unit trusts, eg, real estate investment trusts
- Sole trader
- Co-ownership

The choice of an appropriate structure will depend on the nature of the particular property and parties involved with the acquisition.

1.12 How are real estate transactions usually funded?

The majority of commercial real estate transactions in Australia are funded by a mix of equity and debt, with gearing levels often between 40% and 60%. The type of funding is usually influenced by the asset class and location of property to be acquired.

Institutional lenders such as banks are the main sources of debt financing. On larger acquisitions, it is common for lenders to require a hedging strategy to manage interest rate risk over the term of the financing. While

security structures vary, lenders will typically take a first registered mortgage over the real estate asset and also take security in the form of a registered general security interest over all the assets of the borrower and any entity which holds ancillary or related rights over the real estate.

1.13 Who usually produces the documentation in real estate transactions?

Generally, the party selling or providing the interest (eg, vendor or landlord) will prepare the initial drafts of the documentation required for the particular real estate transaction. The parties may then negotiate the form and substance of the documents until agreement is reached and the documents are executed.

1.14 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?

Generally, upon registration of its interest in real estate, an owner or occupier will assume liability for all matters relating to that property. On the acquisition of real estate, this would include certain liabilities under any existing leases and other registered interests on the title. Typically, on an acquisition of land, any existing mortgages or charges over the land will be discharged.

Rates and taxes (in particular, land tax) run with the land as a statutory charge and can be an inherited liability if not discharged on acquisition.

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

Certain liabilities relating to rates and taxes and stamp duty affecting land can remain with a seller following a sale but these are usually adjusted and discharged on settlement of a property sale.

Residual liabilities can remain with a seller of a property under leases it has granted where the subsequent buyer does not comply with the lease term. However, in practice, this is usually not a material issue.

Apart from contractual liabilities toward the buyer that may remain with the seller following the disposal of the property, the seller may retain liability in connection with contaminated land or pollution in any of the following circumstances:

- If a seller or occupier has contaminated land, it may incur a statutory liability to either investigate or remediate the contamination, even after it has disposed of the land
- If a seller or occupier has caused pollution, it may be civilly or criminally liable for that pollution even after it has disposed of the land

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

The usual documents involved in the acquisition of real estate include:

- Title searches of relevant lots
- Survey to establish boundaries, encroachments and in some cases lettable areas
- Planning and other statutory certificates to establish zoning and use controls and matters affecting the real estate
- Environmental reports including contamination reports
- Building condition reports
- Due diligence report in the case of commercial transactions
- Sale and purchase agreement
- Financing documentation

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

A seller usually gives warranties in relation to tenancies on the property and other third party rights and warranties relating to the state of the property, particularly in the case of contamination.

In most States and Territories, statutory warranties are required by law from a seller. These warranties can be quite extensive and usually cannot be modified or contracted out of. Most warranties relate to any interest or proposal by government authorities and other third parties such as orders and notices affecting the property. The buyer usually has a right to terminate the contract for sale for a breach of these statutory warranties unless relevant disclosures are made.

2.3 When is the sale legally binding?

Parties are usually only legally bound when they sign and exchange the formal contract of sale documents. The sale documents are often drafted to be conditional upon matters such as satisfactory due diligence or approval under the Foreign Acquisitions and Takeovers Act 1975 and 2015 Regulations.

2.4 When is title transferred?

Under the Torrens Title system, legal title is only transferred upon the registration of the title transfer documentation, into the buyer's name, which usually takes place immediately on the closing of a property transaction.

2.5 What are the costs usually shouldered by the parties?

In respect of sales, the buyer usually pays for:

- Buyer's legal costs including the preparation of a due diligence report
- State-based stamp duty

- Registration fees

The seller usually pays for:

- Seller's legal costs
- Real estate agent's commission and fees
- Any income or capital gains tax on any profit made on the sale

With commercial leases, it is not usual for the landlord to require the tenant to pay the landlord's costs of preparing, negotiating and settling the lease documentation.

3. Leases

3.1 What are the usual forms of leases?

In Australia, arrangements between commercial landlords and tenants are primarily governed by lease documentation. These documents, especially those used by institutional landlords, contain detailed provisions that regulate the relationship between the landlord and the tenant.

- Commercial leases

  Commercial leases are commonly net leases, ie, the tenant pays an agreed rent (subject to rent increases on agreed terms) as well as a contribution to the landlord's operating expenses for the building or land.

  The proportion of the tenant's contribution to operating expenses generally is calculated by reference to the proportion (expressed as a percentage) the lettable area of the tenant's premises bears to the total lettable area of the building or property involved.

- Retail leases

Most States and Territories have enacted separate retail lease legislation to enshrine certain statutory protections on retail tenants who are considered to have little or no bargaining power against institutional landlords. The retail lease legislation differs between States and Territories, including as to what falls within the category of a "retail lease" in that jurisdiction. However, all forms of retail lease legislation share the common objective of ensuring that retail tenants are entitled to certain minimum conditions that override any provision to the contrary in a lease.

- Ground leases

  Another form of leasing arrangement is a long-term ground lease, typically granted from a government authority over larger types of developments under which the ground tenant or developer usually leases vacant land for development. Once the development is completed, the ground tenant will sublet the space to retail, office or industrial sub tenants, depending on the type of development. Ground leasehold interests may be bought and sold in a manner similar to freehold property interests.

- Residential leases

  Residential lease terms are strictly regulated by State and Territory legislation to provide residential tenants with tight consumer protections.

3.2 Are lease provisions regulated or freely negotiable?

Generally, commercial lease provisions are freely negotiable but are subject to the common law and legislation dealing with general property principles and title registration. There is limited opportunity to opt out of the provisions of the retail tenancy legislation, which applies to certain retail tenancies, including tenancies in a shopping center.

There are also usually limited rights to amend residential lease terms where they are prescribed by State or Territory legislation.

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

There is no prescribed maximum term for a commercial lease. However, there may be rights in a particular jurisdiction to convert a very long-term lease of several hundred years into freehold. The duration of the lease term can be for any number of years or up to a fixed date (and sometimes Crown Land can be subject to leases in perpetuity). Parties can often negotiate a right to extend or renew the lease for a further term through lease options in favor of the tenant.

Alternatively, a lease may contain a holding over clause which allows tenants to remain in occupation of the leased premises on the basis of a monthly tenancy or some other agreed period after the lease term has expired, but typically only with the prior consent of the landlord.

In some circumstances, planning approval may be required to grant a lease of part of land (not part of a building) for a certain period of time, and some leases require approval under the Foreign Acquisitions and Takeovers Act 1975 and 2015 Regulations.

3.4 What are the usual lease terms?

The length of commercial leases in Australia can vary depending on the nature of the premises and the intention of the parties. The typical term of a commercial lease for commercial premises is usually between three and 10 years, with or without option rights in favor of the tenant to extend. For major retail leases, such as those to anchor supermarket or department store tenants, lease terms can significantly exceed 10 years and generally include a series of option rights to extend, sometimes up to a total of 40 years.

Many retail leases are governed by specific legislation and, in most jurisdictions, have a minimum term of five years (inclusive of options for renewal) unless the tenant agrees to waive that right.

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

There is no right imposed by statute that entitles a tenant to a renewal of a lease. In the case of leases which are subject to retail lease legislation, the landlord can be required to give prior notice as to whether it intends to extend the retail lease on expiry, and the lease will continue until a set period after this notice is given.

3.6 On what grounds may a lease be terminated?

A landlord can generally terminate a lease only when the tenant is in breach of their essential obligations under the lease. Leases usually also contain clauses that allow for a party to terminate in the event of damage or destruction of the premises or if the land involved is resumed.

Additionally, in the case of retail leases, some jurisdictions allow the landlord to terminate a lease if the landlord intends to demolish the premises for redevelopment subject to limited compensation, providing these provisions are clearly set out in the disclosures prior to the grant of the retail lease and in the lease itself.

3.7 Must rent be paid in local currency?

It is standard practice that rent be paid in Australian dollars.

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

Usually, rent is paid on a monthly basis, in advance and on the first day or business day of the month.

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

Generally, commercial rents are reviewed in three ways:

- Fixed annual percentage increase (eg, presently around 3-5%)
- Determination of a market rent value usually settled by an independent valuation
- Cost of living increases measured by the Consumer Price Index published by the Australian Bureau of Statistics

Parties may also agree to use a combination of these types of reviews during a lease term and landlords often seek to include a "ratchet" clause that provides that the rent will not decrease. In most jurisdictions, ratchet clauses and certain other forms of rent reviews are controlled or prohibited in retail leases.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Repair and maintain the structural parts of the property, rectify inherent defects and be responsible for fair wear and tear of the premises
- Ensure that the tenant has quiet enjoyment of the premises
- Provide certain services to the tenancy

The following is usually required of tenants:

- Pay rent on time
- Pay a proportion of the building's outgoings (which may include cleaning costs)
- Maintain the premises in a good and clean condition
- Repair damage caused by the tenant
- Give the landlord access for inspections and landlord's work

- Yield up the premises to an agreed condition at the expiry of the lease

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

Commercial tenants are typically permitted to assign or sublet the premises with the landlord's prior written consent. Where the landlord's consent is required, the landlord is usually required to act reasonably and promptly when considering the tenant's request to assign or sublet the leased premises.

In more sophisticated leases, there are detailed change of control provisions affecting the tenant that can trigger the transfer and assignment provisions in the lease.

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

If the premises is substantially destroyed, rent generally abates and the lease may be terminated by either party subject to certain pre-conditions.

If the premises is not substantially damaged, the landlord may choose to repair the damage or, alternatively, terminate the lease. Typically, rent will abate (on a proportional basis) until the premises is fully repaired unless the damage has been caused by the tenant, in which case, the right to rent abatement is usually lost.

3.13 Who is usually responsible for insuring the leased premises?

Commercial landlords are generally responsible for insuring the building in which leased premises are located. However, the cost of this insurance is typically passed on to the tenant as part of the building outgoings.

The tenant will normally be responsible for maintaining insurance policies for the leased premises that relate to their use and occupation of the premises (such as public liability insurance, plate glass insurance and property insurance). The level of public liability insurance required by

commercial landlords from tenants is relatively high when compared to other overseas jurisdictions and is usually set between AUD 20 million to AUD 50 million.

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

The tenant has the right to remain in occupancy until the end of the lease term, subject to the registration of the tenant's interest under the Torrens Title (where required).

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

Foreclosure is not a common mortgagee remedy in Australia as the mortgagee is usually required to offer the property for sale by public auction. There are also other controls that limit the vesting of property in the mortgagee.

Nevertheless, a lease entered into before a mortgage is placed on the property will survive a foreclosure, as will any lease that has been consented to by the mortgagee during the term of the mortgage, noting that the mortgagee's consent is required as a precondition of registration of a lease under the Torrens Title system, for the mortgagee to be bound by a lease granted after the registration of the mortgage.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

State, Territory and Local Governments primarily control the development and use of land throughout Australia, through a combination of planning policies and instruments, and legislation. Local councils generally assess, approve and regulate the majority of developments within their Local Government boundaries with exceptions relating to projects of regional or national significance.

Environment regulation is primarily governed by the relevant environmental protection authority in each State and Territory.

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

Australia has extensive environmental protection laws at both Commonwealth and State or Territory levels. In broad terms, the Commonwealth legislation deals with Australia's international environmental obligations such as world heritage sites, nuclear activity and the marine environment. Through State or Territory-based legislation and environmental protection agencies (EPAs), each State and Territory regulates and manages systems for pollution control, contamination, hazardous materials, waste disposal and biodiversity protection. While States and Territories take different approaches in some areas regarding environmental matters, they share many common elements.

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

At a local council level, plans designate zones for all land under that local council's jurisdiction and then prescribe for each zone the types of development that will be permitted or prohibited (eg, residential, commercial, industrial and the like, with further divisions within each category), and, where development is permitted, the level of consent that is required. Generally, very little development is permitted without requiring some level of local council consent.

Consent must also be obtained before any building work can be started. Again, the requirements vary between the jurisdictions and from council to council, but common to all is the requirement for detailed construction (and in some cases, landscaping) plans and specifications to be submitted to the local council for approval.

Once building work has been completed in accordance with the consent documents and the conditions imposed by them, the local council (or

private certifier, in some cases) will issue a certificate that enables the building or areas of new work to be occupied legally and used for their purposes.

Annual certification of essential services is also a requirement in all states and territories. These are designed as a means of ensuring that buildings are safe, particularly in relation to fire safety issues.

Depending on the nature of the use of the property, other annual licenses may have to be obtained, for example, for the operation of lifts, waste disposal or for storage, transportation and use of hazardous substances.

4.4 Can an environmental cleanup be required?

Each State and Territory has specific statutes dealing with land contamination and laws with respect to cleanup and remediation of contaminated land. These laws differ as to who is primarily responsible for the cleanup and the hierarchy of parties (government, owner, past owner, or occupier) who can be served with a notice or order attributing some responsibility for contaminated land.

4.5 Are there minimum energy performance requirements for buildings?

Currently, there are two principal systems to rate the sustainability of new and existing commercial buildings in Australia:

- Green Star ratings

  Developed by the Green Building Council of Australia, the Green Star rating system is typically used to assess the sustainability of the building design and construction for a new building. It considers nine criteria, including energy, waste, water efficiency, materials conservation, indoor environment quality, land use and ecology, alterative forms of transport, emissions levels, innovations promoting sustainability as well as the overall management of a buildings design, construction and ongoing operation.

- The National Australian Built Environment Rating System (NABERS)

  NABERS is administered by the NSW Office of Environment and Heritage, but operates Australia-wide. The focus of NABERS is on the "operation" of existing buildings and can be used for the whole building or specific tenancies. It has separate tools to assess energy use (called NABERS Energy, the most commonly used NABERS rating tool), water use, waste and indoor environment quality. While initially developed for office buildings, NABERS has also developed rating tools to be used for residential houses, hotels, shopping centers and data centers. NABERS is also developing further rating tools for industrial premises, schools, hospitals and transport facilities.

The fact that there are two competing green rating systems has caused some confusion in the market, although there are moves to harmonize these two systems. Currently, compliance with either regime (that is obtaining a Green Star or NABERS rating) is voluntary, although there are significant incentives to do so. The Property Council of Australia (Australia's national organization of building owners and managers), will only award a new office building "Grade A" or "Premium" status if the building obtains a five-star Green Star rating and a five-star NABERS Energy rating. The "Grade A" or "Premium" status is important for encouraging tenants concerned about their own energy consumption to lease space.

In addition, Commonwealth and State and Territory Governments have set minimum rating standards for buildings owned or leased by government agencies.

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

Importantly, all Australian commercial office buildings over 1000 square meters must obtain a Building Energy Efficiency Certificate (BEEC) before any listing for sale and leasing transactions in relation to the building. The

certificate must contain a NABERS energy rating. This rating must also be included in any listing for sale or lease.

03 Austria

1. Real Estate Law

1.1 What is included in the term "real estate"?

Austrian civil law provides that the term "real estate" essentially comprises the following:

- Land
- Any buildings or other constructions firmly connected to the ground (following the superficies solo cedit principle)

1.2 What laws govern real estate transactions?

The following laws govern real estate transactions in Austria:

- The Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch)
- The Land Register Act (Grundbuchsgesetz)
- The laws governing the acquisition of land by foreigners of the nine federal states (Grundverkehrsgesetze)
- The Condominium Act (Wohnungseigentumsgesetz)
- The Building Development Contract Act (Bauträgervertragsgesetz)
- The building laws of the nine federal states (Bauordnungen)
- The Real Estate Investment Fund Act (Immobilien-Investmentfondsgesetz)
- The Austrian Tenancy Act (Mietrechtsgesetz)
- The Austrian Energy Certificate Act (Energie-Ausweis-Vorlage Gesetz)
- The Real Estate Transfer Act (Grunderwerbsteuergesetz)
- The Building Right Act (Baurechtsgesetz)

Moreover, under Austrian tax law, particularly with regard to stamp duties (Rechtsgeschäftsgebühren), the rulings of the Austrian Administrative Court (especially in the field of tax and fiscal law) and the Austrian Supreme Court (in particular legal issues in the field of Austrian civil law) have to be taken into account in the handling of real estate transactions.

1.3 What is the land registration system?

The Austrian land register is administered by the district courts (Bezirksgerichte). Each register contains a record of certain rights and encumbrances (eg, ownership, mortgages, easements, etc.) as well as further information regarding the particular real property.

1.4 Which authority manages the registration of titles?

The registration of titles is managed by the competent district court of the district in which the real property is located.

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

The following rights or interests in rights regarding real estate can be subject to a registration with the land register:

- Ownership
- Mortgages (Hypotheken)
- Easements (Dienstbarkeiten)
- Land charges/land rents (Reallasten)
- Building or construction rights (Baurechte)
- Leases (Mietrechte)
- Right to repurchase (Wiederkaufsrecht)
- Preemption right (Vorkaufsrecht)

- Prohibitions of sale and encumbrance (Veräußerungs-und Belastungsverbote)

1.6 What documents can land owners use to prove ownership over real property?

The land register is open to the public. Information on real estate ownership can also be accessed from an electronic register. Thus, excerpts of the land register can be obtained at any district court or from certain institutions with access to the electronic register (such as lawyers or notary publics).

1.7 Can a title search be conducted online?

Yes. The land register excerpts and the respective documents (evidencing the respective entry into the register, such as a purchase agreement) have been available in the electronic register since 2005.

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

All nine Austrian federal states have different legal restrictions for the purchase of real estate by non-EU/EEA residents or entities. These restrictions are governed by the laws governing the acquisition of land by foreigners of the nine federal states. In fact, there are certain requirements for the purchase of real property in each of the nine Austrian federal states, which can differ from one another. In general, a foreign purchaser of real estate properties located in Austria must obtain a specific approval or permit issued by the authorities. This applies to third-country citizens only. Citizens of an EU- or EEA-member state are generally exempted from the requirement to obtain such approval.

1.9 Can the government expropriate real property?

In general, property can be expropriated by government and quasi-government authorities (see the Austrian Main Road Act [Bundesstraßengesetz] or the federal building laws).

In case of an expropriation, the government or the quasi-government authority usually has to pay appropriate compensation.

1.10 How can real estate be held?

Generally, an interest is held by any of the following:

- Ownership
- Co-ownership (Miteigentum)
- Condominium (Wohnungseigentum)

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

The most common corporate structures used to invest in real estate in Austria are the following:

- Stock companies
- Limited liability companies
- Partnerships
- Limited partnerships
- Private foundations

1.12 How are real estate transactions usually funded?

Generally, real estate financing in Austria is established through a loan agreement, entered into between the lender and the borrower. Interest rates are calculated by adding the prime rate and the margin or spread

(displayed as a percentage) plus certain costs (if any). The prime rate is based upon a rate periodically announced by the respective central bank (eg, the three-month EURIBOR). In some cases, interest rate swaps and interest rate caps and floors are used especially in long-term financing to limit interest rate risks. Typically, it is the borrower's responsibility to pay for all of the lender's legal and other costs, such as commitment and processing fees, in arranging property financing. Lending institutions will usually require the borrower to enter into some kind of security documents such as mortgages, charges, liens, pledges and assignments.

1.13 Who usually produces the documentation in real estate transactions?

Usually, the buyer's lawyer will prepare the initial draft of the purchase agreement.

1.14 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?

The applicable Austrian laws (eg, the Waste Management Act [Abfallwirtschaftsgesetz] or the Water Management Act [Wasserrechtsgesetz]) follow the "polluter-pays principle." The polluter remains liable, even if the property is subsequently sold. If the polluter cannot be determined or cannot remedy the situation, then the authorities can request the respective measures be taken by the owner of the land, provided that the owner either consented to the storage of waste materials or tolerated the pollution by a third party without taking adequate measures to prevent it.

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

As pointed out, the buyer of a property may be liable for decontamination measures under public law if he or she was aware of the contamination or could have been aware when he or she took over the property. The parties might agree to restrict the representations and the warranties of the seller

in the purchase agreement. For properties held in leasehold, the tenant is generally not held liable for a previous tenant's obligation.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Sale and purchase agreement (Kaufvertrag)

  Basically, the sale and purchase agreement contains all necessary terms and conditions of the transaction such as the description of the land (as stated in the Austrian land register), stipulation of the purchase price, allocation of taxes and additional costs. In addition, the agreement usually contains representations and warranties of the seller for the benefit of the buyer.

- Formal approval of the seller (Aufsandungserklärung)

  The seller must formally approve the registration of the buyer in the land register. For that purpose, the seller grants consent to the purchase agreement. It may also be granted in a separate document. In any case, the agreement must be made in writing and signatures must be certified by a district court or a notary public. These formal requirements are to be met for the registration in the land register.

- Due diligence

  In general, the buyer conducts extensive due diligence to evaluate the purchase price before the sale and purchase agreement is signed. In particular, lease agreements, construction materials, possible contamination of the property and other public legal duties can strongly influence the value of real estate.

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

The scope of contractually agreed-upon warranties usually depends on both the negotiation power of the parties as well as the type of property. In general, the seller tends to reduce warranties and representations to a minimum of course.

Austrian civil law establishes a rebuttable presumption that the purchasers agrees to the assumption of easements. However, that does not apply to the assumption of liens (mortgages). Therefore, unless agreed otherwise, the seller of a real property is obliged to sell the real property free from any encumbrances (Depurierungspflicht).

2.3 When is the sale legally binding?

Basically, the parties are legally bound as soon as the parties agreed on the object of the purchase and the purchase price. In fact, an oral agreement would be legally binding. However, as the registration with the land register requires the sale and purchase agreement to be certified by a district court or a notary public, the agreement must be made in writing.

2.4 When is title transferred?

According to the Austrian Civil Code, there are two requirements to be met for the transfer of title. Proper title for the transaction (eg, the sale and purchase agreement) and the registration in the land register. Upon registration of the deed, the ownership of the real estate is transferred to the buyer.

2.5 What are the costs usually shouldered by the parties?

In Austria, the buyer usually pays for the following:

- Legal fees
- Taxes and stamp duties

- Registration fees

The seller bears taxes on the profit made on the sale of the real estate.

3. Leases

3.1 What are the usual forms of leases?

At the onset, a crucial particularity of Austrian law must be observed: lease agreements concluded in writing trigger stamp duty tax. Thus, written lease agreements have to be filed with the tax authorities for stamp duties until the 15th of the second month following the execution of the agreement and stamp duty has to be paid. An exemption applies to all residential leases.

The applicable tax rate is 1% of the assessment base. The assessment base is the triple of the annual lease payments (rents, operational costs, VAT, insurance, key money, etc.) if the term of the agreement is indefinite. If the contract stipulates a definite term, the assessment base is the amount of the annual lease payments multiplied by the duration of the agreement (up to 18 times maximum).

If agreements that are subject to stamp duties are not filed on time and the duty is not paid, penalties of up to 100% of the unpaid duties might be triggered. Both parties to the agreement are liable for the stamp duties and the penalties, irrespective of the contractual agreement between the parties.

Stamp duties can legally be avoided and/or reduced. In case of a lease with an indefinite term, the stamp duty assessment base will be reduced to three years only in case the lease provides for a termination right waiver for a specific period. Stamp duties can be fully avoided by offering lease conditions in writing and by the other party just accepting these terms implicitly, eg, by paying the rent. Further, stamp duty can be fully avoided by so-called "lawyers correspondence," ie, the parties together with their

lawyers can orally agree upon the lease and subsequently draft a memorandum regarding the terms to be sent to their respective clients.

- Austrian Tenancy Act (the "Tenancy Act")

  Most residential tenancies and most commercial leases are regulated by the Tenancy Act. The Tenancy Act distinguishes between its full ambit (Vollanwendungsbereich, which provides for a wider scope of tenant-friendly provisions) and its partial ambit.

  Hence, the Tenancy Act is either applicable, partly applicable or not applicable at all. In general, the Tenancy Act is fully applicable on leases of residential properties and commercial premises built before 1945. However, several exceptions apply. If the full ambit applies, the maximum rent payable is capped for residential tenancy. If the tenancy is concluded for a definite term (minimum three years), the maximum rent as defined in the Tenancy Act is further reduced by 25%. The definite term of tenancies subject to the Tenancy Act must be in writing. Otherwise, the tenancy will be interpreted as a tenancy with an indefinite term. Key money payments are not permissible.

  Furthermore, and this applies to both full and partial ambit, landlord's termination rights are restricted to termination for good cause. Thus, no termination for convenience is permissible. Also, the landlord's termination of the tenancy must be declared in court.

- Commercial leases

  With regard to commercial leases, two types of leases must be distinguished: first, the "ordinary" commercial tenancy of space (Geschäftsraummiete), which is subject to the Tenancy Act; second, the lease of a business unit/enterprise (so-called "Pacht"), which is not subject to the Tenancy Act.

As for "ordinary" commercial tenancy, the Tenancy Act will apply if the term of lease is at least six months. However, several provisions exclusively reserved for residential tenancies will not apply, eg, restrictions on rent.

As for Pacht, in case the tenant rents a business/enterprise that includes real property or in case leased premises is part of an enterprise (eg, a shop in a shopping mall) or in case of lease of land, only the Austrian Civil Code applies, which sets forth provisions considerably less favorable for tenants, eg, no termination in court necessary, no restriction of termination rights, etc.

3.2 Are lease provisions regulated or freely negotiable?

The Austrian legal system has two main sources of tenancy law. The special regime of the Tenancy Act is, with very few exceptions, mandatory and cannot be modified by contract to the disadvantage of the tenant. As far as the Tenancy Act is not applicable, the Austrian Civil Code applies (such as commercial lease agreements for a limited period not exceeding six months or employee housing, or Pacht agreements). In these cases, lease provisions are basically not regulated and to a large extent freely negotiable.

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

Austrian law does not provide for a maximum term for leases.

3.4 What are the usual lease terms?

The parties may agree on an indefinite or fixed term. Usually, commercial and residential lease agreements are entered into for a fixed term. However, as for residential tenancies, the Tenancy Act provides for a minimum term of at least three years.

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

Austrian tenancy law does not provide any mandatory provisions that allow the tenant to renew its lease. However, tenancies subject to the Tenancy Act that are limited in time are automatically renewed by operations of law for three years if they are not renewed or terminated (eg, if the tenant continues using the premises or pays the rent and the landlord does not object).

3.6 On what grounds may a lease be terminated?

A lease contract is terminated under any of the following circumstances:

- Termination declared by the landlord, provided that the landlord is relying upon one of the grounds for termination stipulated in the Tenancy Act, if applicable (including nonpayment of rent and lack of proper maintenance of the property)
- Termination declared by the tenant
- Destruction of the rental property
- Lapse of time in case a specific termination date was initially agreed upon
- Immediate termination declared by the tenant if the rental property has deteriorated to the extent that it is impossible for the tenant to use it
- Immediate termination declared by the landlord in case the rental property is used in a way contrary to the lease agreement; another reason would be that the tenant is in default in payment of at least two months' rent

3.7 Must rent be paid in local currency?

Basically, there are no restrictions regarding the currency. However, arrangements for payment of rents in foreign currency are not common practice in Austria.

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

If not agreed otherwise, rent is due in advance on the fifth day of each month (in case the Tenancy Act applies, no earlier day may be set). In business-to-business transactions, if the tenant negligently does not pay the rent on the due date, the landlord may charge default interest at the rate of 9.2% above the relevant base rate. Without negligence, only 4% default interest is due.

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

According to the Tenancy Act, the maximum amount of rent payable per month depends on the category and on the size of the rental property. However, these restrictions do not apply to buildings that fall under the partial ambit of the Tenancy Act or Pacht agreements, or "ordinary" commercial tenancies or lease agreements with a lease term of less than six months.

3.10 What are the basic obligations of landlords and tenants?

The following duties are usually required of landlords:

- Renovate and carry out emergency repairs of the structure of the property
- Insure the property
- Provide tenants with a valid notice of termination (in writing) if terminating the tenancy

The following duties are usually required of tenants:

- Pay the rent on time
- Maintain the property in good condition
- Inform the landlord in case of damages
- Allow the landlord access to the rental property for inspections

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

The transfer of the lease contract to a third party, such as by assignment of the agreement, is subject to landlord's approval/consent.

With regard to subletting, tenants are generally allowed to sublet the premises or parts thereof unless the underlying lease contract states otherwise. Moreover, leases that fall under the full ambit of the Tenancy Act are subject to certain restrictions. The Tenancy Act states that the landlord may only invoke subletting prohibitions for important reasons.

In this regard, it is to be emphasized that under the Tenancy Act, the landlord is entitled to raise the rent to fair market level if the legal and economic influence on a tenant – being a legal entity – changes and if the lease falls under the full ambit of the Tenancy Act. The landlord must be notified immediately of such change to enable the landlord to exercise his or her right to increase the rent. The rent increase corresponds to the difference between the current (and presumably lower) rent and the fair market rent payable for the premises. This applies to asset deals as well as lease-outs. The parties can further agree that this rule shall apply to leases that only fall under the partial ambit of the Tenancy Act or to leases that are not subject to the Tenancy Act.

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

In case real property is substantially damaged or destroyed by an act of God or in time of war, the lease agreement is terminated. In any other case, the landlord is obligated to repair or rebuild the property provided an insurance company covers the costs.

3.13 Who is usually responsible for insuring the leased premises?

As stated above, the landlord is responsible for insuring the real property where the leased premises is located. The landlord may recover such costs from the tenant in a lease.

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

In cases where the Tenancy Act applies, the lease agreement is automatically assigned to the purchaser of the rental object as the new landlord. However, in cases where the Tenancy Act does not apply and where the lease agreement is not registered with the land register, the purchaser may terminate the lease agreement.

3.15 Will the lease survive if the leased premises is foreclosed?

Basically, the same rules apply as explained in the question 3.14 above.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

In Austria, land development on a federal level (überörtliche Raumplanung) is regulated by the laws of the nine federal states. However, land development on a local level (eg, the construction of new projects) is subject to the municipal legislation and execution (örtliche Raumplanung).

The main source of environmental law in Austria is the legislation of the nine federal states, but there are some subject matters reserved to the federal legislation (such as the Waste Management Act or the Water

Management Act). An additional source of environmental legislation is the EU.

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

As stated above, the laws of the nine federal states (in particular those concerning business and industrial activity and the federal legislation, particularly the Waste Management Act and the Water Management Act) affect the use and occupation of real estate in Austria.

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

Building regulations are subject to the legislation of the nine federal states. As a consequence, building regulations can differ from each other in each of the nine federal states. In general, before construction work can begin, planning permission (Baubewilligung) from the local authority must be obtained. Usually, occupancy permission (Benützungsbewilligung) is also required to be obtained by the applicant when construction is finished.

4.4 Can an environmental cleanup be required?

An environmental cleanup may be required by law where authorities seek to reduce or mitigate potential dangers to human health (eg, the Waste Management Act). Apart from certain federal laws, the Austrian civil law may impose liability on a party causing contamination.

4.5 Are there minimum energy performance requirements for buildings?

The EU has adopted several directives regarding energy efficiency, which were implemented in the Austrian building regulations (eg, Directive 2010/31/EU). The building regulations are basically subject to the legislation of the nine federal states.

In addition to that, the Austrian Energy Certificate Act provides that in case of the purchase or lease of real property or rental property, the seller or

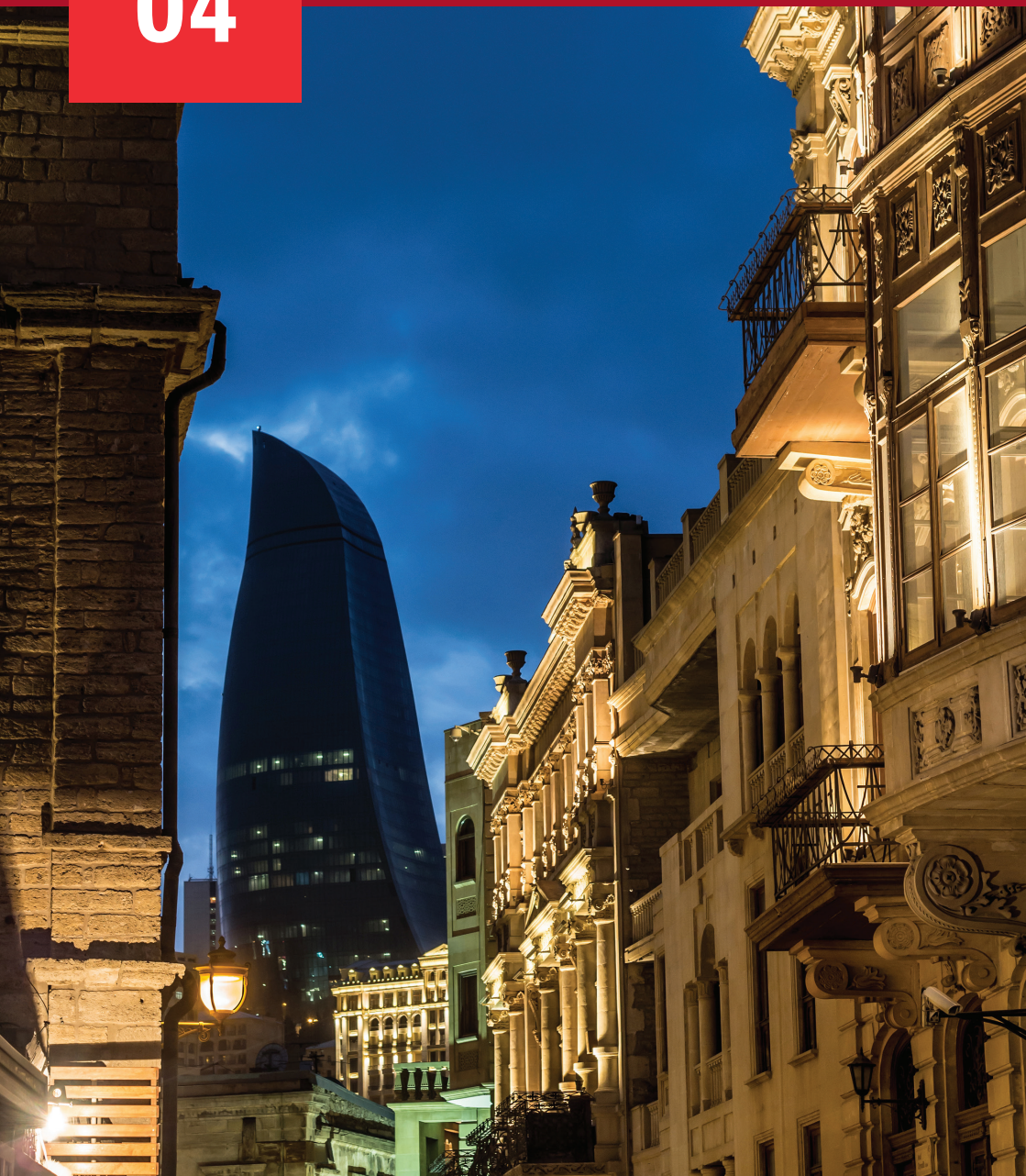
landlord is obligated to provide the purchaser or the tenant with an Energy Performance Certificate (Energieausweis) not older than 10 years showing the energy efficiency of the building.

Furthermore, minimum standards of energy efficiency in buildings have to be fulfilled. Therefore existing and new buildings must be adapted to meet the new standards and all new buildings built after 2020 must meet the requirements of zero-energy buildings.

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

Building regulations are subject to the legislation of the nine federal states. Some of them provide different kinds of regulatory measures that aim to improve the sustainability of newly constructed and existing buildings. For example, the Building Regulations of the City of Vienna (Wiener Bauordnung) deal with issues like heat insulation (Wärmeschutz) and energy saving (Energieeinsparung).

04 Azerbaijan



1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Subsoil plots
- Isolated water objects and any buildings or structures permanently attached to the land

1.2 What laws govern real estate transactions?

Property law is governed by the Civil Code of Azerbaijan, as amended, and the Land Code of Azerbaijan, which are the principal legal documents establishing the major rules and requirements.

Additionally, there are a number of other laws regulating specific real estate issues, including the following:

- Azerbaijani Urban Planning and Construction Code dated 29 June 2012 (the "Construction Code")
- Azerbaijani Law On State Registry of Immovable Property dated 29 June 2004 (the "Property Registry Law")
- Azerbaijani Law On Mortgages dated 15 April 2005
- Azerbaijani Law On Land Lease dated 11 December 1998
- Azerbaijani Law On Lease dated 30 April 1992, as amended
- Azerbaijani Law On Municipal Land dated 7 December 1999
- Azerbaijani Law On Taking Land by the State dated 20 April 2010

1.3 What is the land registration system?

The Service of the State Register of Immovable Property under the State Property Committee of the Republic of Azerbaijan (the "Service") is the single register of immovable property in Azerbaijan that issues title and other documents in the form of extracts from the register certifying the rights to immovable property. Nevertheless, state property (including land and other property subject to privatization) largely remains on the "books" of the previous registration authorities and, as such, is not in the register maintained by the Service.

To have title to real estate registered, an applicant must file certain documents with the Service evidencing:

- the allocation of the land by the executive authorities
- the applicant's rights to the land
- the state registration of these rights
- the state commissioning of property developed on the land
- the issuance of a technical passport

The Property Registry Law sets forth the registration procedure of proprietary rights on real estate and other proprietary interests, their occurrence, restriction, transition and termination, providing for the uniform state register of real estate.

1.4 Which authority manages the registration of titles?

Title registration is usually managed by the Service.

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

To be effective, Azerbaijani law requires the following rights to be registered with the Service:

- Ownership
- Leases
- Mortgages
- Easements and servitudes
- Other types of encumbrances

1.6 What documents can land owners use to prove ownership over real property?

An extract (in the form of a title certificate) issued by the Service is the only document evidencing title to immovable property located in Azerbaijan. Title certificates issued by certain state authorities prior to the establishment of the Service (ie, the Bureau of Technical Inventory and Registration of Ownership Rights, the State Committee on Property Affairs and the State Land Committee) are still effective and do not require replacement with an extract from the Service.

1.7 Can a title search be conducted online?

No. Under Azerbaijani law, information contained in the Service's register is not open to the public. This information is only available to the property's owners (with respect to information contained in the Service's register).

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

Yes, but with certain restrictions. Azerbaijani law recognizes the right of a foreign entity to own movable and immovable property in Azerbaijan except that foreign investors may not directly hold unrestricted and absolute title to a piece of land. As a general rule, land may be leased to foreign entities. Foreigners may own land only if it has been transferred to them by request, gift or enterprise mortgage and must be disposed of within one year of such transfer. If a foreign investor has not voluntarily

disposed of its interest in land, the executive and municipal authorities may order a forced sale.

Azerbaijani law, however, does not prohibit foreign investors from acquiring ownership interests in land through the creation of joint ventures with local capital or the establishment of wholly owned foreign companies in Azerbaijan, as these are viewed as Azerbaijani legal entities.

1.9 Can the government expropriate real property?

Yes. Azerbaijani law permits expropriation of private property by Azerbaijani state authorities for state or public needs and further requires that fair market value compensation be paid prior to expropriation.

1.10 How can real estate be held?

Generally, an interest is held by any of the following means:

- Freehold
- Leasehold
- Temporary use of land (ie, unpaid use as opposed to lease)
- Permanent use of land

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

The following investment structures are typically used:

- Limited liability company
- Joint stock company
- Co-ownership or co-tenancy
- Acquisition of land allocation and land use rights

1.12 How are real estate transactions usually funded?

The residential market is, typically, funded by agents (local Azerbaijani banks) of the Azerbaijani Mortgage Fund under the Central Bank of Azerbaijan, which issue secured loans up to AZN 100,000 (equivalent to USD 59,000) for a period of up to 25 years and at the annual rate of 8%; "social mortgage loans," in the amount of up to AZN 150,000 (equivalent to USD 88,000) are available to certain categories of the population and are granted on more favorable terms (30-year loans with at an annual rate of 4%). However, both standard and social mortgage loans require borrowers to prepay up to 15% and 10% of the purchase price, respectively, before secured loans can be issued.

Commercial market acquisition and development is financed by the following:

- Companies, to finance land acquisition and development for their own business needs
- Licensed Azerbaijani banks (with loan facilities and other funds issued by foreign lending institutions)
- Foreign financial institutions, mostly on a syndicated basis, to finance specific development projects
- International financial organizations (IFC, ADB, EBRD), including Islamic financing institutions (ICD), to finance the major business (multi- and mixed-use complexes with hotels, office buildings and shopping malls) and infrastructure-related development (including roads, transport, water supply, sewers, power infrastructure and telecommunications) projects

1.13 Who usually produces the documentation in real estate transactions?

Generally, the lawyer representing a purchaser will prepare the initial draft of the purchase agreement. The seller will be expected to present valid

documentation on real estate (eg, certificate of title and certificate confirming that the property is not encumbered) before notary execution of a contract on transfer of real estate.

1.14 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?

Liability for property damage or personal injury claims for environmental violations are not imputed to any entity not responsible for such property damages and personal injuries. Upon corporate reorganization, environmental liability for property damage or personal injury caused by the reorganized companies is transferred to the successor company. Purchase of certain assets such as shares of companies holding real estate assets, however, does not result in the purchase of any liability for pre-existing environmental violations or subsequent damage for the violation unless a change of control or ownership is associated with the purchase.

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

Yes. Under Azerbaijani law, any entity responsible for an environmental violation must pay the damages caused as a result of such violation.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

The principal documents are as follows:

- Sale and purchase agreement
- Pre-acquisition (due diligence) investigation conducted by the purchaser's counsel on matters relating to the development and title of the property subject to acquisition
- Certificate of title

- Certificate issued by the Service on encumbrance of real estate
- Legal opinion

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

A seller usually gives the following warranties:

- The capacity warranties (the seller's right, power and authority to enter into, deliver and perform its obligations under the sale and purchase agreement)
- The consent-related representations and warranties (the seller's procurement of all approvals necessary or appropriate in connection with the execution, delivery and performance of the sale and purchase agreement)
- The title-related representations and warranties (the seller's sole registered ownership of the property free and clear of any encumbrances)
- No claim of third-party warranties (lack of any dispute and litigation with regard to the property)

2.3 When is the sale legally binding?

The sale of property is effective upon the mandatory state registration of the purchaser's rights to the property subject to a sale and purchase agreement.

2.4 When is title transferred?

Title is deemed transferred to a purchaser upon the mandatory state registration of the purchaser's rights to the property.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- Realtor's commission
- Legal fees
- Notarization fees
- State registration fees

The seller usually pays for the following:

- Realtor's commission
- Legal fees

3. Leases

3.1 What are the usual forms of leases?

- Land leases for commercial development

  Land leases are typically given for a long period of up to 49 years. In privatization or any other transaction involving foreign investment, municipal and state lands are leased for this period. In any other project, the land lease term is limited to the length of such project.

- Occupational leases of office and other commercial space

  Occupational leases are typically granted for a short term of up to three years, possibly with a renewal option. Longer terms of five or seven years are not unknown but are not yet a regular feature of the market.

- Residential leases (typically granted for a term of up to one year)

3.2 Are lease provisions regulated or freely negotiable?

Generally, a lease is freely negotiable. However, there are certain statutorily imposed rights and obligations on landlords and tenants. Also,

tax authorities may take fiscal action if they establish that property is leased below market price.

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

Azerbaijani law restricts the term of land leases to 99 years.

3.4 What are the usual lease terms?

Leases of office and other commercial space are typically granted for a short term of up to three years, possibly with a renewal option.

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

Azerbaijani law allows a tenant to extend the term of the lease only if so provided in the lease agreement. If the lease agreement does not grant any extension option (right) to the tenant, the lease agreement can be extended only upon mutual consent of the parties.

3.6 On what grounds may a lease be terminated?

A landlord can generally terminate the lease under any of the following circumstances:

- The tenant fails to use the leased property for the purpose for which it was designated
- The tenant fails to pay rent
- The tenant commits any other material breach of the lease

3.7 Must rent be paid in local currency?

Yes. Under the Azerbaijani Constitution, the Azerbaijani manat is the sole legal tender in Azerbaijan. The Azerbaijani currency regime does not allow for rent to be paid in any foreign currencies.

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

Under Azerbaijani law, rent for leased premises with a term exceeding one month must be paid at the end of each month. In practice, however, rent is paid on a monthly basis at the beginning of the month. In occupational leases, landlords require payment of rent on an annual or semi-annual basis.

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

In short-term land leases, rent reviews are not typical. In long-term land leases, however, the situation could be different. Rent reviews are usually made in connection with the rent re-evaluation as provided for in the lease. State and municipal authorities determine the value of the lands based on a number of factors, including the location and quality of the land. While these authorities can also fix the rental value of land, this value cannot be less than the minimum statutory amount – equal to two times the land tax on the land. Thus, any change of the statutory rent would subject the land lease to a rent review should the land lease rent be equal to this statutory amount.

The lease terms for most privately owned buildings are usually not sufficiently long to involve a rent review, although a small number have provisions that reflect an English-style mechanism. Leases of buildings do often include provisions permitting the landlord to review the rent where it is inclusive of certain costs to reflect amendments in tariffs for items such as electricity and heating. It is increasingly common to see rent being reviewed when the option to renew for a further term is being exercised.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Maintain the property in a good and safe condition

- Repair and maintain the structure of the building and make other capital improvements
- Provide all services and utilities related to the leased premises, such as water, heating, elevators and waste disposal

The following is usually required of tenants:

- Use the leased property for the purpose for which the leased property is designed
- Pay rent on time
- At the end of the lease period, vacate the leased property and return it in good condition, taking into account normal wear and tear

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

Under Azerbaijani law, subletting land or buildings is subject to the landlord's prior consent. This consent would be required even if the lease is drafted to allow a tenant to sublet the leased premises, ie, a lease is not construed as automatically allowing a sublease at the time of execution of the lease. While the landlord's consent is required to effectuate a sublease, the law provides that such consent should not be unreasonably withheld.

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

When the leased property is partially destroyed or impaired, a tenant is allowed to seek a proportionate reduction of rent. Upon full destruction of the property subject to lease, ownership to this property and the tenant's lease rights, respectively, are terminated.

3.13 Who is usually responsible for insuring the leased premises?

The landlord is responsible for insuring the leased premises. However, the lessee may be required to procure compulsory third-party liability

insurance to cover the risks associated with the operation of the buildings and structures.

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

Yes. Azerbaijani law provides that upon transfer of the leased property (to include property mortgaged after it was leased), the transferee who becomes the property's new owner succeeds the transferor's rights and liabilities arising out of a lease, ie, the tenant's rights survive the transfer of ownership (including when such transfer is made through sale of the subsequently mortgaged property).

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

Yes. Please see answer immediately above.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Environmental policy in Azerbaijan is implemented by both the Cabinet of Ministers, which is vested with the general environmental authority and the Ministry of Ecology and Natural Resources, which is vested with specific environmental protection responsibilities.

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

Environmental issues in Azerbaijan are regulated by the following laws:

- The Water Code of Azerbaijan dated 26 December 1997
- The Forest Code of Azerbaijan dated 30 December 1997
- Azerbaijani Law On Environmental Protection, dated 8 June 1999
- Azerbaijani Law On Ecological Safety, dated 8 June 1999

- Azerbaijani Law On Fertility of Land dated 30 December 1999 (the "Land Fertility Law")
- Azerbaijani Law On Protection of the Atmosphere dated 27 March 2001

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

Valid land development involves the following:

- Issuance of a land allocation order
- Issuance of a construction passport
- Approval of the construction project documentation by various state and city authorities
- Evaluation of a state environmental expert and issuance of an environmental passport
- Issuance of a permit by the executive authorities on the commencement of construction
- State commissioning of the developed building
- Technical inventory of the developed building and issuance of a technical passport
- Issuance of the title certificate

Under the Construction Code, certain residential buildings and structures developed by natural persons for their own use are exempt from the requirement to obtain advance approval of relevant state authorities.

4.4 Can an environmental cleanup be required?

The Land Fertility Law defines contamination of land as the process of accumulation in the ground of chemical compounds of various origin,

heavy metals, radioactive elements, household and industrial wastes, pathogenic and other hazardous organisms in quantities detrimental to human health, the environment and fertility of land. Under Azerbaijani law, contamination of the natural environment with petrochemical waste is considered environmental pollution. Pollution caused by dumping petrochemical waste (including oil and associated water) onto the ground or into the sea, for example, is a violation of the rights of the persons affected. A violation of this right is considered a tortious act giving such persons the right to seek compensatory damages.

It is generally the polluter who is liable for damage to land. It is unclear where a land owner, user, or lessee can be required to share liability for damage where his/her/its inactions (such as failure to report an environmental impact where such was required pursuant to law, or to monitor the condition of land) contributed to the damage. Businesses engaged in handling hazardous materials and substances must insure their civil liability.

4.5 Are there minimum energy performance requirements for buildings?

No.

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

Yes. Azerbaijan has enacted the law On the Use of Energy Resources, dated 30 May 1996, and the Law On the Energy Industry, dated 24 November 1998, both providing for renewable energy resources (solar, wind, geothermal, biomass, sea and water currents, etc.). In addition, Azerbaijan has adopted the State Program On the Use of Alternative and Renewable Energy Sources in the Republic of Azerbaijan, approved by Presidential Instructive Order No. 462, dated 21 October 2004, and created the State Agency on Alternative and Renewable Energy Resources as a regulatory agency.

05 Bahrain

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Any buildings or structures on it

1.2 What laws govern real estate transactions?

Property law is primarily governed by the Civil Code, a Napoleonic derivative adopted from Egypt. Specific legislation supplements the Civil Code in respect of matters such as the establishment of a land registration system, subdivision, reclamation, procedures for registering strata title and foreign ownership.

1.3 What is the land registration system?

The Survey and Land Registration Bureau is responsible for the registration of land in the Kingdom of Bahrain. It maintains a land register in which each property, its description and legal status is entered. Facts and information recorded in the land register are considered final and conclusive proof as to the matters they describe, by virtue of their inclusion in the land register. Details in the land register cannot be altered except by order of the court or upon receipt of a notarized declaration from a party approved by the Minister of Justice and Islamic Affairs. Material errors in the land register may be corrected by the Director of the Survey and Land Registration Bureau according to the appropriate legal instruments of ownership or disposal.

Land registered in the land registry cannot be acquired through adverse possession or prescription.

Rights of others that encumber the land must be registered on the title to the land. Failure to affect such registration shall render such rights invalid, whether toward the parties concerned or toward third parties.

Title to land registered in the land register kept by the Survey and Land Registration Bureau is guaranteed by the King of Bahrain. Title is indefeasible and ownership is proved conclusively by the information recorded in the land register.

1.4 Which authority manages the registration of titles?

The Survey and Land Registration Bureau manages the registration of titles.

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

Rights in respect of real estate that are not registered may not be enforced. The law requires registration of the following:

- Transfers of title
- All rights arising from a disposal of land
- Gifts of land made by the King of Bahrain
- Mortgages
- Easements
- Restrictive Covenants
- Endowments

1.6 What documents can land owners use to prove ownership over real property?

The original physical title deed issued to the owner by the Survey and Land Registration Bureau provides proof of ownership of real property.

1.7 Can a title search be conducted online?

No.

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

Bahrain first began opening its land to foreign ownership in 1999 pursuant to Decree 40 of 1999 when citizens of countries in the Gulf Cooperative Council were allowed to own land and buildings in Bahrain.

In 2001, the King of Bahrain issued a Royal Decree allowing, in principle, foreign ownership on a freehold basis, of land and buildings in designated areas in the Kingdom of Bahrain. However, it was only in 2003 that enabling legislation was passed ratifying the 2001 Royal Decree, nominating designated areas and formalizing the legal mechanism by which foreigners of any nationality could own land in Bahrain on a freehold basis.

Legislative Decree No. 43 of 2003, entitled "ownership of property and land by non-Bahrainis in the Kingdom of Bahrain" provides for freehold land ownership in the following areas:

- High-rise residential and commercial structures with an elevation of 10 stories within the greater Manama area such as the following:
    - The Ahmed Al Fateh District
        - Hoora Area
        - Bu Ghazal Area
        - The Northern District of Manama, including the Diplomatic Area
    - The Seef District (with elevation of 10, five and three stories)

  - The following tourist areas:
    - Durrat al Khaleej
    - Dannat Hawar
    - Amwaj Islands
- The areas which fall within the sphere of the Bahrain Financial Harbour area, the Bander Al Seef area, Al Lulu Islands or any other area that the ministerial cabinet decrees as areas that meet the same criteria

Edict number 8 of 2006 added Riffa Views to the list of areas in which foreigners may own properties

Subsequently, by edict number 67 of 2006, the government of Bahrain amended Legislative Decree No. 43 of 2003 to allow foreign ownership of a much broader area. The areas described above were replaced by the following two broad categories of land ownership:

(a) Residential properties in zoning areas Category A, B and C all over the Kingdom of Bahrain

(b) Tourist and investment projects of a special nature, subject to approval of the Ministerial Committee for Public Utilities

Edict number 67 of 2006, which came into force on 14 December 2006, has substantially freed up ownership of residential property in much of the Kingdom of Bahrain to foreigners. Category A, B and C residential is a reference to planning, or zoning, districts in the Kingdom of Bahrain. Edict number 27 of 2005, which sets out the planning requirements for building in the different zones, provides that in Category A and B residential areas, developers can build an unspecified number of stories depending on the size of the land and its surroundings. Category C allows developers to build properties up to 10 stories high. Category A, B, and C allow for the properties to be used for residential, commercial or business purposes, or

all of them depending on the certified planning specifications for each zone.

1.9 Can the government expropriate real property?

Legislative Decree No. 8 of 1970 had authorized the government of Bahrain or a municipality in Bahrain to compulsorily acquire privately held land when it is in the public interest to do so. Acquisitions could only take place for a public purpose and in accordance with this legislative decree.

However, this law was held to be in violation of the constitution by the Constitutional Court in case number D/2/2005 issued on 26 March 2007. The judgment, which had the effect of nullifying Legislative Decree No. 8 of 1970, came into force on 12 April 2007, following its publication in the Official Gazette.

Accordingly, it is currently no longer possible for the government to expropriate, condemn or compulsorily acquire land in Bahrain. It is now only possible with the consent of the landowner.

1.10 How can real estate be held?

Generally, an interest is held by any of the following means:

- Freehold
- Leasehold
- Strata title
- Usufruct

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

- Limited liability company
- Single person company

1.12 How are real estate transactions usually funded?

Bahrain is an important banking center in the Middle East. Accordingly, there is a wide range of banks that offer financing to the real estate sector, both on a conventional and Islamic basis, using all manner of financing techniques.

Non-recourse, limited-recourse and full-recourse financing, and secured and unsecured financings have been used in various transactions in the past although in the wake of the global financial crisis, over-collateralized security and full-recourse financing are becoming more common. Borrowers are able to borrow less due to lower loan-to-value ratios.

Equity is playing a greater role in the financing of real estate transactions, particularly through Islamic funds and Islamic bond (sukuk) issuances.

Bahrain has an active mortgage finance market, providing finance to both foreign and domestic purchasers of residential property.

1.13 Who usually produces the documentation in real estate transactions?

Generally, the seller's lawyer will prepare the initial draft of the purchase agreement.

1.14 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?

There is no specific legislation in place to address remediation of contaminated land where contamination was caused by someone other than the current land owner.

At present, an owner or occupier of real estate cannot inherit liability for contamination caused to the land by previous owners, although we sometimes see new owners and occupiers seeking indemnities in respect of the same and in respect of any damage arising from contamination on the land.

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

Yes, but only to the extent that the seller or occupier caused the liability, such as environmental pollution, during its occupation and use of the real estate.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Sale and purchase agreement
- Sale deed
- Due diligence report
- Assignment or renewal of a lease

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

Sellers are usually very reluctant to give representations and warranties. In the event they do, they are generally very limited in nature. Therefore, the obligation is on the buyer to undertake comprehensive due diligence, although sellers will often be reluctant to disclose a great deal of information that one would usually expect to see during the sale process.

2.3 When is the sale legally binding?

Parties are legally bound as soon as they execute the sale and purchase agreement, except where the contract is conditional upon, for example, financing.

2.4 When is title transferred?

Transfer of title takes place only upon registration by the buyer of the sale deed at the Survey and Land Registration Bureau.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- Buyer's agent's fees
- Legal costs
- Due diligence costs for consultants who have prepared building condition reports, valuation appraisals and real estate surveys
- Transfer fees

The seller usually pays for the following:

- Listing agent's fees
- Legal costs

3. Leases

3.1 What are the usual forms of leases?

- Industrial leases
- Commercial office leases
- Retail leases
- Residential leases
- Development leases/ground leases

3.2 Are lease provisions regulated or freely negotiable?

Leasing Law No. 27 of 2014 (the "Leasing Law") governs all leases in the Kingdom of Bahrain with the exception of leases of agricultural land, hospitality and tourism, and industrial lands subject to Law No. 28 of 1999 and leases of furnished apartments with a term of one month or less.

The Leasing Law does not specify any form that a lease should follow but it requires it to be in writing and registered a month after signing taking into consideration that any subsequent amendments to the lease must also be registered. Registered leases take priority over a non-registered lease in the event of a conflict and also give access to the leasing disputes committee (the "Committee"). However, the Leasing Law does impose several default positions that apply unless agreed otherwise in the lease.

The Leasing Law specifies key elements that need to be in any lease agreement such as a:

- Defined lease term – otherwise it shall be presumed to expire when the rent is due
- Specified rent – otherwise it shall be presumed to be a similar rent of similar properties taking into account the condition of the property, purpose and nearby area

In addition, for residential leases the security deposit may not exceed three months' rent.

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

With the exception of industrial leases, there is no limitation on the duration of that period, ie, the term of the lease, so long as a term is specified. There are no restrictions on extension or renewal of the term of a lease, other than for industrial leases.

3.4 What are the usual lease terms?

Development leases/ground leases and industrial leases are usually for terms of between 15 and 25 years with no more than one option to renew. Commercial office leases are typically for a term of between two and five years with further options to renew subject to upward rent review, although several A-Grade office buildings have entered into leases with

tenants for 10-year terms. Retail and residential leases are usually for one-year terms with the option to renew for further terms of one year each.

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

The tenant may renew a residential lease with a term less than three years up to a maximum of three years and any other lease with a term less than seven years up to a maximum of seven years. The tenant must notify the landlord of its intention to renew three months before the end of the term. Moreover, the landlord cannot ask the tenant to vacate a residential property before the third anniversary of the lease or any other property before the seventh anniversary of the lease unless otherwise agreed.

3.6 On what grounds may a lease be terminated?

When a lease is made for a fixed period, either the landlord or tenant may, if serious and unforeseen circumstances arise of such nature as to render, from the commencement of or during the lease, the performance too burdensome, demand the termination of the lease before its expiry, provided the party seeking termination gives notice to the other party in accordance with the required time limits and pays that party equitable compensation.

If it is the landlord who demands termination of the lease, the tenant will not be compelled to hand back the leased property before he/she has been compensated or obtained an adequate guarantee.

Under the Leasing Law, the landlord has the right to request the tenant to vacate the property in the following instances: a) no rent was paid for two consecutive months unless the Committee finds a good reason for the tenant not to vacate; b) assigned or sub-let without the written consent of the landlord; c) exceeded the number of permitted people in the property; d) improper use of the property; e) health and safety concerns; f) the property is 25 years old and the landlord needs to re-build; g) the property

is needed as the landlord's residence; and h) the tenant has vacated the property for a year.

3.7 Must rent be paid in local currency?

The parties to a lease are free to set the rent in currencies other than Bahraini dinars. However, arrangements for payment of rent in foreign currency are not typical.

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

Rent is typically paid monthly in advance, although the parties remain free to agree otherwise.

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

The Leasing Law imposes restrictions on the landlord's ability to increase rent. The landlord may only increase rent after the second anniversary of the lease or the last increase, whichever is earlier. Such increase is capped at 5% for residential leases and 7% for other leases. The landlord can only use the right to increase rent five times during the term of the lease. This provision applies to all existing leases when renewed and the landlord must inform the tenant through registered mail specifying the new rent three months prior to the end of the second anniversary of the lease. The parties are, however, free to agree otherwise and these provisions are default positions only.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- To handover the property as soon as the lease is signed unless another date was agreed
- Repair and maintain the structure of the property
- Handover the leased property with its fixtures

- Conduct urgent maintenance immediately
- Insure the property
- Provide tenants with a valid notice of termination if terminating the tenancy

The following is usually required of tenants:

- Pay rent within a week from the date it is due
- 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 for inspections and landlord's work
- Handover the leased property in the same condition as it was received at the end of the term
- Notify the landlord of his/her intention to vacate the property three months prior to the end of the term through registered mail

In addition, unless otherwise agreed in the lease, the Civil Code imposes several default obligations on the tenant. It is therefore important to consider the Tenant's position in the lease regarding the following:

- Any improvements made by the tenant will not be accounted for when the tenant vacates the property
- Tenant must pay for the electricity, water, telephone, shared services and any other fees
- Any sale by the tenant of any rights created by any lease (except for residential) will be transferred to the buyer until the end of the lease term as long as the landlord is not negatively affected

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

A tenant cannot assign a lease without the landlord's written consent, unless the right to assign is provided for in the lease. Pursuant to the Civil Code, the lessee may not assign his/her lease or sublet the whole or any part of the leased premises unless agreed otherwise. It is common for a lease contract to give a tenant the right to sublet or assign the lease, subject to the landlord's prior consent. Any sub-lease or assignment must be registered to bind third parties.

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

Article 518 of the Civil Code provides that if during the course of the lease, the leased premises are totally destroyed for a cause beyond the control of either the tenant or the landlord, the lease is terminated.

The same article also provides that if, as a result of a cause not imputable to the tenant, the leased premises is only partially destroyed or deteriorates to such an extent that it becomes unfit for the use for which it was leased, or if such a use is appreciably diminished, the tenant may, if the landlord does not restore the leased property to its original condition within a reasonable time, claim either a reduction in the rent or revocation of the lease agreement.

3.13 Who is usually responsible for insuring the leased premises?

The parties are free to agree in a lease who will insure the various risks that arise in respect of the leased premises.

Typically, the landlord will be responsible for taking out property risk insurance and third-party/public-liability insurance, although in some cases, the landlord may seek to recoup an apportioned sum of the insurance premium from the various tenants occupying the leased premises. The tenant is usually responsible for insuring its fixtures, fittings and belongings within the leased premises.

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

The Leasing Law states that leases remain valid on transfer of ownership of the property and the new landlord cannot increase the rent or terminate the lease unless in accordance with the provisions of the Leasing Law. The new landlord shall notify the tenant and register the new ownership within 30 days from registration of the title deed with the Registrar.

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

Yes, for the reasons stated immediately above.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

The Ministry of Municipality and Rural Affairs and the Ministry of Works have authority over land development and town planning matters.

The Public Commission for the Protection of Marine Resources, Environment and Wildlife is the government agency responsible for regulation and control of the environment and activities causing detriment thereto.

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

Environmental laws that affect the use and occupation (as opposed to construction and development) of real estate typically apply to industrial projects operating on industrial land. They deal primarily with emissions, noise pollution and the creation of hazardous materials and waste. However, any activity that gives rise to pollution could fall within the ambit of environmental laws.

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

- Building permit

- Reclamation permit, where land reclamation work is necessary
- Permission to sell strata titled property
- Environmental license, depending on the extent of the environmental impact arising from construction of the planned development

Currently, no permit or license is required to occupy a building, although occupation will not be allowed upon completion of construction until such time as the electricity and water have been connected and commissioned by the Electricity and Water Authority.

4.4 Can an environmental cleanup be required?

Polluters can be compelled by the court to pay all the expenses resulting from making good the damage they caused to the environment, although no specific legislation exists to address remediation of contaminated land where contamination was caused by someone other than the current land owner.

4.5 Are there minimum energy performance requirements for buildings?

No.

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

No.

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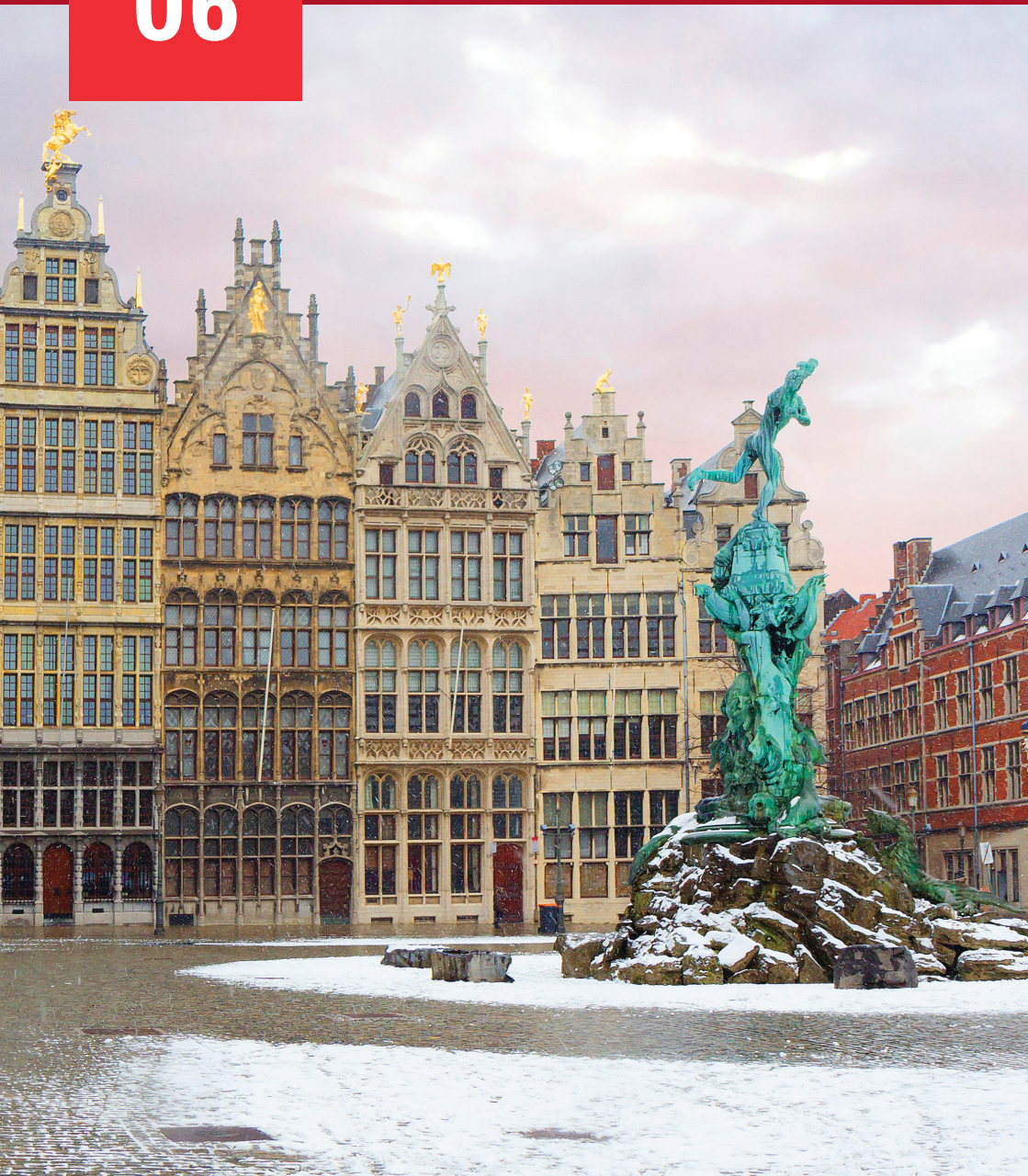

1. Real Estate Law

1.1 What is included in the term "real estate"?

- The land (and underground)
- The building or structures on it, including movable property permanently fixed to the buildings

1.2 What laws govern real estate transactions?

Property laws are governed mainly by the Civil Code, based on the Napoleonic code. This is a federal matter that can, however, be influenced by regional legislators (the Flemish, Walloon and Brussels regions), in respect of certain aspects of lease laws for instance.

1.3 What is the land registration system?

Each property is identified on a state-wide land registry system. For each property, a land registry excerpt can be requested. The land registry is a tax instrument and does not constitute proof of title.

Secondly, all transfers of title and/or leases of more than nine years or entailing a prepaid rent of more than three years, are transcribed in the mortgage registers.

1.4 Which authority manages the registration of titles?

The registration of titles is governed by the mortgage registrar in each mortgage registry office. Only notarial and other authentic deeds will, in principle, be transcribed in the mortgage registers.

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

All real rights need to be transcribed in the mortgage register. Furthermore, certain personal rights such as leases of more than nine years or entailing a pre-paid rent of more than three years also need to be transcribed.

The following are real rights that need to be registered:

- Full ownership
- Surface right (opstal/superficie)
- Long lease (erfpacht/emphytéose)
- Right of use and habitation (recht van gebruik en bewoning/droit d'usage et d'habitation)
- Usufruct (vruchtgebruik/usufruit)
- Easements (erfdienstbaarheden/servitudes)
- Co-ownership (mede-eigendom/co-propriété)
- Mortgages (hypotheek/hypothèque)

1.6 What documents can land owners use to prove ownership over real property?

Ownership of real property is proven by an excerpt of the mortgage register, which reflects the ownership history over 30 years including all previous owners over such 30-year period. The 30-year period results from the fact that acquisitive prescription takes 30 years.

1.7 Can a title search be conducted online?

No. The mortgage registry is not yet available online.

The land registry is available online (for notaries) and can give an indication of title, although it does not constitute formal title evidence.

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

Yes. No restrictions on land ownership relating to nationality exist under Belgian law.

1.9 Can the government expropriate real property?

Yes. Property can be expropriated by the government and quasi-government authorities, but appropriate compensation must be paid.

1.10 How can real estate be held?

Generally, an interest is held by any of the following:

- Full ownership
- Leasehold, ie, a personal right of use on the property
- Long lease, which is a long-term leasehold that is a real and not a personal right with a minimum duration of 27 years and a maximum duration of 99 years for the use of the property as an owner
- Co-ownership

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

The following structures for investing in real estate are common:

- Straightforward sale and purchase of the real property
- Acquisition of the real property through the acquisition of the shares of the special purpose vehicle holding the property
- Traditionally, a lot of real estate was acquired under a so-called "split acquisition structure" involving two acquisition vehicles, one of which acquired a long lease right on the real property and the second acquiring the residual ownership rights on the property. This structure

is no longer accepted for new acquisitions where both components are acquired by two related investors. For the transfer of existing split acquisition structures, a number of alternatives exist which depend on the exact situation.

Next to the above common structures, regulated real estate investment structures exist:

- Real estate certificates (normally covering one or a limited number of buildings) are stock-quoted and grant their owner a right on the rental and disposal income of the underlying real estate. The meeting of holders of real estate certificates has certain controlling powers on the company that issued the certificates and the interests of the certificate holders are also protected by an independent auditor.

- A real estate investment trust (REIT) regime has been in existence for a long time through a stock quoted company investing in real estate (vastgoedbevak/sicafi), which is heavily regulated.

- The "regulated real estate company" (gereglementeerde vastgoedvennootschap/société immobilière réglementée) is a kind of real estate investment trust introduced in 2014, in part to ensure that Belgian REITs would not become subject to the AIFMD-directive, and which is better adapted to their economic reality.

- The "specialized real estate investment fund" (gespecialiseerd vastgoedbeleggingsfonds (GVBF) / fonds d'investissement immobilier spécialisé (FIIS)), is a new kind of real estate investment trust in addition to the above structures that was introduced at the end of 2016. The GVBF/FIIS is attractive from a tax perspective and is aimed at institutional investors. The fund has a closed character, is not listed on a stock exchange and has fewer restrictions than the abovementioned structures.

1.12 How are real estate transactions usually funded?

Real estate transactions are usually funded through a mix of equity and debt. Financing is mostly performed through banks, at fixed or variable rates. Typically, it will be the borrower's responsibility to pay for all of the lender's legal and other costs such as commitment and processing fees.

Lending institutions typically take security such as: mortgage (often for 10% of the value of the borrowed amount); mortgage mandate (for the balance); pledge on receivables; pledge on shares; pledge on accounts; or any combination of the above.

Banks are regulated under federal legislation.

1.13 Who usually produces the documentation in real estate transactions?

Generally, the buyer's lawyer will prepare the initial draft of the purchase agreement, except in auction processes where the seller's lawyer will often prepare the first draft of documentation. As for the draft of the notarial deed of transfer, this is regulated by professional rules governing notaries and the purchasing notary would normally pass and draft the purchase deed.

1.14 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?

Yes. Under current soil legislation in three Belgian regions (Flemish Region, Walloon Region and Brussels Region), an owner (and/or occupier) can be requested by authorities to perform decontamination, even though the contamination

was not caused by it under certain circumstances, and without prejudice to recourse he/she may have against the original polluter.

Similarly, breaches of zoning regulation or building permit conditions may entail liability for the purchaser.

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

Yes. A property owner may remain liable for certain aspects of the property after it has been sold, such as for instance, for pollution that he/she has caused.

Furthermore, in an asset deal, a seller will not be able to exonerate through contractual exoneration clauses his/her liability for hidden defects which he/she had knowledge of. He/she will therefore remain liable for such defects toward the buyer. A professional seller will furthermore be deemed to have knowledge of hidden defects unless he/she proves "invincible ignorance."

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Letter of intent

  Parties will, normally at the start of the negotiations and in order to provide an exclusivity period, sign a letter of intent setting forth the basic principles of the transaction and the process to closing.

- Private sale and purchase agreement

  Before the notarial deed of transfer (and as the only sales document if the real property is acquired through a share transaction), a share and purchase agreement will be signed including all the terms and conditions of the transaction. In the framework of an asset deal requiring an authentic notarial deed to effect the transfer toward third parties, this private agreement will be the document on which the notarial deed is based. This document will often include conditions precedent as to soil procedures, financing and the like.

- Due diligence report

The buyer (and sometimes the vendor in case of vendor due diligence) will perform due diligence of the property (or also the company holding the property if the transaction is a share transaction). This due diligence normally covers all aspects of the property such as zoning, environmental matters, contract review and will often be a combination of legal, technical, financial and tax due diligence.

- Notarial deed

  For the transfer of title to be transcribed in the mortgage register, it needs to be authenticated through the passing of a notarial deed.

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

A seller usually gives the following warranties:

- Title
- Zoning
- Absence of litigation
- Authority, and usual representations and warranties as to shareholding, corporate, housekeeping and tax for share transactions

Usually, these warranties are limited by the information disclosed in the data room provided to the buyer who will not be entitled to claim if the base of the claim was fairly disclosed. In share deals, warranties are usually much more extensive.

2.3 When is the sale legally binding?

The sale is legally binding between the parties if and when there is agreement on the price, the object and other conditions which the parties deem essential. Toward third parties in good faith having a competing claim, the sale in an asset deal will only be binding once it has been transcribed in the mortgage register (which requires an authentic deed).

2.4 When is title transferred?

Title is transferred at the moment indicated by the parties in the sales agreement. For asset transactions, title is normally transferred at the moment of the passing of the notarial deed.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- Buyer's agent's fees
- Legal costs
- Due diligence costs for consultants
- Registration duties
- Notarial and mortgage costs

The seller usually pays for the following:

- Seller's agent's fees (if any)
- Vendor due diligence fees (if any)
- Legal costs
- Capital gains tax
- Mortgage release costs

3. Leases

3.1 What are the usual forms of leases?

- Common lease

For offices, warehouses and all real property other than retail property, principal places of residence and farmland, leases are freely negotiable except for a limited number of restrictive legal provisions related to indexation and a prohibition of conditions subsequent relating to default.

- Retail leases

  The lease of retail premises is governed by the Retail Lease Law 30 April 1951, which protects the tenant with respect to his/her right of renewal, right to transfer the lease with his/her business, rent review procedures, and the like.

- Residential leases

  The lease of a principal place of residence is governed by a specific law that protects the tenant in respect of the quality of the premises, the kinds of rental guarantee the landlord can request, the rights of termination of the tenant and the same.

3.2 Are lease provisions regulated or freely negotiable?

For common leases, terms are freely negotiable except for the fact that the indexation of the rent may not exceed an agreed yearly indexation rate linked to the consumer health index and the fact that any condition subsequent relating to default (ie, the right for the landlord to terminate the lease due to a default of the tenant without intervention of the judge) is prohibited.

Both retail and residential leases are highly regulated and leave little room for contractual flexibility.

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

Leases cannot exceed 99 years. However, they can be extended upon mutual agreement of the parties.

3.4 What are the usual lease terms?

The following are usual terms for lease agreements:

- For common leases, the term is often nine years with possibilities of early termination after three or six years (by either party or by one of the parties)
- For residential leases, the term is often either three or nine years (and for retail leases, nine years (both for retail and residential leases, this is regulated))

A long lease (erfpacht/emphytéose), which is a real right, cannot be shorter than 27 years.

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

For retail leases, the tenant has a regulated right to request an extension, which the landlord can only refuse for specific reasons. The entire procedure of extension is highly regulated.

For residential leases, an extension may be granted due to exceptional circumstances to be decided by a judge.

3.6 On what grounds may a lease be terminated?

A landlord can generally terminate the lease when the tenant has seriously breached its contractual obligations and/or has been declared bankrupt. However, terminating a lease for default always needs to be done through the courts. A clause allowing the landlord to terminate a lease based on default of the tenant without obtaining a court decision is deemed null and void.

3.7 Must rent be paid in local currency?

No.

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

In office leases, rent is normally paid per quarter in advance. In respect of residential leases, rent is normally paid per month in advance. However, this can be freely negotiated.

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

For common leases such as office leases, no rent review exists except if contractually agreed.

For retail leases, each party may request a rent review at the end of each three-year period if the value of the premises has increased or decreased by at least 15%. The procedure for request is highly regulated. The same right exists under residential leases if the value of the premises has increased or decreased by at least 20%.

Next to rent revisions, most leases in Belgium contain an indexation clause that links the rent to yearly indexation according to the consumer health index. No higher indexation is allowed.

3.10 What are the basic obligations of landlords and tenants?

Landlords are usually required to provide the following:

- The quiet enjoyment of the premises (however, factual disturbance will need to be defended by the tenant whereas legal disturbance will have to be defended by landlords)
- Structural maintenance and repair
- Insurance – often, the landlord will, for a multi-tenant property, subscribe a single insurance policy and charge premiums to the tenants through the charges
- Hidden defects warranty

The following is usually required of tenants:

- Occupy the premises
- Pay rent
- Use the premises as a bonus pater familias
- Perform all maintenance that does not have to be performed by the landlord
- Inform the landlord of repairs he/she has to perform
- Return the premises in the state as provided for in the survey of premises at the start, subject to ordinary wear and tear

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

For residential leases, subletting is not allowed without the consent of the landlord.

For other leases, in the absence of any provision, a lease can be freely transferred or sublet but the first tenant remains jointly liable.

In most leases, the tenant will only be allowed to transfer the lease or sublet the premises with the prior written agreement of the landlord, who often can only refuse for reasonable motives.

If this is not excluded in the agreement, the tenant will remain jointly liable with the new tenant.

In the case of a retail lease, the tenant will always be entitled to transfer his/her lease if the transfer is part of his/her business.

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

In the event of destruction of the leased premises, the lease will terminate due to the absence of object. This is without prejudice to contractual recourses if the destruction is due to the fault of either the landlord or the tenant.

3.13 Who is usually responsible for insuring the leased premises?

For multi-tenant buildings, the landlord is usually responsible for insuring the building and will recharge premiums to the tenants.

Such contracts contain mutual waivers of recourse and would still require the tenants to insure as a minimum their belongings and fixtures and/or sometimes their specific tenants' liability (for instance in case of fire) as well. In other cases, the landlord will only insure his/her own owner's responsibility and all tenants will enter into separate insurance policies. The contract provisions will prevail.

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

If the lease is registered, it will normally survive the sale of the property.

If a tenant has remained in the property in the case of a retail lease or a lease of principal place of residence for more than six months, the lease will also survive but the new owner can still terminate the lease for certain specific reasons and subject to giving notice.

A clause can be included in the contract, allowing the new owner to terminate the lease, but for retail leases that will be under strict circumstances and with a one-year notice.

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

The same provisions as in case of transfer apply in principle to foreclosure.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Both land development and environmental regulations are governed by the Belgian regions: the Flemish region, the Walloon region and the Brussels region. Those regions have enacted extensive legislation relating to land development and environmental regulations.

At a lower level, zoning plans are also established by cities and both building and environmental permits are, in principle, delivered at city level, except for large projects for which, in certain cases, permits are delivered at a higher administrative level.

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

The main environmental laws that affect the use and occupation of real estate are the soil legislation, the legislation on hazardous substances (such as PCB and asbestos), the legislation on energy performance and the legislation on environmental permits imposing a range of conditions of operation, including emission limits, energy performance regulations and the same.

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

Any construction of a real property (and often the change of use of a real property) requires a building permit.

Furthermore, real property will often require an environmental permit to be operated (even if such property is a standard office building, due to the presence of air-conditioning installations, fuel tanks and the same).

In case of retail property and subject to certain thresholds being exceeded, a socioeconomic permit will also be required.

Recently the Flemish Region introduced a combined permit (omgevingsvergunning) which includes both the building permit and environmental permit (the socioeconomic permit will be included as well at a later stage). Such combined permit system already existed in the Walloon Region.

4.4 Can an environmental cleanup be required?

Yes. An environmental cleanup can be required.

4.5 Are there minimum energy performance requirements for buildings?

Yes. For new buildings, minimum energy performance conditions need to be met in the three regions.

For existing buildings, energy performance certificates are gradually required (per category of use) in the case of a sale and/or lease of the same, informing the buyer or occupier of the energy performance of the real property.

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

Yes. A number of subsidies exist in respect of investments in alternative energy and other sustainable investments.

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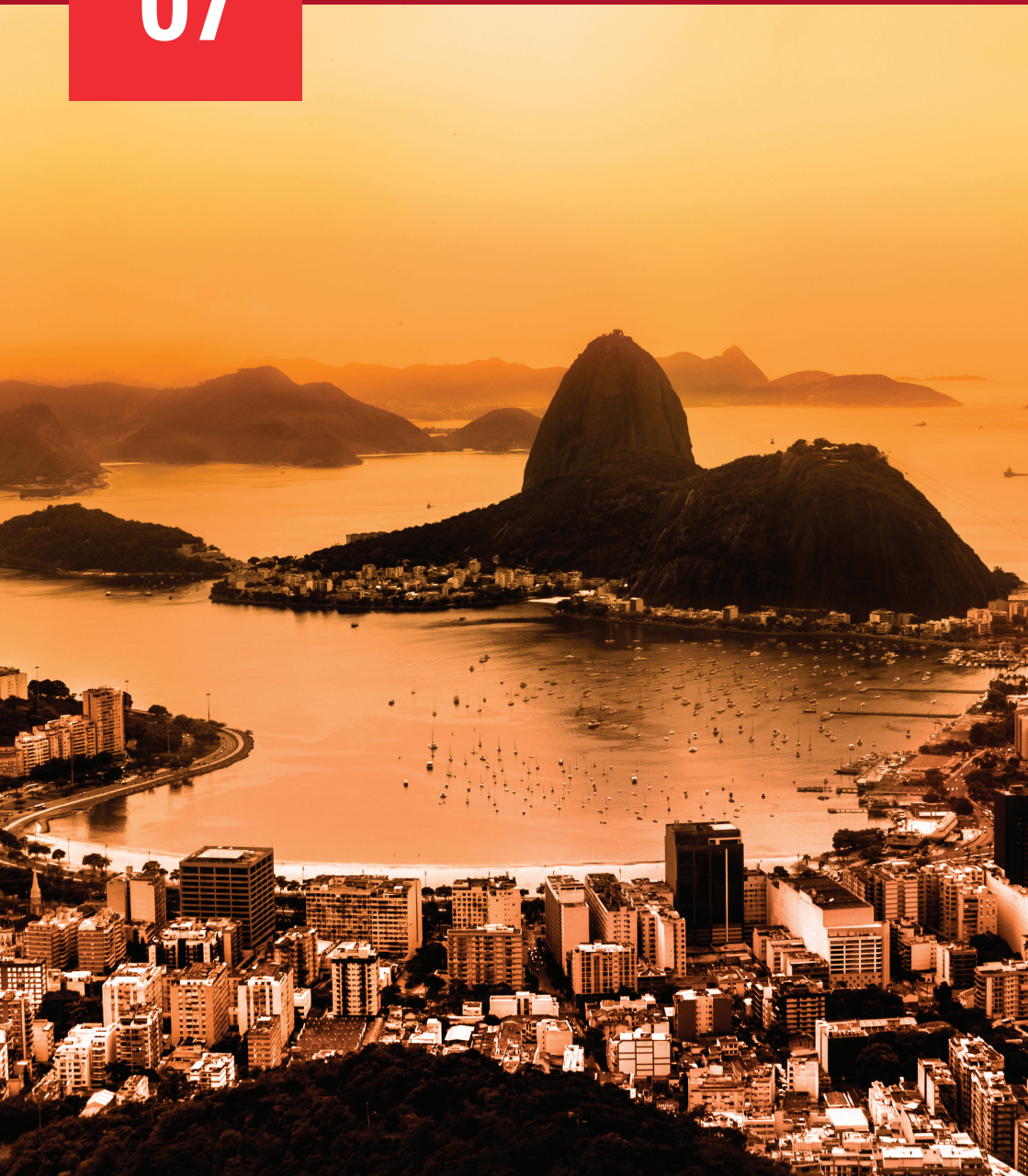


1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Any buildings or structures on land

1.2 What laws govern real estate transactions?

Primary responsibility for property law rests with the federal government. In Brazil, property law is governed by the Brazilian Civil Code.

1.3 What is the land registration system?

All real estate in Brazil must be registered with a real estate registry under a specific record named the "matrícula." Each real estate registry has jurisdiction over a determined geographical area.

1.4 Which authority manages the registration of titles?

Title registration is usually managed by a notary, appointed from time to time through specific public exam procedures.

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

Real estate rights must be registered with the relevant real estate registry. All rights must be recorded in the real estate matrícula. These include the following:

- Transfers
- Mortgages
- Easements
- Co-ownership agreements

- Options to purchase

Tenants also have the right to register leases to enforce non-disturbance provisions.

1.6 What documents can land owners use to prove ownership over real property?

Land ownership may be proven using an updated certified copy of the real estate matrícula and the public deed of purchase.

1.7 Can a title search be conducted online?

All registered records are available to the public. Information about the ownership of real estate can be searched for a fee.

A few real estate registries allow electronic searches of land-related documents.

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

Yes. Law No. 5,709/71, ruled by Decree No. 74,965/74 and thereafter affirmed by opinion CGU/AGU No. 01/2008 – RVJ issued by the Attorney General's Office of Brazil (Advocacia-Geral da União or AGU) allows the acquisition of rural land by foreigners and by foreign-controlled Brazilian companies, provided that certain legal requirements are met. There are requirements that pertain to: (i) the area where the rural land is located; (ii) the size of the rural property; (iii) acquisition or lease purposes; and (vi) the authorization of relevant authorities.

1.9 Can the government expropriate real property?

Yes. The Brazilian Federal Constitution secures the right of the government to expropriate real property subject to fair market value payment, which can be disputed subject to certain requirements.

1.10 How can real estate be held?

Generally, interest is held by the following:

- Freehold
- Leasehold
- Condominium

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

- Limited liability entities
- Corporations
- Investment funds

1.12 How are real estate transactions usually funded?

Most real estate financing is arranged through banks. Interest rates are generally fixed for a specified period of time or are variable, based on a "prime rate" set by the lending institution on a periodic basis. Lending institutions typically take collateral security in real property by means of a mortgage.

1.13 Who usually produces the documentation in real estate transactions?

Generally, the buyer will prepare the initial draft of the purchase agreement.

1.14 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?

For properties held in freehold, government authorities can require the owner to clean up contamination even if the owner did not cause it.

Also, the owner may be held liable for past real estate tax and condominium fees.

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

A seller typically retains liability for eviction in case title is disputed after it is transferred. Environmental matters have also become a matter to retain liability.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Private sale and purchase agreement

  The first document in any real estate acquisition is normally the private sale and purchase agreement between the buyer and the seller. This agreement should contain all necessary business terms for the transaction, including the description of the land, purchase price, deposit (if any), documents to be delivered by the seller, the closing date and any other special terms. These agreements also typically contain conditions for the benefit of the buyer, and representations and warranties by the seller.

- Due diligence report

  Once the sale and purchase agreement is signed, it is generally the responsibility of the buyer, usually through the buyer's lawyer, to conduct due diligence with respect to the property being acquired. This includes title, court and tax clearance certificates, review of any leases and waiver by tenants in connection with the rights of first refusal for acquisition. An independent environmental assessment is often recommended. The buyer's lawyer typically provides a title opinion to the buyer. However, such opinion is not used for title insurance since the coverage is not available in Brazil.

- Public sale and purchase deed

Provided all the conditions under the private sale and purchase agreement are met, the buyer and seller enter into a public deed (drawn by a public notary), whereby the balance of the purchase price is paid. The public deed contains a description of the real property and representations by the seller with respect to title.

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

A seller usually gives warranties in connection with title and non-existence of liens and encumbrances and, more recently, environmental matters.

2.3 When is the sale legally binding?

The sale is legally binding upon the seller and buyer when the private sale and purchase agreement is executed. This agreement may also be recorded at the relevant real estate registry for publicity, although this is not usual because registration costs may be significant.

2.4 When is title transferred?

Title is transferred upon registration at the real property matrícula of the sale and purchase public deed.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- Buyer's consultant's fees
- Legal costs
- Due diligence costs for consultants who have prepared building condition reports, environmental assessments, valuation appraisals and real estate surveys
- Due diligence inquiries made to statutory and government bodies
- Registration fees

- Transfer taxes

The seller usually pays for the following:

- Listing agent's fees
- Legal costs
- Income tax on any profit made on the sale of the real estate

3. Leases

3.1 What are the usual forms of leases?

- Commercial leases

  Most commercial offices, retail space and standard industrial space are available only through a commercial lease. Most commercial lease transactions commence with an offer to lease, which contains the business terms agreed upon by the parties, including the space, term, rent and any tenant inducements. Commercial leases typically require tenants to be responsible for their proportionate share of property taxes, insurance, common operating expenses and common area utilities. Tenants are further responsible for all costs associated with their own occupancy including personal property taxes, janitorial services and all utility costs. In a retail lease (mostly in shopping center leases), a tenant may also be required to pay rent based on a percentage of its sales. In a built-to-suit type of lease, early termination by the tenant is contingent to the payment of contractual penalties not exceeding the aggregate amount of rent maturing until the end of the term originally agreed.

- Residential leases

  Residential leases are regulated by federal legislation, which will override the terms of the lease contract, regardless of the intention of the parties.

3.2 Are lease provisions regulated or freely negotiable?

Except for the matters deemed as public policy (as provided under Brazilian real estate lease law, such as the mandatory renewal in commercial leases and the right of first refusal, just to mention the most relevant ones), leases can be freely negotiated.

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

There is no maximum term for leases. However, if the landlord is a married individual and the lease term exceeds 10 years, the consent of the landlord's spouse is required.

3.4 What are the usual lease terms?

Residential leases are generally entered into for a term of 30 months, since such term grants the landlord certain termination rights. Commercial leases are generally entered into for a term of five years as they grant tenants certain rights to renew. Some landlords try to enter into a lease of less than five years to avoid mandatory renewal.

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

In case of commercial leases for a term equal to or more than five years (or if the sum of successive terms is equal to or more than five years), the tenant may demand a lease extension for a term equal to the expired term.

3.6 On what grounds may a lease be terminated?

A landlord can only terminate a lease on its expiration date or if the tenant breaches the lease and the breach is not cured. In case of a breach of payment of rent, for instance, the tenant may have certain rights to cure default as provided in the lease law. In case of residential leases entered into for a term of 30 months, after the end of the term, the landlord may terminate the lease for convenience. In case of commercial leases effective for an indefinite term, both parties may terminate the lease for convenience by means of 30-day prior notice (or the prior notice period agreed under the contract). Tenants, on the other hand, can always terminate leases for convenience at any time upon prior notice and payment of a penalty (in an amount either agreed under the contract or fixed by a court).

3.7 Must rent be paid in local currency?

Yes. Pursuant to Brazilian real estate lease law, even if the landlord is a foreigner, rent must be paid in Brazilian currency.

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

Rent is typically paid on a monthly basis. Rent can be required to be paid in advance, in which case the landlord cannot require a guarantee from the tenant for the payment of the rent. Temporary residential leases usually provide for the rent to be paid in advance.

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

Rent can be increased due to inflation every 12 months. In addition, rent can be reviewed three years after the start date of the lease if it is not aligned with market value for similar real properties in the region.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Repair and maintain the structure of the property
- Grant the tenant the use of the property and hold the tenant harmless from disturbances in its use
- Pay for non-ordinary maintenance fees (in case of condominium)

The following are usually required of tenants:

- Pay rent on time
- Offer a guarantee to secure payment of rent
- Keep the property in good order and return it in the same condition (regular wear and tear is exempted)
- Give the landlord access (often by appointment) for inspections and landlord's work

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

Tenants are generally allowed to assign the lease or sublet the premises, provided that they obtain consent of the landlord.

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

If the premises are substantially damaged or destroyed by an act of God, the lease is often terminated. Rent generally abates according to the extent of the damage or destruction.

If the premises are damaged or destroyed due to causes attributed to the tenant, then the tenant may be liable for repairs or replacement.

3.13 Who is usually responsible for insuring the leased premises?

The landlord is usually responsible for insuring the leased premises and recovers the cost from the tenant.

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

Tenants are granted the right of first refusal if the owner sells the leased premises. If the right is not exercised, the tenant may have the right to maintain the existing lease in effect under the following circumstances:

- The agreement establishes that it shall continue in force in case of sale to third parties
- The agreement was entered into for a fixed term
- It is registered before the relevant matrícula

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

The lease will survive at the option of the lender or buyer (in case of an auction resulting from foreclosure).

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Construction of new projects is also subject to state and local legislation. Building codes set specific standards for the construction of buildings and most municipalities require building permits before the commencement of construction. Building codes also regulate the maintenance of existing structures.

Environmental matters are regulated by federal, state and local legislation.

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

Each state and municipality issues laws on matters affecting the use and occupation of real estate. Such laws shall comply with the federal legislation in force.

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

Generally, environmental, construction, occupancy and operation licenses are issued by the relevant authorities and the inspection certificate is issued by the fire department (Auto de Vistoria do Corpo de Bombeiros or AVCB).

4.4 Can an environmental cleanup be required?

Generally, an environmental cleanup may be required where the authorities seek to reduce or mitigate potential dangers to human health.

4.5 Are there minimum energy performance requirements for buildings?

Local building codes provide minimum energy efficiency requirements for new buildings. Old buildings are usually not covered by these requirements.

However, there are a number of voluntary standards for environmentally sustainable buildings. The Green Building Council Brazil promotes Leadership in Energy and Environmental Design ("LEED"), a certification program and an internationally accepted benchmark for the design, construction and operation of high-performance green buildings.

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

No.

08 Canada

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Any buildings or structures on it

1.2 What laws govern real estate transactions?

Primary responsibility for property law rests with the provincial governments. In all provinces except Quebec, property law regimes have developed through a combination of statutes and the English common law process. In Quebec, property law is governed by the Civil Code of Quebec, a Napoleonic code derivative.

Some federal laws to keep in mind in real estate transactions include interest rate, competition and anti-money laundering laws. The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and provincial "Know your client" rules are playing an increasing role in real estate transactions.

1.3 What is the land registration system?

All provinces maintain a public land title registration system where ownership can be verified and through which interests in land are registered. The purpose of the system is to provide notice to the public about the various interest that parties have in land. Priority of registration is paramount and the right first registered enjoys priority over any subsequently registered rights (subject to certain exceptions).

Land titles systems are in place in British Columbia, Alberta and Saskatchewan. Ontario, Manitoba, Nova Scotia and New Brunswick are in various stages of converting from registry based systems to land titles

systems. Prince Edward Island, Newfoundland & Labrador and Quebec all continue to use registry based systems.

What this means for Ontario is that until all properties are converted to the land titles system there are two concurrent land registration systems operating: the registry system and the land titles system. The older more traditional registry system is a "registration of deeds" system, which provides only for the public recording of instruments affecting land and does not itself make any qualitative statement concerning the status of title. The land titles system, by contrast, is operated by the province and title to land within the system is effectively guaranteed by the province, subject to certain statutory limits. Properties under the land titles system are either designated as "land titles absolute" parcels or "qualified land titles" parcels and this designation affects the quality of the title guarantee from the province.

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

Rights are generally not required to be registered. However, registration is important to establish priority and to provide notice to third parties. Third parties who do not have notice are generally not bound by unregistered rights over property. So, owners usually register any document creating or evidencing an interest in real estate to protect the interest. The following are the most common instruments that are registered:

- Transfers
- Mortgages
- Easements
- Restrictive covenants
- Leases (or notice of lease)
- Co-ownership agreements

- Options to purchase or right of first refusal

Some rights in land do not need to be registered to still be effective against owners and third parties. These rights include claim by adverse possession, certain utility easements, municipal taxes and government land planning or subdivision restrictions.

1.5 What documents can land owners use to prove ownership over real property?

Land registries in Canada do not issue an original physical title document to a new owner of real estate. Once registration is completed, a copy of the transfer or a copy of the certificate of the title is provided to the new owner to confirm the registration and status of title.

1.6 Can a title search be conducted online?

All registered records are available to the public and information about the ownership of real property can be searched for a fee. Most land title jurisdictions allow electronic searches of land-related documents.

1.7 Are there any restrictions on foreign entities owning Canadian real estate?

There are generally few prohibitions or direct restrictions on foreign ownership of Canadian lands. However, some provinces have begun to impose a combination of taxes, registration or reporting requirements on real estate acquired or owned by non-residents of Canada. The following is a summary of both direct and indirect restrictions.

Indirect restrictions – taxes, registrations and reporting requirements for foreign entities:

- As real property is often part of an acquisition of a business, the Competition Act and the Investment Canada Act must also be considered:

- The federal Competition Act provides for the review of certain commercial transactions for potential lessening or preventing of competition in a relevant market, where the party's assets or revenue exceed certain thresholds
- Under the federal Investment Canada Act, non-residents seeking to acquire control of existing Canadian businesses or to establish new Canadian businesses are subject to governmental review where the value of the transaction exceeds certain amounts (the review exemption threshold is significantly greater for investors who are residents of World Trade Organization member countries), or where the business falls within certain "sensitive" categories

- Foreign entities in Ontario, Quebec and British Columbia may need to obtain a license to own and operate real estate in those provinces
- British Columbia introduced a 15% land transfer tax on foreign persons and entities that purchase residential property in the Vancouver Regional District. The City of Vancouver has also created a vacancy tax beginning in 2017 calculated as 1% of the assessed value of the vacant residential properties
- In 2017, Ontario introduced a Non-Resident Speculation Tax ("NRST") of 15% of the purchase price on the purchase of residential property in the Greater Golden Horseshoe Area by foreign entities, taxable trustees or buyers who are not citizens or permanent residents of Canada. This tax applies to the transfer of land which contains at least one and not more than six single family residences and it must be pre-paid to the Ministry of Finance before a transfer can be submitted in the land registry. NRST does not apply to land containing multi residential rental apartment buildings with more than six units, agricultural land, commercial land or industrial land. A rebate of the NSRT may be available if a buyer subsequently becomes a permanent

resident of Canada, is an international student enrolled full-time in Canada for at least two years or if a foreign national works in Ontario continuously for a minimum of one year

Direct restrictions:

- Prince Edward Island (PEI), Canada's smallest province, prohibits a person who is not a PEI resident from having an aggregate land holding in excess of five acres or having a shore frontage in excess of 165 feet (unless he/she first receives permission to do so from the lieutenant governor in council (see the Land Protection Act))
- Subject to certain exemptions, Alberta limits non-residents and non-Canadian corporate entities to two plots of "controlled land" (lands located outside of urban areas) not exceeding a total of 20 acres (Agricultural and Recreational Land Ownership Act)
- Saskatchewan restricts the sale of agricultural land to non-residents to 10 acres
- Manitoba restricts non-residents from owning more than 40 acres of farmland and requires that they move to the province within two years of purchasing the land
- Non-residents may apply for an exemption from the Alberta, Saskatchewan and Manitoba restrictions, and Canadian citizens and permanent residents (and corporations controlled by the same) are not subject to these restrictions
- Quebec does not permit non-residents to purchase farm land (land used for agricultural purposes having an area of not less than four hectares, consisting of one lot or several contiguous lots or several lots that would be contiguous were they not separated by a public road) without permission from the Commission of the Preservation of

Agricultural Territory of Quebec (Commission de protection du territoire agricole du Québec).

A natural person is resident in Quebec if the person is a Canadian citizen or a permanent resident within the meaning of the Immigration and Refugee Protection Act (S.C. 2001, c. 27) and has lived in Quebec for not less than 1,095 days during the 48 months.

A legal person is resident in Quebec if it is validly constituted, regardless of the manner or place of its constitution and (i) in the case of a legal person with share capital, more than 50% of the voting shares of its capital stock are owned by one or more persons resident in Quebec and more than one-half of its directors are natural persons resident in Quebec; (ii) in the case of a legal person without share capital, more than one-half of its members are resident in Quebec; and (iii) it is not directly or indirectly controlled by one or more non-residents. Quebec also restricts ownership by non-residents of certain classified cultural properties.

1.8 Can the government expropriate real property?

Property can be expropriated by government and quasi-government authorities, but appropriate compensation must be paid.

1.9 How can real estate be held?

The two most common ways to hold real estate are (i) exclusive ownership of the land through freehold rights; or (ii) exclusive possession of land through leasehold rights. Freehold and leasehold interests can be held either as tenants in common or as joint tenants.

Other interests that you can have in real estate:

- Condominium or strata title ownership
- Easements
- Restrictive Covenants

- License*

*A contractual license is a contract that binds only the named parties that give a licensee certain rights to use land but, unlike a lease, it does not run with the land and therefore does not create an interest in the land.

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

- Corporations
- Co-ownership or co-tenancy
- Partnership
- Limited partnership
- Joint Venture
- Trusts, including bare trusts or nominee arrangements

In 2016, Ontario introduced legislation which requires corporations to maintain a register of their ownership interests in Ontario real property. This requirement will apply to all existing Ontario corporations by the end of December 2018,

1.11 How are real estate transactions usually funded?

Most real estate financing is arranged through institutional lenders such as banks, trust companies, pension funds, credit unions and insurance companies. Interest rates are generally fixed for a specified period of time or are variable, based on a "prime rate" set by the lending institution on a periodic basis. The prime rate is based upon a rate announced periodically by the central bank – the Bank of Canada.

Typically, it will be the borrower's responsibility to pay for all of the lender's legal and other costs, such as commitment and processing fees, in arranging property financing. Generally, interest rates must be expressed

as an annual or semi-annual rate, and a higher rate upon default is not permitted when the loan is secured by real property.

Lending institutions typically take both primary and collateral security in real property and related assets. Typical primary security includes registration in the land registry of a mortgage or charge, a debenture containing a fixed charge on real property or, in some cases, where more than one lender is involved, a trust deed securing mortgage bonds or debentures and including a specific charge over real property. Collateral security often includes assignments of leases and rents, general security agreements for personal property and personal guarantees. Notice of collateral security is typically registered in the personal property registry system of the applicable province.

Banks and trust companies are regulated under provincial and federal legislation with special provisions applying to foreign financial institutions.

2. Acquisition of Real Property

2.1 Who usually produces the documentation in real estate transactions?

Generally, the buyer's real estate agent and/or lawyer will prepare the initial draft of the purchase agreement and the buyer will submit it to the seller as an offer. The parties can then negotiate the terms of the deal and produce a final purchase agreement.

The closing documents that actually transfer ownership to the land are generally prepared by the seller's lawyer but this can vary by jurisdiction. In Ontario and New Brunswick it is the seller's lawyer that prepares the documents but in British Columbia it is the buyer's lawyer.

2.2 What are the usual documents involved in such transaction?

- Sale and purchase agreement

  The first document in any real estate acquisition is normally the sale and purchase agreement between the buyer and the seller. This agreement should contain all necessary business terms for the transaction, including the description of the land, purchase price, deposit (if any), due diligence and other conditions, representations and warranties, closing date and any other special terms.

- Due diligence report

  Once the sale and purchase agreement is signed, it is generally the responsibility of the buyer, usually through the buyer's lawyer, to conduct due diligence with respect to the property being acquired. This includes both title and off-title searches. Common off-title searches include review of realty tax charges, water/sewer charges (or water quality for properties serviced by well or septic systems), unregistered agreements, zoning compliance, work orders, fire protection, occupancy permits, heritage designation, development charges and surveys. An independent environmental assessment is often recommended and an independent engineering review of the property, particularly in the case of property with older buildings or sensitive use sites such as former gas stations. The buyer's lawyer will also provide a title opinion to the buyer or obtain title insurance for the buyer (in which case the lawyer will provide a title opinion to the insurer).

- Requisitions

  If the results of the due diligence inquiries identify defects in title or other problems, the buyer's lawyer will submit a requisition letter to the seller's lawyer before the due diligence period set out in the sale and purchase agreement expires. The seller (through its lawyer) will

respond to the requisition and will either repair the defect or negotiate a solution with the buyer.

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

The recent trend is for sellers to give limited representations and warranties. Thus, a buyer is generally responsible for conducting an extensive due diligence with respect to the property to be acquired.

2.4 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?

Yes. Any owner, occupier or person in management or control of real property may be liable for environmental contamination of real property and for contamination migrating from real property.

2.5 Does a seller or occupier retain any liabilities relating to the real estate after it has disposed of it?

A seller can retain liabilities relating to the real estate even after it has disposed of it. The seller is liable for any contamination and/or resulting environmental harm caused before, during, and, to the extent causally linked to the seller, even after ownership and for any indebtedness secured by a mortgage placed by it on the real estate.

2.6 When is the sale legally binding?

Parties are legally bound as soon as they execute the sale and purchase agreement, subject to the terms and conditions contained therein, including the buyer being satisfied with the results of its due diligence.

2.7 When is title transferred?

Ownership of the land is generally transferred when the deed or transfer is registered in the applicable land registration office. Prompt registration is important to preserve registration priority.

2.8 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- Its legal costs
- Due diligence costs for consultants who have prepared building condition reports, environmental assessments, valuation appraisals and real estate surveys
- Due diligence inquiries made to statutory and government bodies
- Registration fees
- Land transfer taxes*
- Sales taxes (HST or GST/PST) (if applicable)*

* Transfer tax: land transfer tax is usually paid when the transfer is registered with the land registry office and the amount of tax varies between the provinces. Some transfers can qualify for an exemption from land transfer tax. For example, in some provinces a parent corporation can transfer land to a subsidiary corporation (or vice versa) without triggering land transfer tax payment. Typically transfer of registered ownership of land triggers the transfer tax but, in some provinces, it can also be triggered when there is a transfer of beneficial ownership.

* Sales tax: in general, sales taxes apply to the supply of all real property unless there is a specific exemption. The main exemptions are for used residential property and for the sale of personal use property. The seller has the responsibility to remit the tax on behalf of the buyer. If the buyer is a GST/HST registrant, it may be permitted to self-assess the GST/HST and the seller will not need to collect the GST/HST at the time of the transfer.

The seller usually pays for the following:

- Real estate agent's commission*
- Its legal costs

- Income tax on any profit made on the sale of the real estate (capital gains)*

* Commission: buyer's agent's fees are usually paid out of the listing agent's fees rather than by the buyer. Typically commission is paid out of the purchase price on closing. Commission are subject to sales taxes (HST or GST/PST).

* Income tax: unless a specific exemption applies there will be income tax payable on the sale of real estate. The main exemption is on the sale of an individual's principal residence. If a seller is a non-resident of Canada there is an additional tax imposed on the gain on disposition of real property. Non-resident sellers must provide the buyer with a clearance certificate from the government pursuant to section 116 of the Income Tax Act (Canada).

3. Leases

3.1 What are the usual forms of leases?

- Ground leases

  One form of a leasing arrangement is a long-term ground lease, in which a tenant leases vacant land and develops it. Once development is completed, the ground tenant may sublet space to retail, office or industrial tenants, depending on the type of development. Ground leasehold interests may be bought and sold in a manner similar to freehold property interests.

- Commercial leases

  Most commercial office and retail space, and much of the standard industrial space in Canada is available only through a commercial lease. Most commercial lease transactions commence with an offer to lease, which contains the business terms agreed upon by the parties, including the space, term, rent and any tenant inducements.

  Commercial leases usually fall into two categories: net lease or gross lease. The most typical form of commercial lease is a net lease which

requires a tenant to pay basic rent plus additional rent comprising a proportionate share of realty taxes, insurance, utility and common area maintenance charges. In a retail lease, a tenant may also be required to pay rent based on a percentage of its annual sales. In a gross lease the tenant agrees to pay a fixed amount and that fixed amount includes the tenants share of operating expenses and realty taxes.

- Residential leases

  Residential leases are regulated by provincial legislation; in some cases, the applicable legislation will override the terms of the lease contract, regardless of the intention of the parties. In some provinces, including Ontario, the ability of the landlord to increase residential rents is limited by provincial regulation.

3.2 Are commercial lease provisions regulated or freely negotiable?

Generally, lease provisions are not regulated and are freely negotiable. However, some provinces establish certain rights and obligations of commercial landlords and tenants.

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

Some provinces set a maximum term for leases. In Quebec, the maximum term of a lease, including renewals, is 100 years. In Ontario, a lease for a term of 21 years or more is generally considered void if the lease only applies to a portion of the landlord's real property unless planning consent is obtained or unless the lease is in respect of a part of a building only, and a lease for a term of 50 years or more is subject to land transfer tax on the fair market value of the land.

3.4 What is the usual length of a commercial lease?

Most commercial leases are for a five-year or a 10-year term. Often, the leases will provide the tenant with extension or renewal rights.

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

Commercial tenants do not have a default legal right to renew or extend their leases. Renewal and extension rights are a matter of negotiation between landlords and tenants.

It must also be noted that there is an distinction between a renewal right and an extension right. The exercise of a renewal right terminates the existing lease and begins a new lease. Rights that are personal to the tenant, such as purchase rights, rights of first refusal and exclusivity rights will not apply during the renewal term, unless the lease expressly provides otherwise. By contrast, the exercise of an extension right continues the existing lease, including rights that are personal to the tenant.

3.6 On what grounds may a lease be terminated?

Commercial leases generally terminate at the expiry of the lease term but can also be terminated when there is a breach or default of the lease or if there is a contractual right to terminate the lease early. Termination for breach or default of the lease is usually the result of a tenant's failure to pay rent, insolvency of a tenant (subject to statutory restrictions) or tenant assigning or subletting the property without the consent of the landlord.

3.7 Must rent be paid in local currency?

The parties are free to set the rent in other currencies, but arrangements for payment of rents in foreign currency are not typical.

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

This will depend on the agreement of the parties. Rent is usually paid monthly, at the beginning of the month.

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

Rent is usually fixed at the beginning of the initial term and will often increase each year during the term. Rent upon renewal or extension may

also be fixed or may be adjusted to reflect the market value at the time of renewal or extension.

Some provinces, like Manitoba, British Colombia and Ontario, set an allowable annual percentage increase in rent for residential leases.

3.10 What are the basic obligations of landlords and tenants?

The following are usually required of landlords:

- Repair and maintain the structure of the property
- Insure the property
- Provide tenants with a valid notice of termination (in writing) if terminating the tenancy

The following are usually required of tenants:

- 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

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

Tenants are generally allowed to assign the lease or sublet the premises provided that they obtain written consent from the landlord. The landlord is usually required to act reasonably when considering the tenant's request.

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

If the premises are substantially damaged or destroyed by an act of God, the lease is often terminated. Rent generally abates according to the extent of the damage or destruction.

If the premises are damaged or destroyed due to causes attributed to the tenant, then the tenant may be liable for repairs or replacement.

3.13 Who is usually responsible for insuring the leased premises?

Leases typically require that both the landlord and the tenant will obtain insurance.

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

Lease agreements survive and are binding upon the new owner.

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

In the absence of a non-disturbance agreement, if a foreclosure is the result of a prior mortgage over the property, the lease will not survive at the option of the lender, and may be terminable at the option of the tenant.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Property development is provincially regulated, primarily at the municipal level. Municipalities typically control land use and the density of the development through official plans and zoning bylaws. The ability of an owner to subdivide property is restricted and regulated in a number of provinces, including Ontario. Development charges are also imposed by many municipalities on new developments within their jurisdiction.

Construction of new projects is also subject to provincial and municipal legislation. Building codes set specific standards for the construction of buildings and most municipalities require building permits before the commencement of construction. Building codes also regulate the maintenance of existing structures.

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

Each province issues laws on matters affecting the use and occupation of real estate.

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

Generally, a site plan agreement and/or a building permit are required for the construction or renovation of real properties. Environmental permits are generally not required for the building or occupying of real estate itself, but for the environmentally relevant activities occurring at that real estate.

4.4 Can an environmental cleanup be required?

Generally, an environmental cleanup may be required where authorities seek to reduce or mitigate potential dangers to human health or the natural environment. Development or subdivision of a site will often trigger the need to clean up contamination as part of the permit and development approval process.

4.5 Are there minimum energy performance requirements for buildings?

Local building codes provide minimum energy efficiency requirements for new buildings. Old buildings are usually not covered by these requirements.

However, there are a number of voluntary standards for environmentally sustainable buildings. The Building Owners and Managers Association has a

voluntary environmental certification program for commercial buildings. The Canada Green Building Council promotes the Leadership in Energy and Environmental Design (LEED) Green Building Rating System, a third-party certification program and an internationally accepted benchmark for the design, construction and operation of high-performance green buildings.

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

No.

09 Chile

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following types of properties:

- Land and estates (referred to by law as natural properties) – these are things that cannot be transported from one place to another, such as soil, land and mines
- Adherence properties – these are things that permanently adhere to natural properties, such as buildings and trees; plants are real properties while they adhere to the ground with their roots, unless they are in pots or boxes that can be transported from one place to another
- Destined properties – these are movable things that, through a legal fixture, are considered as real estate properties as the result of being continuously used or cultivated, or are for the benefit of a natural property

1.2 What laws govern real estate transactions?

Property law is governed by the following regulations:

- The Civil Code is the main statutory piece which governs real estate purchases
- When leases are involved and the leased property is an urban premise, Law No. 18,101 regarding Urban Land Lease plays a relevant role; while when the premise is a rural one, Decree Law No. 993 is relevant, as it contains special provisions on the leasing of rural land
- Other regulations that are applicable are the Decree Law No. 458, General Law on Urban Planning and Construction; Law No. 19.537

regarding Real Estate Co-ownership; and Law No. 19,281, which sets standards for Leases with Purchase Option for housing purposes

1.3 What is the land registration system?

The land registration system in Chile is carried out in the property registry of each one of the real estate registrars (Conservadores de Bienes Raíces), which are public. Requests and applications are paid by the applicant.

There are several of said registrars in Chile, and each registrar has jurisdiction over particular counties. Each property is registered in only one registrar at a time (the one where it is located), although large properties located in more than one jurisdiction shall be recorded in all the registrars in which said property is located.

It should be noted that registration in Chile not only has the purpose of keeping the history of real estate ownership, but it is also the way to transfer property rights (title passes upon registration); hence once the property is registered on behalf of someone, the property is transferred to that person.

Similarly, mortgage rights are granted through registration, and therefore both for acquiring or granting securities over properties, it is mandatory to conclude obtain a acquisition or encumbrance registration.

1.4 Which authority manages the registration of titles?

Title registration is handled by the real estate registrar, a non-governmental office, which is under the supervision of the appeal´s court of each jurisdiction.

Head of the registrar is the Conservador, who is a counsel of renewed experience, appointed by the local authorities.

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

- The right of ownership and mortgages have to be registered, as otherwise they are ineffective.
- The right of use and enjoyment of or other rights that establish trusts that comprise or affect real estate must be recorded as well.
- Final decrees that declare adverse possession, seizure of assets or any other rights must be recorded to make them enforceable against third parties.
- Easements and long-term leases may be registered, although it is not mandatory to do so (usually it is made to keep record of them and to ease the enforceability of those contracts against third parties, although its registration its not always mandatory).
- Some special laws also consider other registrations, but they are specific to certain kind of projects.

1.6 What documents can land owners use to prove ownership over real property?

Land ownership may almost only be proven through presentation of a copy of the property's registration in the owner's name, called the ownership registration or registration of dominion (inscripción de dominio), although to ensure ownership, a title's review has to be carried out.

The reason of this is because — pursuant to our Civil law tradition — property passes upon registration and after 10 years of undisputed registration, registration becomes constructive ownership. Because of that, to ensure ownership, title's review is made, to attest that 10 years of such undisputed registration exist.

1.7 Can a title search be conducted online?

Generally, it is not possible to conduct a title search online. Currently, some real estate registrars are modernizing and digitizing their registries and, to date, the Real Estate Registrar of Santiago has almost had all documents digitalized since early 2000. Moreover, it is possible to get certain information and request certificates online from such real estate registrar, but there is no online access to the actual registrations, which must be picked up at the registrar office.

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

Yes. Any foreign individual or legal entity may own property, with the exception of certain legal limitations in the case of real estate located along national borders (which cannot be acquired by citizens of the neighboring country). An important requirement is that for the purposes of acquiring the property, the acquiring individual or entity must have a taxpayer number (this is a brief process).

1.9 Can the government expropriate real property?

Yes. The government can expropriate land for a public purpose. This is regulated in Article 19, No. 24 of the Constitution, and the expropriation procedure is described in Decree Law No. 2,186. Expropriation must indemnify the damages caused to the owner due to the expropriation, which include not only the fair market value of the land, but also constructions and improvements.

Expropriated amounts may be challenged before courts. Usually the main ground to claim is that the amount is lower than the fair market value, or that the indemnification does not consider loss of profits. Courts usually rely on expert reports to determine the market value, while for the loss of profit it is usually not granted.

1.10 How can real estate be held?

Real estate property may be held by the owner (due its ownership over the property) or by a mere holder, such as the lessee or the beneficiary of a right of use and enjoyment. Likewise, it may be held as owner (ownership) or as a security interest (mortgage).

An owner is someone who has registered the property in their name such that the registration acts as an evidence of ownership. A mere holder is someone who, according to the law, holds the property but not as the owner (Civil Code 714). Lease is the most common form of mere possession.

Also, ownership may be total or bare, depending on whether the individual may use, enjoy and dispose of the asset, or only use and enjoy it.

Finally, ownership may be held individually or in community.

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

The Chilean law paradigm is that price is paid and ownership is transferred. However, due to the increase of the market and the transformation of real properties into investment, nowadays most real estate properties are purchased with money lent by a financial institutions, that secures the debt with a mortgage over the property.

If the land is going to be used for construction, once the construction begins (especially with skyscrapers), new mortgages are established over each apartment or office that will be built, and they provide more investment capital for construction.

Thus, at the end of construction, there are as many mortgages as apartments, and when it is time to sell the apartments or offices, part of the debt is paid and the financial institution releases the respective mortgages.

Also, the lender sometimes secures the credit with pledges over the materials of the construction of the building that will be built over the real estate property.

Another common structure is one where a company buys the property and a contractor (such as a construction company) builds on it, for a certain amount. The company that bought the land leases it to the contractor so that the former owner experiences losses during construction stage, but then he/she does not pay taxes at the time of sale due the capital gain for the proceeds of the sale.

Finally, financial leasings (lease to purchase or hire-purchase agreements) are also used to acquire real property, and in that case a financial institution purchases the property and then the lessee pays rent for a certain period of time (equivalent to the payment of the purchase price plus an interest rate), and once the rent for the entire period has been fully paid, the lessee acquires the ownership of the property.

1.12 How are real estate transactions usually funded?

The acquisition of real estate is generally financed through a loan secured by a mortgage that the lender (such as a banking entity or an insurance company) executed at the same time as the deed of sale.

In such a sale, the buyer, seller and lender are all parties to the transaction. If the amount is high, the loan and mortgage may be coupled with bills of exchange, which are traded as lots in the secondary markets, to make the mortgage more profitable for the lender.

1.13 Who usually produces the documentation in real estate transactions?

Generally, the buyer prepares the initial drafts of the purchase agreement. When banks intervene in mid/small transaction (such as the purchase of warehouses or other SME investments), banks are usually the ones that provide the documents of the sale. When transactions involve high

amounts (for example when office buildings are purchased as the entire facility), documents are drafted by all the participants.

1.14 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?

This depends on how the new owner or occupant had acquired ownership. The acquisition methods, as listed in Article 588 of the Civil Code, are as follows:

- Occupation
- Accession
- Property transfer
- Inheritance
- Adverse possession

Likewise, new owners are liable for the mortgages, encumbrances or the granting of easements, if they acquire the property through a grant of property rights or inheritance. This also applies if the property is purchased on auction, although in that case there is a special procedure to clean it from mortgages (but not from other form of encumbrances).

On the other hand, if the property is acquired by occupation, accession or adverse possession, the property is acquired as new and free of any encumbrances or mortgages.

In case of common expenses in co-ownership properties, new owners or occupants are always liable for their payment.

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

Under Chilean law, the seller represents and warrants that he/she will transfer the property rights to the owner. Therefore, if any post-transfer issue arises that was caused by something that occurred prior to the sale, seller is liable to cure such issues; otherwise, the buyer may claim indemnifications or may ask a court to declare the agreement null and void.

Also, the owner must pay all the debts arising out of the property that remain under the owner's name, except in the case of property obligations such as common expenses.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

At the outset, a title study or due diligence over the property is done. Here, the seller, through the seller's attorney or the real estate broker, must provide the following documents:

- Copies of the deeds of sale or transfer and any other document that transfers title over the last 10 years
- Copies of the registrations of the property from the real estate registrar (such copies must correspond to the current registration as well as registrations recorded over the last 10 years)
- A certificate of ownership, issued by the real estate registrar, issued no earlier than 30 days before
- A certificate of mortgages, encumbrances and prohibitions for the last 30 years, issued no earlier than 30 days prior to the commencement of the due diligence procedure

- A certificate of non-municipal expropriation and a certificate from SERVIU with issuance dates no earlier than 30 days prior to the commencement of the due diligence procedure
- A copy of the effective possession decree (only if the seller or one of the previous owners acquired the property by inheritance)
- A certificate of final receipt for existing buildings on the property (related to the building licenses of the property)
- A certificate approving the sale of building floors and apartments, or that the property is part of a joint property ownership regime (if applicable)
- Certificate issued by the Treasury stating that there are no recorded debts for the territorial property, and if there are any debts, proof of their payment (this information can also be found online — to confirm that the property has no contribution debts, visit: www.tesoreria.cl)
- Certificate of Zoning Information (Certificado de Informaciones Previas) for the property that states other characteristics, such as whether height construction is allowed; if it is in a rural or urban zone; if the zoning rules of the property are compatible with commercial use; whether there is historical area protection; and if certain types of establishments may not be built; this document is issued by the Municipal Works Department (Direccion de Obras Municipales or DOM) of the corresponding municipality.

In certain special cases, the following are requested:

- For joint ownership – a certificate from the condominium manager certifying that there are no debts for common expenses, and if there are any, documents proving their payment
- Titles older than 10 years – when there is a need to verify the regularity of the registrations, marital status of any party, etc.

- For legal entities – proof of the representatives' capacities. If the seller has been a legal entity in previous sales, the capacities of those who appear on its behalf must be proven, through the respective public deed or reduction to public deed of the appropriate document, except if they were partially or completely inserted in the respective deed of sale; if a delegate is involved, his or her capacity to act must also be proven

- Powers of attorney – (i) copies of powers of attorney deeds are required if in any of the prior sales, one of the parties appeared represented by proxy, except when the power of attorney has been inserted in the respective deed; (ii) certificate of enforceability of the power of attorney up to the date of the execution of the document

- Supplemental records – depending on the sale's characteristics, additional records may be requested, such as (i) powers of attorney and delegation that are not issued more than one year prior to the respective date of sale, otherwise a certificate from the judicial archive stating that there is no revocation of the power of attorney in the margin of the master deed may be required; (ii) the power of attorney granted by the board of directors of a corporation, identifying the stockholders who actually attended the meeting of the board on that date (sufficient evidence for this is the notarial certificate attesting the board's conformation pursuant to the public record established on Art. 135 of the Corporations Law); and (iii) the legal entity's legal records, including copies of public deeds, registrations at the Registry of Commerce, publications in the Official Journal, and other evidence that prove the company's existence and validity.

The purchase is executed in a purchase deed (mandatory), which shall be executed before a notary. Usually also an escrow agreement is executed, by which the price is held in escrow by the notary until the property is registered in the real estate registrar under the name of the buyer, free of encumbrances other than those recognized in the purchase deed.

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

The seller usually represents and warrants that the property is free of all encumbrances, easements, seizure of assets and mortgages. Representations regarding the absence of expropriations are quite common. The seller also warrants that the property is free of occupants and other furniture or goods. In case of rural properties, the buyer usually warrants that all workers have left the estate.

Finally, the seller represents that the property is free of debt and owed taxes.

2.3 When is the sale legally binding?

The sale is binding the moment the purchase agreement is executed. However, the transfer of the buyer's ownership rights is made with the registration of the property in the real estate registrar.

2.4 When is title transferred?

Titles are transferred upon registration.

2.5 What are the costs usually shouldered by the parties?

Costs are usually split between parties, although there is no mandatory rule in this regard. Usually (a) the buyer pays for half of the notary costs for the execution of the public deed of sale; and (b) the seller pays for half of the notary costs for the execution of the public deed of sale as well as the total cost for registering ownership under his/her name at the property registry of the relevant real estate registrar. Deed costs are usually less than USD 500, while registrations are usually within that range as well.

3. Leases

3.1 What are the usual forms of leases?

The most common form of lease agreement is that with a fixed rent for a certain term, and the lease is automatically renewed unless the lessor serves advance written notification in accordance with the lease agreement.

Other forms of lease agreements involve fixed and variable rent (for example, for retailers, the rent usually involves part of the earnings of the leased plot to build the store).

Also, some leases allow the lessee or lessor to early terminate the agreements, under certain circumstances, or without cause, depending on the terms of the negotiation.

Finally, there are also lease agreements that allow the lessee to have a call for the title and ownership of the property, which must be exercised under certain circumstances.

In relation to the formality of the agreements, lease agreements can be executed through private instrument or by public deeds (however, in case of rural properties, the agreement must be either a public deed or has to be signed before witnesses).

When the rent is high or the term is long, the lease agreements are executed by public deed, because this formality assures the lessee that if the landlord sells the property, any new owner (third-party purchaser) will be obligated to comply with the lease terms. If the lease was entered through a private instrument, the third party purchaser is not so obligated and may terminate the lease.

3.2 Are lease provisions regulated or freely negotiable?

Lease provisions are — in most cases — freely negotiable. Leasing in general terms is regulated by the Civil Code; leases of urban properties are further regulated by Law No. 18,101; and Decree Law No. 993 contains special provisions on the leasing of rural land. However, almost all of these rules are supplemental to the intention of the parties, ie, they apply in the absence of an agreement between the parties, except for very specific mandatory provisions. According to Law No. 18,101, certain rights of the lessees are not renounceable.

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

There is no maximum term for leases, although excessive long-term leases may be characterized as a sham or as a disguised transfer of property.

Another exception corresponds to leased properties under marital property (or belonging to the spouse in the case of a community property marriage), when the property is leased for more than five years (if urban) or eight years (if rural), as in that case it requires both husband and wife's consent.

3.4 What are the usual lease terms?

The parties may agree to the terms of their choice according to their interests. In general, leases of residential buildings are for one year and the rental period is extended for the same period tacitly and automatically.

Leases for commercial purposes tend to be longer, ranging between two and five years.

Finally, leases for major projects (such are commercial centers or industrial facilities) tend to be for more than 20 years.

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

No. Lessees may not require for extensions of the lease, unless the lease itself contains such provision.

However, if the agreement terminates but none of the parties deem it terminated (one continuing paying while the other accepts payment), the agreement is automatically renewed (in accordance with the agreement) for three-month periods.

3.6 On what grounds may a lease be terminated?

Either party may early terminate the agreement if there is breach of obligations by the other party, or when the parties have stipulated early termination conditions.

Even if it is not provided in the contract, the law gives the lessee the option to terminate the agreement early in the following cases:

- When the poor state or quality of the leased premises prevents it from being used for the purpose for which it has been leased
- When necessary repairs are not made by lessor
- In urban property leases intended for residential purposes with a fixed term exceeding one year and there is a subletting prohibition

3.7 Must rent be paid in local currency?

No. Parties may agree that the rent be paid in foreign currency. Also, it is very common that parties agree for the rent to be paid in UF (Unidades de Fomento), which is a monetary unit that is adjusted according to the inflation on a daily basis (similar to the CPI in the United States).

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

Rent is paid according to the parties' agreement. If there is no agreement, the law establishes that it be paid according to local practice.

If neither local practice nor the parties are able to establish a rule, lease of urban property is paid monthly and lease of rural property is paid yearly. Also, for urban properties, payments are usually made within the first five days of each month.

That said, usual practice is that rent is paid month by month and in advance to each month (the first five days of each month).

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

There are no limits to rent increases. Normally, rent is agreed in UF as described in Section 3.7 above or in nominative units that adjust for inflation (Chilean pesos + % Consumer Price Index).

3.10 What are the basic obligations of landlords and tenants?

The following are usually required of landlords:

- Deliver the leased property
- Keep the property in a state that functions for the purpose it was leased (ie, the landlord has to perform all necessary repairs)
- Maintain the property free from any disturbance or disruption
- Reimburse the tenant for costs incurred that are not the tenant's responsibility

The following are usually required of tenants:

- Pay the rent

- Use the property according to the terms of the lease, without breaching the purpose of the agreement or agreed objectives
- Perform or pay for repairs that are the tenant's responsibility
- Return the property at the end of the lease
- Maintain the property in good condition

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

The tenant has no right to assign the lease or sublet the property without the landlord's express and written consent. If allowed, and the tenant assigns the lease, the assignee must agree to the same conditions as the original tenant.

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

It must be determined whether or not it was the tenant's fault. If the tenant is at fault, he/she is liable for the damages to the destroyed property, especially for the payment of rent. If there is no tenant fault, the lease is not responsible for the damages. In both cases, the lease expires.

3.13 Who is usually responsible for insuring the leased premises?

The landlord is usually responsible for insuring the leased premises. The tenant may also insure the premises if they choose to do so or if the parties agree.

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

It must be determined whether or not the lease is a public deed or private instrument (as described in 3.1). If the lease is executed in a private document, the purchaser is not obligated to respect it and the new owner may evict the lessee, terminating the lease (the lessee being allowed to claim damages against its former lessor). If it is a public deed, the

purchaser will be bound to follow its terms (however, there are specific provisions in case the property is transferred by sale in auction as part of the enforcement of a mortgage, as in such case purchaser is only obliged to honour the lease if it was registered in the Real Estate Registrar prior to the mortgage that caused the auction).

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

Again, this depends on whether or not it was executed as a public or private deed. If the deed is private, it does not survive. If its by public deed, the deed is registered in the Mortgages Encumbrances Registry of the real estate registrar, and the mortgage is registered with a date prior to the deed, then the lease survives.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

In terms of urban planning, the DOM of each municipality has the main authority over land development and zoning. DOMs are overseen by the Ministry of Housing and Urban Development.

For environmental matters, the Environment Ministry has the main authority, although the Environment Assessment Service (Servicio de Evaluación Ambiental or SEA) is in charge of evaluating projects with environmental impact in Chile. Finally, the Environmental Superintendence is in charge of overseeing the regulations.

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

In relation to urban planning issues, the applicable laws are the General Law of Urban Planning and Construction, the Organic-Constitutional Law of Municipalities and the General Ordinance of Urban Planning and Construction. At a local level, the Master Plan of the county, and the Law on General Grounds Environment (Law 19,300) govern environmental issues.

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

To build in an urban area, a building license from the DOM is required. For minor work in an urban area, a permit is still necessary, but at a lower charge and with briefer approval periods.

At the end of the construction, and before start using the building, the construction must be reviewed by the DOM, which must issue a certificate of Final Reception of the Work. This certificate is mandatory for using the premises.

Finally, to build in rural areas, a special certificate issued by the Agricultural and Livestock Service (Servicio Agricola y Ganadero or SAG) must be requested.

4.4 Can an environmental cleanup be required?

No, but the city, in accordance with the General Ordinance of Urban Planning and Construction, may take charge of cleaning vacant lots. Also, if a building poses a risk to a community, a dilapidated building claim may be raised.

However, on 1 June 2016, Law No. 20920 regarding "Waste management, the extended liability of the producer and the encouragement of recycling" was published in the Official Gazette. This legal reform attempts to redefine the current approach to waste management in our country and has positioned Chile as a pioneer in Latin America by establishing a recycling public policy.

One of the underlying principles of this act is the "polluter pays" principle, that is, the generator of the pollution is responsible for it's waste, as well as for internalizing the costs and negative externalities associated with its waste management (Article 2 of the Waste Management Act).

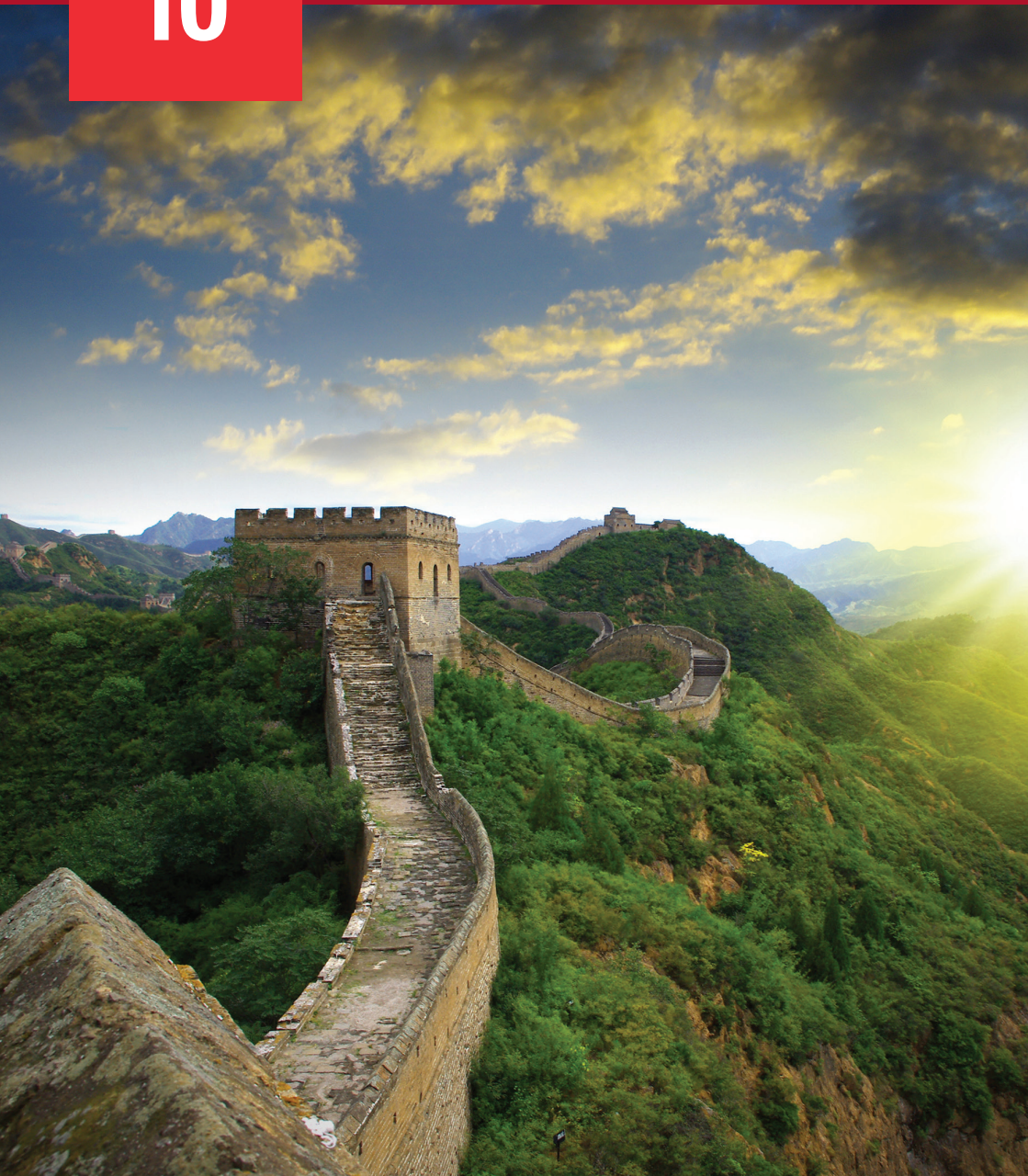
4.5 Are there minimum energy performance requirements for buildings?

Certain minimum energy performance requirements are described in Decree No. 327, and vary according to building type. Also, currently being discussed in Congress is a law that expressly regulates energy performance requirements.

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

There are some regulatory measures such as Decree D.S. No. 157, of 2007, which establishes rules for the recovery of neighborhoods, and the Environmental Law, which establishes controls for the projects' sustainability and also creates a fund for their protection (Art. 66).

10 China



1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" generally includes the following:

- Land use rights (or land ownership in some cases)
- Buildings or structures constructed on land

1.2 What laws govern real estate transactions?

Real estate transactions in the People's Republic of China (PRC) are governed by statutes enacted by national and local governmental authorities. The principal statutes at the national level include the following:

- PRC Interim Regulations Concerning Assignment and Transfer of Urban Land Use Right (1990)
- PRC Urban Real Estate Law (1995)
- PRC Land Administration Law (1999)
- PRC Contract Law (1999)
- PRC Property Rights Law (2007)
- Commercial Properties Leasing Measures (2010)
- Land Registration Measures (2007)
- Building Registration Measures (2008)
- Interim Regulations on Real Estate Registration (2014)

While the national statutes set out the general legal framework, local regulations enacted at provincial and municipal levels often provide the

detailed legal rules for local real estate transactions. For example, Shanghai has many local regulations, including the following:

- Shanghai Land Administration Implementation Measures (1994)
- Shanghai Real Estate Title Registration Regulations (2009)
- Shanghai Properties Leasing Regulations (1999)
- Shanghai Residential Properties Leasing Administrative Measures (2011)

While China is not a "common law/case law jurisdiction," the PRC Supreme People's Court and the local courts do issue judicial interpretations to provide guidance on the laws and occasionally refer to precedent court cases when making judgments on real estate transactions.

1.3 What is the land registration system?

China adopts what is basically the "Torrens system" where title to real estate is registered with and certified by the government.

Real estate title registration is achieved by registering the title details at the local real estate registry administered by the government, and the registry issues a title certificate to the registered owner.

The information contained in the title certificate issued and at the local real estate registry should be consistent with each other. However, if there are discrepancies, the information registered at the local real estate registry is conclusive unless there are manifest errors. The owner may sue the government for wrongful registration.

1.4 Which authority manages the registration of titles?

At the national level, the Ministry of State Land and Resources generally takes charge of real estate title registrations.

At the local level, real estate title registration for land and buildings has been combined and centralized at one registry in most cities by the end of 2017.

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

The following types of real estate interests and transactions must be registered at the local title registry for them to be fully protected and enforceable against third parties:

- Grant (creation) of land use rights by the government
- Recognition (creation) of ownership of new buildings by the government
- Transfer of land use rights and buildings
- Mortgage of land use rights and buildings

A real estate lease is also required to be filed with the designated local authority; however, the lack of filing does not invalidate the lease.

As for easements, they are not required to be registered. An easement takes effect upon signing of the easement agreement. However, registering an easement will protect the holder of the easement right from third parties.

1.6 What documents can land owners use to prove ownership over real property?

Depending on the location and the types of real estate interests involved, owners will normally use their "land use right certificates," "building ownership certificate," or "real estate title certificate" issued by the local title registry as proof of title.

1.7 Can a title search be conducted online?

Online title search is not yet available in China. In most cities, the real estate registration database has been computerized. According to the Implementation Measures for Interim Regulations on Real Estate Registration effective from 1 January 2016, only owners, interested parties in real estate transactions, succession or litigations, persons authorized by the owners or interested parities, and courts, prosecutors, security bureaus, supervisory bureaus or other government authorities carrying on official affairs may conduct title search at the local registry.

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

Since July 2006, foreign companies and individuals are no longer permitted to directly acquire and hold PRC real estate for "investment purposes" (eg, greenfield development projects and acquisition of buildings for investment holding and/or leasing). Real estate directly acquired by foreign companies and individuals for investment purposes prior to July 2006 are "grandfathered." Today, foreign companies and individuals must obtain approval from the PRC foreign investment authority to set up a local company to carry out real estate investment.

On the other hand, foreign companies and individuals may still directly acquire PRC real estate for "self-use" or "self-residence" purposes in certain limited circumstances. For example, foreign individuals who work or study in China may purchase buildings for self-use or self-residence based on actual needs. However, some cities currently restrict non-local individuals who do not have local tax and social security registrations from purchasing residential properties.

Foreign companies may purchase a "reasonable quantity" of buildings for self-use for their representative offices or branches in China. Note, however, that foreign companies and individuals from countries without

diplomatic relations with China could be restricted from acquiring PRC real estate even for self-use purposes.

1.9 Can the government expropriate real property?

The government is empowered by law to expropriate land and buildings for public interest purposes, but the government must pay compensation to the owners in accordance with the law.

1.10 How can real estate be held?

There is no private "freehold" land ownership in China. All urban land in China is owned by the Chinese government and is commonly referred to as "state-owned land." All rural and suburban land is owned by rural collectives (ie, local groups of farmers) and is commonly referred to as "collective land."

The PRC government is permitted to grant, lease or allocate the right to use state-owned land, but PRC laws prohibit the transfer of ownership of state-owned land. Collective land in China is subject to stringent legal restrictions and investors should exercise caution when dealing with them.

For illustration purposes, an owner of a residential apartment in China obtains and holds his property title in the following manner:

- The local government arranges a public bidding process to grant the land use rights of a residential site to a real estate developer for a term of 70 years (the maximum permissible land grant term for residential use)
- The developer winning the bid signs a land grant contract with the local government and pays a substantial land grant fee to the local government. Effectively, the developer acquires a long-term, transferrable leasehold interest in the land

- The developer constructs residential development on the granted land site
- The developer sells the residential development on a strata-title basis to different buyers
- Each buyer registers his/her real estate title at the local registry and obtains a real estate certificate (or a land use certificate and a building ownership certificate in some cases) in respect of the residential property he/she purchased. The buyer will enjoy ownership of the residential property for the remaining term of the 70-year land grant. Under PRC law, the buyer's title will be automatically renewed at the end of the 70-year initial land grant (although the legal procedures for title renewal have not yet been legislated)

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

The most common structure is for the investors to form a limited liability company in China as a special purpose project company to acquire, develop or operate real estate assets in China. Such project company is an independent legal entity separate from its investors. The project company would be required to have a registered capital, and its investors are obligated to contribute capital in accordance with the law and the company's articles of association.

If one or more of the investors are foreign investors, the establishment of the project company will require the approval of the PRC foreign investment authority. The project company will be established as either an "equity joint venture company," a "cooperative joint venture company," or a "wholly foreign-owned company."

1.12 How are real estate transactions usually funded?

Acquisition of real estate by companies are usually funded by a combination of paid-in (registered) capital, shareholder loans, bank loans and also sale proceeds from the project in some cases. There are corporate,

investment and banking rules governing the capitalization and financing for real estate projects.

For development projects without any foreign investors, at least 20–30% of the project investment must be funded by shareholders' equity; whereas in the case of foreign-invested development projects, at least one third of the project investment must be funded by shareholders' equity. Local banks are not permitted to provide loans to developers for the payment of land grant fees to the local government. Developers are allowed to "pre-sell" properties and use the pre-sale proceeds collected to fund the development, provided that the relevant government permits (including the pre-sale permit) have been obtained.

Depending on the nature of the property and the circumstances of the buyer concerned, it may be possible for the buyer to fund 50-80% of the purchase price by way of a bank loan.

1.13 Who usually produces the documentation in real estate transactions?

For sale of properties in a development project, the legal documents are usually prepared by the developer and its legal counsel. For other types of transactions, there is no standard practice and the parties are free to negotiate and decide who shall prepare the legal documents.

1.14 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?

If the property concerned is subject to certain real estate interests which existed prior to the transfer or occupation by the current owner or occupier (eg, outstanding mortgage or pre-existing easement), the current owner or occupier could be exposed to these claims against the property.

Further, under the specific circumstances specified by the law, the current property owner could be liable for environmental contamination to the property caused by the previous owner.

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

It is possible for the buyer to claim against the seller for breach of statutory implied warranties or express contractual warranties with respect to matters which arose prior to the disposal of the property (eg, breach of warranties in respect of good title, structural safety and no outstanding payment).

Further, the former owner or occupier is generally liable for environmental contamination committed by it even after he/she has disposed of or left the property.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

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

2.2 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.

2.2 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.

2.3 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.

2.4 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 if 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

3. Leases

3.1 What are the usual forms of leases?

- Commercial leases

  The national and local authorities have published model form contracts (in Chinese only) for real estate lease for reference by

landlords and tenants. Generally, the provisions of these model leases are quite simple and fairly balanced between the interests of both landlord and tenant. However, these model leases would not be legally adequate for leasing transactions of substantial value. In many cities, the parties must use the locally published model leases to satisfy local lease registration requirements, but the parties are permitted to attach a supplemental agreement to these model leases.

The level of detail and sophistication of lease agreements in the Chinese market vary significantly and largely depends on the background of the parties and the nature of the property involved.

- Residential leases

The leasing practices for commercial property are basically similar to those for residential properties. Therefore, the foregoing comments regarding commercial leases are also generally true for residential leases. Local citizens usually use the model leases for simple residential leases and they often do not file their leases with the local authorities.

3.2 Are lease provisions regulated or freely negotiable?

Generally speaking, lease provisions are not much regulated and the parties are free to negotiate most of the lease provisions. Nevertheless, lease agreements are subject to certain basic legal rules. For example, national leasing regulations provide that a lease agreement with a term longer than six months must be in written form.

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

The maximum term for a lease is 20 years. If a lease term exceeds 20 years, the portion of the lease period beyond the initial 20-year period is invalid. When the lease term expires, the parties may renew the lease for another term not exceeding 20 years.

3.4 What are the usual lease terms?

The lease terms vary in practice depending on the type of property involved. Currently, the typical lease term for office and retail properties are as follows:

- Office property: two to five years
- Retail property: three to seven years

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

The national law does not give a tenant a legal right to renew the lease at its expiry, but many local regulations give the tenant a priority right to renew the lease on terms no less favorable than those offered by other potential tenants. If the tenant wants to have an assured right to extend the lease at its expiry, it must negotiate for a renewal right in the lease agreement.

3.6 On what grounds may a lease be terminated?

A landlord may terminate the lease if the tenant breaches any of its basic legal obligations as the tenant. Likewise, the tenant may terminate the lease if the landlord breaches any of its basic legal obligations as the landlord. A summary of the basic legal obligations of landlords and tenants are set out in Section 3.10 below.

The lease agreement may stipulate additional contractual grounds of termination exercisable by the landlord and the tenant.

Further, the lease may be terminated by either the landlord or the tenant if the use of the property is substantially frustrated due to force majeure or government action not caused by the fault of either party.

3.7 Must rent be paid in local currency?

PRC law requires property rent to be denominated and paid in the local currency, renminbi yuan.

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

The parties are free to negotiate the rent payment terms, but monthly or quarterly payment in advance is fairly common.

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

There are no statutory limits on rent increases upon lease expiry. It is fairly common that the parties will negotiate the rent for the extended term by referring to the prevailing market rate for comparable properties. Some substantial leases may provide for an elaborate mechanism or limits for rent review.

3.10 What are the basic obligations of landlords and tenants?

Under national laws and regulations, landlords have a number of basic legal obligations, including the following:

- Ensure that the tenant's use of the property is not affected by third parties' claims or actions (except for those which are beyond the control of and not attributable to the landlord's fault, such as government actions)
- Deliver the property to the tenant in the condition required by the lease and maintain the property to a condition fit for the use stipulated in the lease
- Not to lease out property which does not meet safety, hygiene or other applicable statutory requirements
- Unless the lease provides otherwise, maintain and repair the property

Under national laws and regulations, tenants have a number of basic legal obligations, including the following:

- Pay rent in accordance with the lease and the law
- Use the property in accordance with the lease provisions
- Take proper care and custody of the property
- Not to alter the structure of the building
- Not to sublet the property without the consent of the landlord
- Upon the expiration of the lease, return the property to the landlord in the condition stipulated in the lease

It should be noted that local regulations may impose additional obligations on landlords and tenants.

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

Under national laws and regulations, a tenant must obtain the landlord's prior consent before it may sublet the leased property or assign the lease to a third party. The landlord typically will require the head-tenant to be responsible for any breach committed by the sub-tenant before giving its consent. Many leases allow the tenant to carry out intra-group lease subletting or transfer without being subject to landlord's consent.

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

Under national laws and regulations, if the leased premises are destroyed or substantially damaged due to force majeure or other reasons not attributable to the landlord or the tenant, either party may terminate the lease.

3.13 Who is usually responsible for insuring the leased premises?

Landlords are usually responsible for insuring the leased premises.

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

Generally, a lease will survive and be binding on the buyer if the owner sells the leased premises.

The law gives the tenant a priority right to acquire the property on terms no less favorable than those offered to the landlord by other potential buyers. However, if the landlord fails to honor this right of the tenant, the tenant can only seek compensation from the landlord but cannot invalidate a completed sale of the property to a third party.

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

It depends on whether the lease was entered into effect prior to the property mortgage. If the property mortgage was registered prior to the lease, then the mortgagee may evict the tenant and carry out an enforcement sale of the property free of the lease. If the property mortgage was registered after the lease, then the mortgagee can only carry out an enforcement sale of the property subject to the lease.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

At the national level, the Ministry of Housing and Urban-Rural Development, and to some extent also the Ministry of State Land and Resources, has regulatory authority over land development activities in China. The Ministry of Environmental Protection has regulatory authority over environmental issues relating to land, buildings and construction activities. These national ministries have their own local bureaus in each province and city to exercise their regulatory powers.

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

The principal environmental legislation at the national level are as follows:

- The PRC Environmental Protection Law (1989)
- The PRC Environmental Impact Assessment Law (2002)
- The PRC Environmental Protection Regulations for Construction Projects (1998)
- Various national regulations for control of environmental waste disposal

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

Under national laws and regulations, the main permits for development and construction of real estate projects include the following:

- Land use right certificate
- Approval for project verification report
- Approval or registration of environment impact assessment report
- Construction land planning permit
- Construction project planning permit
- Construction work permit

Under national laws and regulations, the main permit required for occupying real estate is the construction completion inspection and acceptance recordal form (which signifies that the fire safety inspection acceptance and other statutory inspections have also been completed).

4.4 Can an environmental cleanup be required?

Under certain circumstances stipulated by the law, a current owner of land could be required to carry out an environmental cleanup of the land even if the site contamination was not caused by the current owner.

4.5 Are there minimum energy performance requirements for buildings?

There are national and local statutory specifications for energy efficiency for new buildings. Old buildings are usually not covered by these statutory requirements. Use of advanced environmentally friendly construction materials and technologies is encouraged in China.

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

Statutory construction standards in China contain energy conservation and sustainability requirements. Non-compliance with such standards could lead to government sanctions and other legal liabilities. Residential property developers are required to provide home buyers with information relating to the energy consumption levels of the properties.

The Chinese government has introduced a voluntary "green building" rating system. The Chinese government also grants some (albeit not substantial) tax incentives to developers, contractors and suppliers for satisfying the relevant energy conservation standards.

11 Colombia

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Any buildings or structures on it
- Movable property intended to permanently serve land

1.2 What laws govern real estate transactions?

In Colombia, real estate transactions are governed primarily by the Civil Code.

Transactions that have commercial purposes are also governed by the Commercial Code.

1.3 What is the land registration system?

There is a national title registration system that covers the entire Colombian territory. In this registration, ownership can be verified, as well as where public deeds regarding real rights, liens and attachments over the property are registered. This system is the only means to verify ownership and mortgages.

1.4 Which authority manages the registration of titles?

Title registration is managed by the Superintendence of Notaries and Registration, through public registry offices located throughout the country.

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

- Transfer of property (ie, purchase, donation, expropriation)

- Leases by public deed
- Mortgages
- Usufruct
- Easements
- Court measures like embargoes

1.6 What documents can land owners use to prove ownership over?

Land ownership may only be proven with the property certificate issued by the respective public registry office.

1.7 Can a title search be conducted online?

Most public registry offices have an online system to search property certificates over real estate properties registered in such offices. However, it is not possible to search for the public deeds online.

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

Yes. Foreigners can own real property in Colombia, except vacant lots located at a national border.

1.9 Can the government expropriate real property?

Yes. When there are reasons of public interest (for instance, road or power transmission construction), the government can expropriate real property through an administrative or judicial procedure. In all cases, the government must indemnify the owner of the property with the commercial price thereof.

1.10 How can real estate be held?

Real estate is usually held by the following:

- Leasehold
- Freehold property
- Condominium
- Possession

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

- Corporations
- Co-ownership
- Limited partnership
- Trusts

1.12 How are real estate transactions usually funded?

These transactions are usually funded through loans granted by financial institutions, which are generally banks. The loans are commonly secured with mortgages over the property. Interest rates are fixed by the lenders and are generally low compared to other rates in the market.

Financial leasing and trusts are used as well.

1.13 Who usually produces the documentation in real estate transactions?

Either party may prepare the initial draft of the promissory sales agreement and the draft of the sales agreement public deed. When financial institutions are involved in real estate transactions, they will normally produce the drafts of the contractual documentation. After the

sales agreement public deed has been registered in the public registry office, such office will issue the property certificate.

1.14 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?

Yes. An owner can inherit liability for matters relating to the real estate even if they occurred before the owner bought it. For instance, regarding condominium properties, the new and former owner will be jointly liable for administration expenses caused prior to the acquisition of the property.

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

Yes. The former owner is held liable before the new owner in guaranteeing (i) the right of ownership against third parties that may challenge the title for grounds that occurred before the transfer of the property; and (ii) the good physical conditions of the property (absence of hidden defects). Also, it usually is agreed that the former tenant is held liable before the landlord for the public utilities expenses that remain to be paid.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Promissory sales agreement

  This agreement is not a sales agreement itself; it is just a promise that on a given date and before a given notary public, the parties will attend to execute the sales agreement public deed. The promissory sales agreement must contain all terms required for the transaction such as the description of the property and price. It could also include securities.

- Property certificate (public property folio) issued by the public registry office

By this certificate, parties may acknowledge the legal status of the property in terms of aspects subject to registration such as ownership right, attachments, mortgages or interim measures. It is worth noting that the property certificate is the document that proves the ownership of real properties in Colombia.

- Sales agreement public deed

  This agreement can only be executed before a public notary by a public deed. Usually, both parties pay for the notary expenses in equal portions.

- Usually, the mortgage over the property (if any) will be included in the same sales agreement public deed

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

According to applicable law, the seller guarantees the buyer's right of ownership and the absence of hidden defects in the property.

2.3 When is the sale legally binding?

When the public deed that contains the purchase and sales agreement is duly executed.

2.4 When is title transferred?

When the sales agreement public deed is registered in the public registry office.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- 100% of the registration expenses
- 100% of the registration tax

- 50% of the notary expenses

The seller usually pays for the following:

- 50% of the notary expenses
- Withholding tax

3. Leases

3.1 What are the usual forms of leases?

- Commercial leases

  Commercial leases are governed by the Civil and the Commercial Code. The Commercial Code provides special provisions to protect a tenant who has occupied real estate with a commercial establishment for at least two years. The protection consists of the right the tenant has to renew the lease (a few exceptions are made such as contractual breach of the tenant, or the landlord needing the property to install a different commercial establishment, or the need to perform necessary repairs).

- Residential leases

  Residential leases are regulated by the Residential Lease Statute. According to this statute, there are restrictions for yearly basis rent increases made by the landlord. In case parties do not agree otherwise, the lease agreement will last for a one-year term, which will automatically be extended for successive one-year terms.

3.2 Are lease provisions regulated or freely negotiable?

Lease provisions are generally freely negotiable. However, Colombian law does provide certain restrictions to such freedom regarding certain minimums that must be complied with despite the agreement of the parties to the contrary. For instance, restrictions apply regarding increases

of the rent for residential leases, as well as regarding the causes to terminate commercial leases as explained above.

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

There is not a maximum term for leases. Parties are free to set forth the extension conditions of the agreement as they please.

3.4 What are the usual lease terms?

For residential leases, one-year terms; for commercial leases, between two- to five-year terms. The term is usually agreed to be automatically extended unless prior termination notice is given.

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

In commercial leases, the tenant has the right to renew the lease when it has occupied the leased property with the same commercial establishment for at least two years and the landlord does not have a just cause, according to Article 518 of the Code of Commerce, to terminate the lease.

3.6 On what grounds may a lease be terminated?

Lease agreements can generally be terminated under the following circumstances:

- Upon the expiration of the lease term (does not apply for commercial leases when the tenant has occupied a property for at least two years with the same commercial establishment)
- When there is a need to repair or demolish the property
- When the tenant's use of the property is different from that agreed on in the contract

- Upon the extinction of the landlord's right to lease (unless the lease was executed by means of a public deed and registered in the public registry office)
- Upon the destruction of the leased property
- If the landlord needs the property for their own residence or to establish a substantially different business of the tenant
- When parties fail to comply with their obligations under the lease according to legal and contractual provisions

3.7 Must rent be paid in local currency?

Yes. Although it is possible to agree on rent in a foreign currency, the payment of the rent must be made in local currency (Colombian pesos) at the exchange rate of the date of payment, or of the date agreed by the parties.

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

Rent is usually paid on a monthly basis and in advance within the first five to 10 days of the month. However, the parties are free to agree otherwise.

Regarding rural properties, rent is usually paid on a yearly basis.

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

Yes. In residential leases, the increase of rent cannot exceed the Consumer's Index Price (IPC) of the previous year, nor the commercial value of the property.

In commercial leases, there are no legal limits for rent increases. However, the applied rate is usually the IPC, sometimes increased by one or two points.

3.10 What are the basic obligations of landlords and tenants?

The landlord's main obligations are as follows:

- Maintain the property in a way that it can be used for the purpose of the agreement
- Protect the tenant from third parties who may disturb their tenancy
- Pay for necessary repairs

The following are the tenant's main obligations:

- Use the property according to the agreement and preserve it
- Pay the rent on time
- Pay for public utilities
- Pay for ordinary repairs

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

Generally, tenants are not allowed to sublet the property, unless previously authorized by the landlord.

Regarding commercial leases, tenants can sublet without prior authorization up to 50% of the leased premises, as long as, with the sublease, the tenant does not give a different use of the property in a way that affects the landlord.

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

If the premises are destroyed, the lease is terminated. In this event, the tenant must prove that the destruction did not occur due to their behavior, or else, will be liable for such destruction.

3.13 Who is usually responsible for insuring the leased premises?

In a lease agreement, none of the parties are usually obligated to insure the premises. However, the landlord may require the tenant to insure the leased premises.

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

As a general rule, when the owner sells the leased premises, the right as landlord disappears, and thus the lease agreement will be terminated unless: (i) the lease has been executed by public deed and such public deed has been duly registered in the public registry office; or (ii) the new owner accepts the assignment of the lease agreement.

If the premises are not sold but transferred without any consideration (eg, donation, inheritance, etc.), the new owner will be obligated to maintain the lease agreement.

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

No. Unless the lease agreement has been executed by public deed duly registered in the public registry office.

If the foreclosure is due to a mortgage, the lease agreement will only survive if the registration of the lease agreement executed by public deed is prior to the registration of the mortgage.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Municipalities and districts regulate land development through official zoning plans. These plans refer to the classification of land, the limits between urban land and protected historic and cultural areas, and identification of zones in which construction is prohibited.

All official plans are based on the general development plan issued by the national government.

Municipalities and districts also regulate environmental matters along with environmental agencies (Corporaciones Autónomas Regionales) and the Ministry of Environment.

Environmental regulations issued by municipalities and districts are also contained in the official zoning plans. There are specific requirements, such as environmental licenses, that apply mainly for the undertaking of industrial activities.

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

- Zoning plans of relevant municipalities or districts
- Regulations issued by the Ministry of Environment
- Regulations issued by environmental agencies

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

Construction licenses and certificates of land uses issued by municipalities or districts. In case the construction is related to an activity that may have an environmental impact, an environmental license is required.

4.4 Can an environmental cleanup be required?

Generally, environmental cleanup is required when public space is involved or when the authorities seek to reduce or mitigate potential danger to human health.

Specific provisions for handling disposable material are set forth in local regulations.

4.5 Are there minimum energy performance requirements for buildings?

According to Decree 3450 of 2008, as of the enforcement of this regulation, all energy users must use high light-efficient instead of low light-efficient energy sources.

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

There are some regulations[1] that refer to energy efficiency but such regulations only contain principles and definitions.

[1] Law 697 of 2001 and Decree 3883 of 2003.

12 Czech Republic

1. Real Estate Law

1.1 What is included in the term "real estate"?

The Czech real estate law has been affected by a significant change as a result of Act No. 89/2012 Coll., the Civil Code (the "Civil Code"), which entered into legal effect on 1 January 2014. Consequently, a number of previously applicable acts was repealed, including, but not limited to the former Civil Code, Act on Lease and Sublease of Non-residential Premises, Act on the Cadastral Register and the Act on Registration of Ownership and Other Rights In Rem. The legal regulation is currently contained in the Civil Code and Act No. 256/2013 Coll., on Cadastral Register. The basic notions of the current real estate law, including the most significant changes brought by the new legal regulations, are set out below.

The term "real estate" includes both tangible and intangible things (ie, rights), as follows:

- Land plots
- Underground structures (if designated for a specific purpose)
- Rights in rem to the above
- Other rights stipulated by law (eg, a construction right).

The Civil Code also specifically designates apartment units as part of real estate. All other assets, unless explicitly provided for otherwise by a special legal regulation, are not considered real estate under Czech law.

Under Czech law, as of 1964, the superficies solo cedit principle, which treats each plot of land and anything built upon it as a single object of real estate did not apply. As a result, construction built on a plot of land did not form part of such plot of land. Therefore, it was possible that an owner of a plot of land was not the same legal or physical person as the owner of a construction built on that same plot of land.

However, superficies solo cedit has been re-introduced to Czech law by the Civil Code. It explicitly sets forth that the following items shall be understood to be part of the land plot:

- The space below and above the surface of the land plot
- Constructions built on it and other equipment (excluding temporary constructions)
- Plants growing on it

Connections to utilities and related pipes (eg, sewerage or water) are not a part of the land plot.

To achieve the application of the above principle in practice, certain temporarily applicable provisions have been introduced by the Civil Code. Basically, where the owner of the land plot and the owner of the construction built thereon were the same as of 1 January 2014, the construction as a separate thing in legal sense ceased to exist (ie, became a part of the land plot), and the owner of the land plot now owns solely the land plot, which includes the construction as a part of such land plot. In all other instances, both the land plot and the construction continue to be separate things in a legal sense (ie, the construction has not become a part of the plot of land) and both the land owner and the construction owner have a preemption right with regard to the transfer of ownership of either the plot of land or the construction until the ownership is unified in the hands of the same person.

The newly introduced construction right entitles its owner to have a construction on a plot of land that belongs to another person and may be established only for a limited period of time not exceeding 99 years. This right may relate to a construction that is yet to be built or to an already existing one; such a construction becomes a part of the construction right itself and the owner of the right has, with regard to the construction, the same rights as an owner. It may be established by means of an agreement,

usucapio or by a decision of a competent authority based on a legal provision and has to be entered into the cadastral register. The construction right is both transferable and encumbrable and passes onto the legal successor of its owner. In addition, leases may now be registered in the cadastral register, upon the request of the owner of the real property or upon the tenant's request, provided that the owner has expressed his or her consent.

In cases not covered by the construction right, a construction newly constructed on a land plot by a person different from the owner of the land plot (constructor) at his or her own costs becomes the ownership of the owner of the land plot by virtue of law. The owner of the land plot is then required to reimburse reasonably incurred costs to the constructor, provided the construction was performed by such constructor in good faith. The owner of the land plot may also ask the court, provided that the constructor was not entitled to perform the construction of the land plot, to decide that such a construction shall be demolished and the land plot shall be returned to its former state, and that the constructor shall bear all costs associated therewith. The owner of the land plot is further entitled to ask the constructor to purchase the land plot. The constructor may require the owner of the land plot to transfer the ownership of the land plot to him or her for a price usual in terms of place and time, provided that the constructor performed the construction in good faith, and that the owner of the land plot was aware of the construction taking place and did not prohibit it without undue delay. Furthermore, either party may ask the court to decide that the constructor shall gain ownership right to the land plot and pay a consideration in return.

Should someone use someone else's material to build a construction on his or her own plot of land, the construction becomes part of the plot of land; however, the owner of the land plot shall reimburse the value of the material to its owner.

Should a small part of the construction built on the constructor's own land plot reach onto another person's land plot, the constructor becomes by virtue of law the owner of such small part of the relevant land plot, provided that the constructor performed the construction in good faith.

1.2 What laws govern real estate transactions?

Real property law is governed, in particular, by the following legal regulations:

- The Civil Code
- Act No. 256/2013 Coll., on the cadastral register

Other legal regulations may also be involved, such as the so-called restitution laws adopted to relieve wrongdoing connected in particular with the confiscation of real properties by the former socialist regime.

1.3 What is the land registration system?

The Czech Republic maintains a uniform system cadastral register (katastr nemovitostí). The cadastral register is a collection of data on real estate in the Czech Republic, which comprises a list and description of the real estate and its geometrical and location determination. The cadastral register comprises a registry of ownership and other rights in rem to real estate pursuant to applicable legal regulations. It is also a source of information with the following additional purposes:

- Protects rights to real estate
- Serves tax and other payment purposes
- Protects the environment, mineral wealth and cultural monuments
- Serves the purposes of the development of the territory, the valuation of real estate, as well as scientific, economic and statistical purposes

- Allows for the creation of other informational systems serving the abovementioned purposes

The cadastral register enables the interested entities to verify the ownership title and other rights to the real estate registered therein.

1.4 Which authority manages the registration of titles?

Title registration is managed by a competent cadastral office. It is determined on the basis of the location of the real estate in question. Each cadastral office has cadastral workplaces under it. There are currently 14 cadastral offices in the Czech Republic.

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

The cadastral register comprises the following items:

- Land plots
- Constructions, unless they are already forming part of the land plot or of the construction right (see below)
- Apartment units

As noted above, the cadastral register is a public record of certain rights to real property including the following:

- Ownership right
- Mortgage right
- Right corresponding to an easement
- Lease
- Pre-emptive purchase right with effects of right in rem
- Construction right (see below)

- Other rights if stipulated by law

The Civil Code has introduced the possibility to register leases in the cadastral register upon the request of the owner of the real property or upon the tenant's request, provided that the owner has expressed his or her consent.

1.6 What documents can land owners use to prove ownership over real property?

In general, ownership over real property is proved by an excerpt from the cadastral register, where the current owner is indicated.

Under previous laws, cadastral registry entries did not constitute a definitive or conclusive proof of ownership. A person relying on entries made after 1993 was only deemed, as a matter of law, to be relying on good faith that the registration corresponds to the factual state, unless such person must have been aware that it does not so correspond. As a consequence, a particular entry only established the good faith of the person holding a real property. If real property was held in good faith for a period of 10 years, the holder would become the owner of the real property on the basis of usucaption. Thus, legal titles regarding acquisition or transfer of real estate performed during the past 10 years were often required for legal inspection by prospective acquirers of real estate to mitigate the risk that such acquirer would not become the entitled owner of the real estate in question.

Currently, pursuant to the Civil Code, as soon as the title to real estate is entered into a public (cadastral) register, it is presumed that it corresponds to the actual situation of the property. Should the title entered into the register not correspond to the actual situation, the acquirer's good faith in acquiring ownership title for consideration from a person entitled to transfer it according to the cadastral register entry (at the moment of filing of the registration application) will be decisive. As a consequence, the acquirer of the real estate may become the entitled owner thereof even if

it the real estate was acquired from a person who was (in terms of the law) not the entitled owner thereof but was registered in the cadastral register. With regard to the rights entered into the cadastral register before the Civil Code entered into legal effect or within the first year thereafter, the abovementioned consequences will only arise one year after its entry into legal effect.

Should there be a discrepancy between an entry in the cadastral register and the actual situation, the affected person is entitled to ask for such entry to be corrected accordingly. However, such entitlement is limited in terms of time expired from performance of the relevant entry in the cadastral register.

1.7 Can a title search be conducted online?

Yes. All registered entries are available to the public, and information about the ownership of real estate can be searched online at www.cuzk.cz.

Basic information on real estate (ie, information on the owners, way of protection of real estate, limitation of the ownership right and eventually other basic information) are available for free. A complete excerpt from the cadastral register may be obtained for a fee.

Electronic searches of real estate-related documents, comprised in a so-called collection of documents, which forms an integral part of a cadastral register, are not possible. As a result, an interested entity should visit the competent cadastral office (or more specifically, cadastral workplace) that maintains the relevant cadastral register to obtain copies of the requested real estate-related documents.

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

No. Nationality restrictions are currently in place with regard to the acquisition of real estate located in the Czech Republic. However, this situation was different in the past.

During negotiations on the accession of the Czech Republic to the EU, two exceptions from the general principle of the free movement of capital[2] were established in the Treaty on Accession.[3] The exceptions expired on 1 May 2009 and 1 May 2011, respectively.

1.9 Can the government expropriate real property?

Yes. Expropriation is allowed under Czech law. Nevertheless, according to the constitutional provisions, such expropriation or forced restriction of ownership right may be performed only if it is in the public interest, on the basis of a law and for compensation.

In practice, no expropriation has been known to be carried out by the government in recent years.

1.10 How can real estate be held?

An interest may be held by any of the following:

- Freehold
- Ideal joint co-ownership
- Accessorial co-ownership
- Joint ownership of spouses

[2] The principle of free movement of capital is one of the basic freedoms applied in the EU (its internal market, respectively). It comprises free movement (ie, acquisitions) of real estate vis-à-vis any other member state of the EU and any third country.

[3] The Treaty between the Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden, the United Kingdom (member states of the European Union) and the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, Slovakia, concerning the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the EU, 16 April 2003.

Accessorial co-ownership has been newly introduced by the Civil Code and relates to instances in which a group of individually owned items is interrelated by means of their location and purpose; real estate which enables the use of the individual items is held in accessorial co-ownership. If the subject of the accessorial co-ownership serves the purpose of common use of land plots, the shares in the accessorial co-ownership are determined on a pro-rata basis according to the surface area of the individually owned land plots. Additionally, the share in accessorial co-ownership may only be transferred together with the ownership right to the item the use of which it enables.

The accessorial co-ownership applies in practice, for instance, in the case of individually owned land plots which are, by way of their purpose, linked to the co-ownership of another piece of real property, such as an access road or a parking lot. In the given example, the individually owned real property would create a functional unit such as an industrial area, and its use without the piece of real property subject to accessorial co-ownership would be rendered impossible or inconvenient.

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

Real estate is usually owned by commercial corporations (in particular by limited liability companies) or by individuals (through an exclusive ownership or an ideal co-ownership or an accessorial co-ownership or joint co-ownership of spouses). Special purpose limited liability companies or joint stock companies are usually used as entities to hold real property in commercial investment transactions and investment is very often made by means of acquisition of shareholding interest in such companies, subject to appropriate tax structuring.

1.12 How are real estate transactions usually funded?

Most real estate transactions have been financed through institutional lenders such as banks or real estate funds. Consistent with other markets, expectations of institutional lenders active on the Czech market in relation

to the debt equity ratio have shifted toward an increased portion of equity required to be invested by the investor.

1.13 Who usually produces the documentation in real estate transactions?

The seller usually prepares the initial draft of the purchase agreement.

1.14 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?

Yes. A liability that occurred prior to acquisition can pass on to new owners or occupiers of real estate.

"Inheritance" of liability by an owner or a tenant of land is not excluded in connection with the environmental liability stipulated by special legal regulations. However, since the principle of "the polluter pays" is generally applied in relation to environmental pollution control, such situation is more of an exception than a general rule. An owner or a tenant may be held liable for pollution he or she did not cause, particularly in such case where the polluter who caused the contamination may not be found or does not exist anymore.

In addition, under Czech law, leases generally pass on to new owners of real estate; consequently, a lease granted by a predecessor of a new owner will be binding upon the new owner.

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

Yes. Sellers or occupiers generally retain such liabilities.

In general, no entity held liable for damage it caused is allowed to dispose of its liability, unless special conditions stipulated by applicable legislation are met. This general rule is also applied in the case of disposition of real estate by its owner or by the tenant, and is especially important in the area of environmental pollution control (please see above).

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Sale and purchase agreement

  The sale and purchase agreement is concluded between the buyer and the seller. The essentials of this agreement are the following:

  - Due specification of the transferred real estate, such as:

    - in the case of a land plot – the land plot number (including the specification of whether it is a building land plot (stavební parcela), if applicable, otherwise it is presumed to be a plot of land [pozemková parcela]) and cadastral area

    - in the case of a building not yet forming a part of a land plot or of construction right (see above) – denomination of the land plot on which the building is located, its registration number (číslo popisné) or reference number (číslo evidenční) (or, if neither the registration nor the reference number is assigned to the building, the manner of use of the building), and pertaining of the building to the municipality district if the denomination of the municipality district is different from the denomination of the cadastral area where the land plot on which the building is constructed is located

  - Specification of the purchase price, which must comply with price regulations, if any; moreover, the contracting parties are allowed to agree on other terms and conditions, such as method of payment of purchase price including a deposit, representations and warranties by the seller, pre-emptive purchase right, or right of the contracting parties to withdraw from the agreement.

  - Application of registration of ownership right in the cadastral register

The application of registration of ownership right needs to be filed by any of the contracting parties or jointly by both contracting parties with the competent cadastral office (cadastral workplace, respectively) using the respective standard form. It must contain the following:

- Identification of the cadastral office to which the application is addressed (including the denomination of the cadastral workplace)
- Identification of the seller and the buyer (in the case of individuals. name and surname, permanent residence and birth number [or date of birth in the case of individuals who have not been assigned a birth number]; in the case of legal entities, their name, seat and identification number
- Identification of real estate and enumeration of rights that are to be registered in or deleted from the cadastral register

- Signature of the applicant

The application must be accompanied by appendices determined by the law, such as a document evidencing the right to be registered, a power of attorney (if applicable), an excerpt from the commercial register of the legal entity that is a participant of the proceedings (in cases of entities not registered in the Czech commercial register), or an officially certified translation of documents.

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

The range of warranties depends on the actual needs and requirements of the contracting parties and on the negotiation of the purchase agreement.

The typical warranties include the seller's ownership of the transferred real estate, easements and other obligations related thereto, environmental issues and technical conditions of the transferred real estate, if applicable.

Buyer's warranties typically include basic corporate warranties regarding incorporation and authorization. Scope and extent of warranties are negotiable to a large extent, depending on the type of transaction and commercial circumstances.

2.3 When is the sale legally binding?

The sale is legally binding at the moment of signing the relevant purchase contract by the last of the contracting parties. As of this moment, the seller is obligated to transfer the real estate in question to the buyer. The transfer of the ownership right is completed at the moment of the registration of the ownership right in the relevant cadastral register (please see below).

2.4 When is title transferred?

The ownership title is transferred at the moment of registration of the ownership title in the relevant cadastral register in favor of the buyer. The effect of such transfer occurs retroactively as of the moment the relevant application for registration of transfer of ownership title has been received by the competent cadastral office.

Cadastral register entries previously did not constitute a definitive or conclusive proof of ownership of the buyer. Therefore, if the real estate has been wrongly transferred, (eg, on the basis of an invalid agreement), the ownership right may have been successfully challenged in spite of the completed registration of the ownership title of the buyer.

Under the Civil Code, an ownership right registered in the cadastral register may only be challenged within a limited time from registration of the ownership right into the cadastral register, unless the acquirer acted in bad faith.

2.5 What are the costs usually shouldered by the parties?

There is a legal requirement to pay a real estate acquisition tax under the Legal Measure of the Czech Senate No. 340/2013 Coll., on Real Estate Acquisition Tax (legally effective as of 1 January 2014), currently amounting to 4% of the acquisition value.

The acquisition value is determined as of the day on which the situation which is subject to tax occurred and may be applied in one of the following forms:

- Agreed price
- Comparative tax value
- Ascertained price
- Special price

The agreed price applies if it is higher or equal to the comparative tax value or if explicitly provided for by the law. The comparative tax value applies provided that it is higher than the agreed price. The ascertained price applies if the acquisition value is neither the agreed price nor the comparative tax value or if explicitly provided for by the law. In cases where a special price may be determined, the acquisition value is always such special price.

Comparative tax value is the amount equal to 75% of either of the orientation value or ascertained price. The payer of the tax is free to determine which of these two values will be used, unless the law provides for (in some specific cases) mandatory application of the ascertained price. The orientation value is generally determined according to the prices or real estate in the area in which the relevant real estate is located in a comparable time period; the type, location, purpose, state, age, equipment and constructional parameters of the real estate in question are taken into

account and the details of the price determination process are set out in a decree of the Czech Ministry of Finance.

The ascertained price is determined in accordance with legal regulations governing valuation of property.

If the purchase price is determined in a foreign currency, it is calculated into Czech crowns using the foreign currency rate declared by the Czech National Bank for the day when the ownership to the real estate was acquired.

As of 1 November 2016 the tax is payable by the acquirer of the ownership right.

Other costs are not prescribed by law to be paid by one of the parties and, therefore, may be split between the contracting parties or be borne exclusively by the transferor or by the acquirer. Such other costs comprise, in particular, legal and notary costs, fees related to an escrow account and fees for registration of the transfer in the cadastral register.

3. Leases

3.1 What are the usual forms of leases?

The usual forms of leases are as follows:

- Leases of apartments

  An apartment is defined as a room or rooms designated and used for residential purposes, forming part of a house. A tenant of an apartment is typically more protected than a tenant of premises used for entrepreneurial or other purposes, especially with regard to the termination of the lease agreement.

- Leases of premises used for entrepreneurial purposes

  This type of lease is a lease of a room or rooms used (or mainly used) for purposes of carrying out entrepreneurial activities. This may be premises used for production; business; services; research; administrative activities; artistic, pedagogical or educational activities; archives; garages; warehouse premises; parts of buildings accessible publicly; or apartments with respect to which a competent building office gave its consent to the non-residential manner of their use.

- Other leases

  This category includes leases not comprised in the preceding list, such as leases of land plots and premises used neither for residential nor for entrepreneurial purposes.

3.2 Are lease provisions regulated or freely negotiable?

In general, provisions of a lease agreement are freely negotiable. Nevertheless, when negotiating terms and conditions of a lease agreement, the contracting parties are obligated to comply with mandatory provisions stipulated by applicable legal regulation. Otherwise, the provision in breach with any mandatory provision would be invalid. Such invalid provision may cause invalidity of the whole lease agreement if it is not severable from the rest of the lease agreement.

One exception from the above is a lease of land for non-commercial purposes, the maximum rent of which is set by a mandatorily applicable price decree issued by the Czech Ministry of Finance.

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

There is no maximum term for leases stipulated by applicable legislation. A lease agreement may also be concluded for an indefinite period of time.

However, if the parties conclude a lease agreement for a specific period that exceeds 50 years, the lease will be presumed to have been concluded for an indefinite period of time (in such a case, within the first 50 years, the lease may only be terminated in accordance with the termination provisions and the notice period stipulated in the contract).

A lease agreement concluded for a definite time period may be extended as follows:

- On the basis of a mutual agreement of contracting parties

  A lease agreement concluded for a definite time period may generally be extended on the basis of a mutual agreement of the contracting parties (which must generally be in written form if the original lease agreement was concluded in writing) before the lapse of the agreed term of the lease agreement.

- On the basis of an automatic renewal

  If the tenant uses the leased real estate after the term of the lease has expired, and the landlord does not ask the tenant to return the object of the lease within one month, it is presumed that the original lease agreement has been concluded once again (ie, it is renewed) on the same terms and conditions as it was originally negotiated, but for a maximum period of one year. If the term of the lease was negotiated for a time period shorter than one year, the lease agreement shall be renewed for such shorter time period.

  This rule of automatic renewal shall be applied in the case of leases of premises used for entrepreneurial purposes and in the case of leases of objects other than apartments.

  However, in the case of leases of apartments, if the tenant continues using the apartment for at least three months after the date the lease should have expired and the landlord does not ask the tenant in

writing to vacate the apartment within this time period, the lease is automatically renewed for a period of time that the original lease was agreed for (maximum period of two years applies). Application of this provision may be excluded by an agreement of the parties.

- On the basis of an exploitation of renewal option by the tenant

  The contracting parties are allowed to agree to a "renewal option" in the lease agreement. In such a case, the contracting parties negotiate a "basic" term of the lease, after the expiration of which the tenant shall enjoy the right to ask for renewal of the lease upon agreed terms and conditions and for the term specified in the original lease agreement. Such provision is quite common in commercial leases of premises used for entrepreneurial purposes.

3.4 What are the usual lease terms?

Lease agreements regarding apartments are usually concluded for a one-year term.

Lease agreements regarding premises used for entrepreneurial purposes are usually concluded for three- to 10-year terms, with an option to extend the term.

It is also quite common to agree upon a break option, with a break fee in case of a premature termination of lease.

Other leases are usually concluded for a definite time period.

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

In general, there are no such instances.

However, in case of automatic renewal of the lease (please see above) that is compliant with all applicable legal provisions, the tenant shall enjoy the claim for such renewal. Therefore, the tenant may address a competent court with a petition for declaration of such renewal if a dispute on the

existence or termination of the lease agreement in question arises between the contracting parties.

3.6 On what grounds may a lease be terminated?

In general, any lease agreement — whether concluded for a definite or an indefinite time period — may be terminated by a mutual agreement of the contracting parties.

- Leases of apartments

  Under the Civil Code, the tenant is entitled to terminate the lease agreement concluded for a definite period of time, provided that the circumstances under which the agreement has been entered into have substantially changed and, therefore, the tenant cannot reasonably be required to continue the lease.

  The landlord is entitled to terminate the lease agreement following a three-month notice period, both in cases of a lease concluded for a definite and for an indefinite period of time. Possible reasons for such termination by the landlord include the following:

- The tenant grossly breaches his or her duty arising out of the lease
- The tenant has been sentenced for an intentional crime against the landlord, against a member of the landlord's family, against a person staying in the building in which the relevant apartment is located, or against property located in such a building
- Because of public interest, the apartment has to be treated in a way rendering its use impossible and has to be vacated
- There is a similar serious reason for terminating the lease agreement

Additional reasons for the termination of the lease in the case of a lease for an indefinite period of time also include the following instances:

- The apartment will be used by the landlord or his or her spouse who intends to leave the family household, provided that either a petition for divorce has been filed or a divorce has already taken place

- The landlord needs the relevant apartment for his or her relative or for his or her spouse's relative (applicable only to certain kinds of close relatives as set out by law)

In the two above cases, if the landlord fails to use the apartment for the intended purpose within one month after it has been vacated by the tenant, he or she is then obligated to lease the apartment again to the former tenant or to pay damages to the former tenant.

If the tenant breaches his or her duties in a particularly serious manner (eg, has not paid the rent and the costs of the services for at least three months), the landlord is entitled to terminate the lease without a notice period and to demand that the tenant hand over the apartment without any undue delay – within one month after the lease was terminated at the latest.

- Leases of premises used for entrepreneurial purposes

Under the Civil Code, the tenant is entitled to terminate a lease agreement regarding premises used for entrepreneurial purposes concluded for a definite period of time under any of the following circumstances:

- He or she has lost the authorization or capacity to conduct the activity for which he or she leased the premises

- The leased premises have objectively become unfit for the performance of the activities for which they have been intended, and the landlord has not provided the tenant with appropriate substitute premises

- The landlord substantially breaches his or her duties toward the tenant

The landlord is entitled to terminate a lease agreement regarding premises used for entrepreneurial purposes concluded for a definite period of time under the following circumstances:

- The real property in which the premises used for entrepreneurial purposes are located has to be demolished or reconstructed in such a way that continued use of the premises is not possible and the landlord could not have foreseen such situation at the moment when the lease agreement was concluded

- The tenant grossly breaches his or her obligations toward the landlord despite a written request by the landlord to cease to do so, particularly by: (a) breaching certain obligations stipulated by law with regard to the placement of signs on the leased property; or (b) being in default with the payment of rent or of the charges for supplies and services connected with the use of the premises for a period exceeding one month

For leases concluded for a definite period of time, the notice period is three months.

In the case of a lease concluded for an indefinite period of time, any of the parties is entitled to terminate it upon a six months' notice (or three months' notice if there is a serious termination reason). However, if the lease has lasted for a period exceeding five years and the other party could not have foreseen the first party's intention to terminate the lease, the notice period will always be six months.

- Other leases

The landlord is entitled to terminate the lease agreement at any time if the tenant uses the object of lease in a way that results in greater wear and tear than usual of the leased object, or if the use may cause the destruction of the object despite a written warning delivered by the

landlord to the tenant. The same applies if the tenant has not paid due rent until the due date of the next rent.

If a party to the lease agreement grossly breaches its obligations and thus causes considerable damage to the other party, such other party is entitled to terminate the lease agreement without any notice period.

The tenant is entitled to terminate the lease agreement at any time without notice period if the object of lease becomes unfit for the agreed purpose of use, or if no specific purpose has been agreed, for the customary purpose as a result of circumstances other than on the side of the tenant.

A lease agreement concluded for a definite period of time may only be terminated by any of the parties if it contains specific termination reasons and specific notice period.

In case of a lease agreement concluded for an indefinite period of time, the notice period stipulated by law is three months.

To the extent that the abovementioned termination reasons are not stipulated (or modified, as the case may be), specifically in relation to leases of apartments and/or leases of premises used for entrepreneurial purposes, they shall also be applied in relation to leases of apartments and/or leases of premises used for entrepreneurial purposes.

3.7 Must rent be paid in local currency?

No. Rent does not have to be paid in Czech crowns.

The contracting parties are allowed to negotiate the rent in other currencies. This is quite common in cases of commercial leases of premises used for entrepreneurial purposes.

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

The parties are free to negotiate the payment of rent according to their needs – monthly, quarterly, yearly, in advance, in arrears, etc. No mandatory provisions are stipulated by the applicable laws in this respect.

In case an agreement is not reached by the parties, the Civil Code foresees monthly payments in arrears for other leases, and in advance for leases of apartments.

In commercial leases of premises used for entrepreneurial purposes, the rent is usually paid quarterly in advance at the beginning of the relevant quarter of the year. Monthly payments in advance, however, are becoming more common. In case an agreement is not reached by the parties, the Civil Code foresees monthly payments in arrears, as in the case of other leases.

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

The parties may agree upon an inflation clause (often known as indexation of rent). On the basis of such inflation clause, the rent shall be increased (or decreased, as the case may be) according to the terms and conditions stipulated by the contracting parties. Such increase must, however, be stipulated in such a manner that it does not violate the good morals or the principle of fair business relations, as applicable. The inflation clause is common, in particular, in the area of leases of premises used for entrepreneurial purposes.

The rent for leases of apartments may also be increased subject to the landlord's written proposal if the parties to a lease agreement failed to agree on a way to increase the rent and did not explicitly exclude the possibility to increase rent. The proposed increase may be up to the amount of rent that is common with regard to the relevant location at that time, provided that the proposed increase together with the increases that occurred in the past three years does not exceed 20%. The said proposal may not take place earlier than after the lapse of one year after

the most recent rent increase. If the tenant does not accept such a proposal in writing within two months after its receipt, the landlord may then ask the court within the following three months to determine the rent that is common with regard to the relevant location at that time. The same procedure as above shall also be used if the tenant proposes a decrease of the rent.

3.10 What are the basic obligations of landlords and tenants?

Leases of apartments

The following is generally required of landlords:

- Hand over the apartment in a condition suitable for due use (unless otherwise agreed with tenants) and ensure full and undisturbed performance of rights connected with the use of the apartment to tenants
- Perform repairs other than minor ones in the leased apartment at his/her own cost
- Return to the tenants the monetary funds collected, including interest at least at statutory rate, to secure the due payment of the rent (after termination of the lease); the agreed amount of such security payment may not exceed six times the rent
- Allow the tenant to keep an animal inside the apartment, unless this causes inconvenience to the landlord or others within the building

The following is generally required of tenants:

- Pay the rent and consideration for performances connected with the use of the apartment
- Perform any construction work or other substantial changes of the apartment only with the consent of the landlord

- Perform minor repairs connected with the use of the apartment at their own cost
- Inform the landlord about any increase in the total number of people living in the apartment (if the tenant fails to do so within two months following the change, he or she has grossly breached the duties connected with the lease of the apartment); the parties to the lease agreement may agree that the consent of the landlord is required to accept a new person to stay at the apartment (with exception of closely related people, who are exempted from this requirement)
- Inform the landlord about any other change (decrease) in the total number of persons living in the apartment
- Notify the landlord of intent to be absent from the apartment for a period of time longer than two months, during which the tenant will be unavailable (ie, difficult to contact); at the same time, the tenant shall designate a person who will be able to enter the apartment should it become necessary during his or her absence (in the absence of such designation, the landlord is considered to be such person); failure to comply with the notification duty is considered a gross breach of the tenant's obligations if a significant damage arises as a result thereof
- Notify the landlord of any repairs needed that are to be performed by the landlord without undue delay
- Remove defects and impairments caused by the circumstances for which they bear liability
- Vacate the apartment within the time limits stipulated by law (in case of termination of the lease)

Leases of premises used for entrepreneurial purposes

The following is generally required of landlords:

- Hand over the premises in a condition suitable for the agreed purpose of lease and maintain the object of lease in such a condition at their own cost
- Ensure due rendering of services, the performance of which is connected with the use of the premises
- Enable full and undisturbed performance of rights connected with the lease to tenants

The following is generally required of tenants:

- Pay the rent and consideration for performances connected with the use of the premises
- Only carry out the kind of activities that correspond to the purpose of the lease as agreed in the lease agreement (this rule does not apply if such change does not lead to deterioration of the state of the building or does not unreasonably harm the landlord or other users of the building and also in case of only an insignificant change of the tenant's activities due to the changed circumstances on tenant's side)
- Announce to the landlord any need for repairs that are to be performed by the landlord without undue delay, and enable performance of such repairs
- Demand consent of the landlord with placement of their business signage onto the leased real estate; landlords may refuse their consent if there is a serious reason therefor (in case of failure of landlords to reply to the tenants' request within one month, the consent is deemed to be given)
- Return premises in the condition in which they took them over, with due regard to usual wear and tear (in case of termination of the lease), and to remove their business signage

Other leases

Landlords are generally required to hand over the object of the lease in a condition suitable for the agreed or usual use, maintain the object of lease in such a condition, and procure undisturbed use of the object of the lease by the tenant.

The following is generally required of tenants:

- Pay the rent
- Make any changes on the object of the lease only with the consent of the landlord
- Notify the landlord of any repairs needed that are to be performed by the landlord
- Take due and diligent care of the object of lease
- Enable the landlord to carry out an inspection of the object of lease and access thereto or therein to carry out necessary repair or maintenance works, upon prior notification from the landlord (such notification is not required if an action needs to be taken without undue delay in order to prevent damage)
- Within the last three months prior to the termination of the lease, enable a person interested in the lease of the object of lease, accompanied by the landlord, to perform an inspection thereof
- Return the object of the lease in a condition corresponding to the agreed use thereof or to the usual wear and tear (in case of the termination of the lease); otherwise, the landlord is entitled to claim damages

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

- Other leases

  Under the Civil Code, the tenant may sublet the object of the lease only with the landlord's consent, which has to be provided for in writing if the lease agreement was entered into in written form. A breach of this rule is considered to be a gross breach of the tenant's obligations. Furthermore, in case of sublease, the tenant is liable for the actions of the sub-tenant as for its own use of the real estate.

- Leases of apartments

  The tenant may sublet a part of a apartment to a third person without the landlord's consent, provided that the tenant himself or herself continues to reside in the apartment as well. Should the tenant not reside in the leased apartment, he or she may sublet the apartment or its part only with the landlord's written consent. If the landlord does not reply to the tenant's written request in this respect within one month, consent is deemed to be given (unless the parties explicitly agreed on the prohibition of sublease).

- Leases of premises used for entrepreneurial purposes

  For subletting, the same rules as in the case of other leases apply.

  Moreover, the Civil Code enables the tenant of premises used for entrepreneurial purposes to transfer the lease (as a whole) in connection with the transfer of its entrepreneurial activity for which the premises are used, subject to written consent of the landlord.

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

The lease ceases to exist by operation of law. In case of a partial destruction of the leased premises, the tenant is entitled to an appropriate

discount from the rent or may terminate the lease agreement without prior notice (ie, with immediate effect).

Nevertheless, in case of commercial leases of premises used for entrepreneurial purposes, the contracting parties often agree that the lease is not terminated by the destruction of the leased premises and that the landlord is entitled to decide whether the lease will be terminated or not. Such situation is usually covered by property insurance.

3.13 Who is usually responsible for insuring the leased premises?

In general, the landlord is responsible for insuring the leased premises. Nevertheless, in case of commercial leases of premises used for entrepreneurial purposes, the costs of such insurance are often "transferred" to the tenant through consideration for services that are provided in connection with the lease.

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

Leases of premises used for entrepreneurial purposes and other leases

Basically, the rights and obligations arising out of the lease automatically transfer to the new owner of the leased premises. However, as a result of an ownership transfer of the object of the lease, the new owner is not bound by the provisions stipulating the landlord's duties other than those provided by law (ie, the new owner is not bound by the terms and conditions of the lease agreement concluded between the transferor and the tenant). However, this restriction does not apply if the new owner had been aware of the provisions of such lease agreement.

In general, no party to the lease agreement is entitled to terminate it due to the change of ownership of the leased object. If the parties agree on the contrary, the landlord may terminate the lease within three months after he or she became or could have become aware of the tenant's identity, and the tenant may terminate the lease within three months after he or

she became aware of the change of ownership, both subject to a three months' notice period.

If the new owner did not have reasonable justification to doubt the fact that he or she is purchasing an item not subject to a lease, he or she may terminate the lease within three months after he or she became or could have become aware of the fact that the premises are leased and of the tenant's identity, subject to a three months' notice period.

The Civil Code requires the party terminating the lease to pay a reasonable breakup fee.

- Leases of apartments

  In the case of a lease of an apartment where a tenant lives, the landlord is not entitled to terminate the lease due to the change of ownership. Application of this rule may not be excluded by the agreement of the parties.

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

According to Czech legislation, different rules apply, as follows:

- Bankruptcy proceedings

  If bankruptcy proceedings have been declared over the owner of the leased real estate, the insolvency trustee is entitled to terminate a lease or a sublease agreement concluded by the owner of the leased real estate even in case of an agreement concluded for a definite time period. The notice period, which is stipulated by law or contractually, must not be longer than three months. The special provisions applied in case of termination notice related to an apartment must be respected (please see above).

- Forced public sale or auction of real estate ordered by the competent court

If a forced sale of real estate was ordered by the competent court, all leases concerning the real estate to be sold, with exception of housing leases, cease to exist as of the moment the acquirer becomes the owner of the real estate. This general rule, however, does not apply to leases where the court decides that they do not cease to exist.

The court also decides if the lease should cease to exist prior to the sale if due lease payments common according to current local standards are not being provided or if the existence of the lease significantly limits the possibility of sale of real estate in an auction.

The abovementioned rules shall also be applied in case of a forced sale of the real estate ordered by a judicial executor.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

As for land development regulation, the competence is divided among state, regional and municipal authorities. At the state level, the most important land development issues are regulated by the Land Development Policy adopted by the government. At a regional level, the most important land development issues are regulated by Land Development Principles, which are adopted by the competent authorities of each region and must be compliant with the Land Development Policy. At municipal level, land development issues are regulated by zoning plans adopted by the competent authorities of each municipality.

Zoning plans must be compliant with the issued Land Development Principles and regional regulation plans (if applicable, please see below). In addition, the municipalities and regions within the borders of their territory and the Ministry of Defense of the Czech Republic within the borders of the designated military areas (vojenský újezd) may issue regulation plans, which in general determine details of Land Development Principles and zoning plans (usually for a smaller territory). Within the

territory regulated by regulation plans, these regulation plans substitute (to the extent set out therein) planning permits that are otherwise necessary for the construction of new buildings (please see below).

As for environmental regulations, the competence primarily belongs to the state, which is the only authority entitled to issue regulations binding within the whole territory of the Czech Republic. The regional and municipal authorities may also adopt environmental regulations if the applicable legislation allows them to do so; these regulations are, however, binding only within their territory and must be compliant with environmental regulations issued by the state.

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

The main environmental laws affecting the use and occupation of real estate are as follows:

- Act No. 17/1992 Coll. on Environment, as amended
- Act No. 114/1992 Coll. on Protection of Nature and Environment, as amended
- No. 185/2001 Coll. on Wastes, as amended
- Act No. 334/1992 Coll. on Protection of Agricultural Soil Fund, as amended
- Act No. 156/1998 Coll. on Fertilizers, as amended
- Act No. 167/2008 Coll. on Environmental Harm Prevention and Rectification, as amended
- Act No. 76/2002 Coll. on Integrated Pollution Prevention and Control, as amended

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

The main permits for building real estate are as follows:[4]

- A planning permit (územní rozhodnutí) – if a regulation plan has been issued for the relevant territory, the planning permit is not issued; or a planning consent (územní souhlas) in cases specified by law
- A building permit (stavební povolení) or a notification to a building office (ohlášení) in cases specified by law

In certain cases, a specific contract on the performance of building or ground-shaping activities governed by public law may be concluded between the developer and the competent building office. Such public contract would subsequently substitute the building permit.

Additionally, the developer may conclude a contract on the performance of control of project documentation with a certified inspector, who will verify the project documentation instead of the competent building office. Such certificate of the certified inspector is equivalent to the building permit.

The requirements for occupying real estate are as follows:[5]

- Obtaining an occupancy permit (kolaudační rozhodnutí) in cases specified by law
- Obtaining an occupancy consent (kolaudační souhlas)

[4] Please note that constructions specified by legal regulations do not require any public permits, eg, buildings for breeding of animals with one aboveground story, with a maximum of 16 square meters of built-up area, construction of up to five meters above ground and up to three meters deep under ground.
[5] Please note that the use of constructions not requiring any public permit does not require any public consent whatsoever.

Occupancy permit or consent may — if so required by the competent building office, the developer or other competent public authority — be issued only after a trial operation of the building (zkušební provoz) has been performed.

In cases specified by law, authorization to the early use of a building (povolení k předčasnému užívání stavby) may be issued. This authorization is, however, not definitive and it is valid only until the expiration date specified in the authorization (or until the construction of the building is completed in full). Subsequently, the occupancy permit or consent must be obtained (including the trial operation, if applicable).

4.4 Can an environmental cleanup be required?

Yes. In general, environmental cleanup may be required where the conditions of applicable laws are fulfilled, such as in cases when ecological harm within the meaning of Act No. 167/2008 Coll., on Environmental Harm Prevention and Rectification, as amended, is caused.

4.5 Are there minimum energy performance requirements for buildings?

Yes. Requirements concerning energy efficiency of buildings are regulated by Act No. 406/2000 Coll., on Energy Conservation, as amended, and by its implementing regulations.

Compliance with the requirements is proven by the energy performance certificate of a building (průkaz energetické náročnosti budovy), which is valid for a period of 10 years from its issuance or until a major change in the building takes place. This certificate will be required for all new buildings and will have to be obtained for existing buildings within a period of time stipulated by the law.

Upon the construction of a new building, the constructor must, when applying for a building permit, submit an authorization confirming that the energy performance requirements have been met. Also, the energy performance certificate must be presented.

The certificate must also be obtained in cases of major changes in existing buildings. Special rules apply to buildings used by a public authority; energy performance certificates for such buildings are required to be obtained as of 1 July 2013, for buildings having a total energy-related floor area (celková energeticky vztažná plocha) exceeding 500 square meters and as of 1 July 2015, for buildings having a total energy-related floor area exceeding 250 square meters.

The owner of the building is required to arrange the preparation of the energy performance certificate in the case of sale of the building or its part, in case of lease of the building and also in case of lease of a part of the building. He or she must present it to a potential buyer or lessee of the building or the related part thereof. The certificate must be handed over to the buyer or lessee when executing the respective contract, at the latest. These duties are also applicable to the owner of an apartment with respect to a potential buyer thereof and, with regard to the potential tenant prior to concluding the lease agreement.

Notwithstanding the above, there are also certain exemptions from the obligation to obtain the energy performance certificate.

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

Yes. The governmental subsidy program known as the New Green Savings Program (Nová zelená úsporám) is currently in place. The New Green Savings Program focuses on support for heating installations using renewable energy sources and on investment in energy savings in reconstructions and new buildings. The program supports quality insulation of family houses and multiple-dwelling houses, the replacement of environmentally unfriendly heating for low-emission biomass-fired boilers and efficient heat pumps, installation of these sources in new low-energy buildings, as well as the construction of new houses of passive energy standards. Homeowners, home-builders of family houses and

owners and builders of multiple-dwelling houses can submit their applications until 31 December 2021. More information may be found at http://www.novazelenausporam.cz/en/ (official source) or at http://www.inherit.eu/green-savings-and-new-green-savings/ (last accessed on 30 January 2018).

13 England and Wales

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Any buildings or structures on it

1.2 What laws govern real estate transactions?

Property law in England and Wales is governed by statute and English common law principles.

1.3 What is the land registration system?

The system of land registration in England and Wales was first introduced in the late 19th century and is dealt with by the Land Registry pursuant to various United Kingdom statutes. All dealings with freehold interests in England and Wales are registerable as are all dealings with leases with terms of seven or more years.

1.4 Which authority manages the registration of titles?

In England and Wales, the relevant authority is the Land Registry, a quasi-governmental body that has regional offices throughout England and Wales.

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

In addition to transfers of freehold land and leases for more than seven years, all charges over land should be registered to be fully enforceable.

In addition, other rights and interests are capable of being registered. These include the following:

- Rights over land

- Restrictive covenants
- Easements
- Options
- Contracts for sale

It is also possible for third parties to register certain notices against registered titles without the consent of the owner (registered proprietor). Such notices are often used to protect third parties who believe that they have an interest in the property or the proceeds of sale.

1.6 What documents can land owners use to prove ownership over real property?

The Land Registry no longer issues formal title deeds since the land registers are open to public inspection. Accordingly, the entries at the Land Registry are regarded as sufficient proof of ownership.

Upon application, the Land Registry will issue an official copy of the entries relating to any given property. Such official copy comprises the following:

- The Property Register describes the property and any appurtenant rights
- The Proprietorship Register shows the name and address of the registered proprietor
- The Charges Register shows any encumbrances (including mortgages) that may affect the property. If the property is subject to leases that are registerable, then such leases will usually be listed in a Schedule of Leases that forms part of the Charges Register
- The File Plan shows the location and boundaries of the property, usually edged in red

1.7 Can a title search be conducted online?

Yes. All registered titles are available to the public upon payment of a fee and most related documents are also available online.

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

There are no nationality restrictions on land ownership whether as individuals or corporate entities.

1.9 Can the government expropriate real property?

Property can be expropriated by government, quasi-governmental authorities and local authorities but appropriate compensation must be paid.

1.10 How can real estate be held?

Broadly speaking, there are two ways (or estates) in which property can be held:

- Freehold
- Leasehold

There are two main categories of registered title:

- Absolute title is the best form of title and applies to most registered titles
- Possessory title implies that upon application to the Land Registry, the applicant could not deduce a satisfactory paper or documentary title to the property in question notwithstanding that the applicant is, in fact, in actual occupation or possession of the land in question

To the above forms of title, there is an additional category for leasehold land namely "good leasehold" title. This form of title is usually granted

where the lessee applicant cannot deduce the freehold title from which the lease is derived.

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

Any person or entity with a separate legal identity can be registered as a proprietor of registered land. These would include the following:

- Corporations
- Co-owners
- Partnerships (subject to a maximum of four partners, as registered proprietors who would hold the registered estate in trust for the remaining partners, if any)
- Limited partnerships (typically holding through the General Partner)
- Limited liability partnerships
- Charities
- Trusts (bare or nominee)

More often than not, investment in real estate will be through the direct acquisition of the real estate asset. However, there may be circumstances where it is preferable to invest indirectly, for instance, through the acquisition of shares of the company holding the property.

The actual structure used will be driven by tax considerations.

1.12 How are real estate transactions usually funded?

Traditionally, real estate transactions have been funded by banks or other lending institutions where the interest rate charged is a margin over the base rate of the Bank of England or the London Interbank Offered Rate (LIBOR). The length of such funding will vary depending on the commercial terms agreed.

Generally speaking, borrowing to finance a residential property would be over a long period, usually 15 to 25 years, whereas borrowing to finance commercial property is usually on a short-term basis of three to five years. Longer funding terms for commercial property are available in the market place.

Typically, it will be the borrower's responsibility to pay for all the lender's legal and other costs such as commitment and processing fees, valuations and surveys.

In commercial loans, lending institutions would typically take a first charge over the property in question together with a charge over any rental income. Often, other collateral security is also sought.

A typical purchasing structure would take the form of a special purpose vehicle (often incorporated in an offshore jurisdiction such as the British Virgin Islands), formed solely for the purpose of acquiring the property. In such circumstances, the typical security package is as follows:

- Debenture over the borrowing company
- Share charge over the shares in the borrowing company from its parent
- A deed of subordination in relation to any shareholder's funds or parent loan
- An intercreditor deed if any mezzanine or secondary loans are to be secured against the property
- A duty of care deed with the managing agents
- Possibly a guarantee from the parent or a director of the borrowing company

Banks and other institutions lending in the UK market are generally regulated under UK legislation.

1.13 Who usually produces the documentation in real estate transactions?

Generally, the seller's lawyer will prepare the draft sale agreement, particularly where the property is being sold in a traditional asset sale.

In fact, even where the property owning vehicle is being sold by way of a share sale, it is often the seller's solicitor who will prepare the initial share sale and purchase agreement.

Likewise, the landlord's solicitor will prepare the draft lease and associated documents where a property is being let.

1.14 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?

In relation to both freehold and leasehold interests, broadly speaking, a purchaser inherits the liabilities of the seller and, accordingly, a full due diligence exercise is recommended in relation to any real estate acquisition in England and Wales. This is to ensure that any contingent liabilities are properly reflected in the purchase price and that appropriate indemnities and guarantees are negotiated.

From an environmental perspective, while the concept that the "polluter pays" is applicable under UK law, the current owner of the land from which the contamination or pollution emanates would be primarily liable even if the contamination was historic, hence the need for appropriate indemnities.

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

It is possible for a seller to retain liabilities relating to real estate after a sale since most obligations entered into in relation to real estate are

deemed to be of a personal contractual nature between the original contracting parties.

Accordingly, appropriate indemnities are important to a seller to ensure that it is adequately indemnified against future breaches of covenants affecting the land, which were given by the seller or which affected the land during the seller's period of ownership. As a result, a "chain" of indemnity covenants is continued and extended whenever the property is sold.

In relation to leasehold land, it was always the case until 1996 that an original tenant (and usually all subsequent tenants) retained direct personal liability to the landlord to observe and perform all covenants within the lease, including the payment of rent. However, this position has changed in relation to all leases that completed on or after 1 January 1996, so that an outgoing tenant is only liable on its covenants to the landlord for so long as its assignee remains the tenant under the lease.

For example, if the landlord grants a 10-year lease to A, which A then assigns to B after two years, A is liable to the landlord throughout the period of B's ownership. If B assigns to C after a further three years, then A has no further liability from the point of such assignment, but B is liable to the landlord for so long as C remains as the tenant.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transactions?

The first document in any real estate transaction is normally a sale and purchase agreement between the buyer and the seller.

Such agreements are in a broadly standard format and will contain all commercial terms agreed between the parties. In addition, the agreement will incorporate certain standard conditions that have been developed over many decades and are nationally recognized.

The sale and purchase agreement will contain any appropriate conditions and will also include appropriate indemnities and warranties.

However, it should be noted that the general principle in UK real estate transactions is that of caveat emptor (buyer beware) so that, broadly speaking, it is for the purchaser to investigate the seller's title to the property and raise appropriate enquiries of the seller. In replying to such enquiries, the seller must be careful not to make any misrepresentations since this could lead to a claim for damages should any statement made by the seller be either deliberately or negligently untrue.

Accordingly, a purchaser is always recommended to undertake its own full due diligence exercise including a structural survey, an environmental survey and all appropriate searches of governmental and public authorities.

In relation to sale and purchase agreements relating to leasehold land, in addition to the above matters, such agreements will often be expressed to be conditional upon obtaining an appropriate license from the landlord for the assignment of the lease and, possibly, a license for any alterations that the purchaser may wish to undertake.

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

As mentioned above, the general principle in UK real estate transactions is a caveat emptor so that in a traditional asset sale, warranties and representations are relatively limited.

However, if the sale is structured as a sale of the shares in the property-owning vehicle, then more extensive warranties and representations are given to reflect the fact that it is a sale of a company rather than the underlying real estate asset. In share sales in particular, the UK has seen a trend towards the use of Warranty & Indemnity (W&I) insurance. W&I policies are designed to enable a seller to limit its contingent liability whilst providing a buyer with additional comfort in the event of a claim being made after completion.

2.3 When is the sale legally binding?

The parties are legally bound as soon as the sale and purchase agreement is dated and exchanged. Until that point, either party is entitled to withdraw from the transaction without penalty.

2.4 When is title transferred?

Usually, the sale and purchase agreement will stipulate a completion or closing date when legal title is to be transferred. However, from the point of exchange of contracts, the seller holds the legal estate in trust for the purchaser who, from that point, is the beneficial owner.

However, it should be noted that when dealing with registered land, it is only once formal registration of the transfer has been completed that the purchaser's title is complete vis-à-vis the outside world.

Consequently, there is often a "registration gap" being the time lapse between the date of completion of the transfer of the legal title to the purchaser and the date of registration at the Land Registry. In the vast majority of cases, this is not problematical but in certain circumstances (such as the service of a notice on the registered proprietor by a third party who is unaware of the pending or completed sale), it can cause issues.

2.5 What are the costs usually shouldered by the parties?

The seller usually meets its own legal costs and the costs of the selling agent.

The buyer usually pays for the following:

- Buyer's agent's or adviser's fees
- Legal costs
- Due diligence costs for surveys, assessments, reports, etc.

- Search costs of statutory and government authorities
- Land registration fees (rate ranges from GBP 50 to GBP 920)
- VAT
    - Generally, the sale of a property will be subject to VAT at the standard rate (20%) if the land is subject to an option to tax made by the vendor or the property comprises "a civil engineering work" or is the freehold of a new commercial building
    - A transaction that satisfies the rules that apply to the transfer of a going concern is not subject to VAT. On the other hand, the first sale of a newly constructed residential building will be zero-rated for VAT purposes
- If a mortgage is involved, a buyer will also pay the mortgagee's legal fees and, if the buyer is a UK incorporated entity, registration fees at Companies House
- Stamp Duty Land Tax (SDLT)

  SDLT ranges from 0–15%, as follows:

- Residential Property

Freehold Purchase Price or Lease Premium	SDLT rate
Up to GBP 125,000	Zero
The next GBP 125,000 (the portion from GBP 125,001 to GBP 250,000)	2%
The next GBP 675,000 (the portion from GBP 250,001 to GBP 925,000)	5%
The next GBP 575,000 (the portion from GBP 925,001 to	10%

Freehold Purchase Price or Lease Premium	SDLT rate
GBP 1.5 million)	
The remaining amount (the portion above GBP 1.5 million)	12%
Where a purchase results in the purchaser (including the purchaser's spouse) owning two or more residential properties, an additional 3% surcharge is applied on top of the rates set out in the table above (unless the property being purchased is replacing the purchaser's main residence which is being sold).	+3%
Where the purchaser is a "non-natural person" (eg, a company, a partnership with at least one corporate partner or a unit trust; trustees and bona fide property development businesses may be excluded from the 15% rate if certain conditions are met) and the chargeable consideration is over GBP 500,000	15%

- Non-Residential and Mixed Use Property

Acquisition of freehold or existing lease

Purchase Price	SDLT rate
Up to GBP 150,000	Zero
The next GBP 100,000 (the portion from GBP 150,001 to GBP 250,000)	2%
Over GBP 250,000	5%

Acquisition of new lease

Where a new non-residential or mixed use leasehold is granted, a purchaser must pay SDLT on both:

- the lease premium applying the rates above; and
- the "net present value," being the value of the rents payable over the first five years of the lease, applying the rates below.

Net Present Value of Rent	SDLT rate
Up to GBP 150,000	Zero
The next GBP 4.5 million (the portion from GBP 150,001 to GBP 5 million)	1%
Over GBP 5 million	2%

3. Leases

3.1 What are the usual forms of leases?

Leases of land in England and Wales are infinitely variable and can contain such terms as the parties may agree. However, in general terms, there are two main forms of lease:

- Long lease granted for a premium with a nominal or ground rent.

  For commercial property such leases are usually in excess of 50 years and, possibly, may extend to 999 years. Usually, a substantial capital premium is paid by the tenant on the grant of the lease and the annual rent thereafter is a nominal amount. Very often, such long leases are granted to developers who also assume building obligations such as city center re-developments.

In those circumstances, once the relevant buildings have been constructed, they will then be let on standard commercial lease terms and it is possible that the nominal ground rent paid during the course of the building works will increase to represent a percentage of the rental income achieved by the developer from such commercial leases.

Such long leases or "virtual freeholds" are regularly bought and sold. Shopping centers are a prime example of this.

Leases of residential flats or houses are also usually granted by way of a long lease (99 years plus) and a premium is paid to the developer by the original tenant. Ground rent of between GBP 100 and GBP 250 are then reserved, which will increase regularly throughout the term of the lease usually at 25- or 33-year intervals. It should be noted that there is considerable legislation relating to residential leases, particularly the sale of the underlying freehold and the administration of service charges.

In recent years, in relation to residential leases and in an attempt to maximize income, many developers have adopted the practice of imposing higher levels of initial ground rent combined with rent review mechanisms which result in significant increases on review (generally every 10, 15 or 25 years). On review, the ground rent is usually doubled or increased in line with the retail prices index.

This practice has the effect of increasing the value of the freehold reversion in the hands of the developer and, as a result, an active market in the sale of freehold reversions as a separate investment class has developed.

However, in some cases, the review mechanisms have been thought to be so onerous that the residential properties concerned are potentially unsaleable.

As a result, the UK government has indicated that it will review such "profit" ground rent and the wider related issue of leasehold enfranchisement.

- Rack rented leases

  Virtually all commercial premises in the UK are let on commercial leases for a term of between five to 20 years at an open market rent, which is reviewed at regular intervals (usually five, yearly) on an upward-only basis.

  In recent years, there has been a move toward geared or fixed rent reviews where the parties agree at the outset that the rent will increase at a rate equivalent to the rise in the Retail Prices Index at a relevant review date. Currently in England and Wales, it would be highly unusual to have a rent review mechanism that allows the rent to go down as well as up.

  If a new lease is being negotiated, then the parties will agree the commercial terms and there will usually be an agreement for lease, which is then followed at a later date by the formal grant of the lease. Often, the intervening period is used by the landlord to complete certain fit-out works on behalf of the tenant.

  In addition, existing commercial leases are regularly assigned from one tenant to another where the incoming party accepts the existing terms of the lease in question. It is rare for a premium to be paid by an incoming tenant to an outgoing tenant. In fact, it is not unusual to see a "reverse premium" paid where the outgoing tenant makes a capital contribution to the incoming tenant to facilitate the assignment. Such reverse premiums can often be substantial in circumstances where the existing lease is viewed as "over-rented" compared to the open market rent then payable on new premises.

Generally, commercial leases are granted on a full repairing and insuring (FRI) basis, which means that, in addition to the rent payable to the landlord, the tenant is also responsible (whether directly or by way of service charge) for the cost of repair and insurance of the premises. In addition, the tenant, as occupier, will be liable to pay business rates (a tax to local government).

In some retail leases, rents are based on the turnover generated by the business being carried on at the premises or, possibly, a combination of a base rent and a turnover rent.

Increasingly, there is a move to include "Green Lease" provisions in new leases. Many of the UK's leading commercial property owners are working with the UK Better Buildings Partnership to develop an industry standard set of green lease provisions for new leases and a "toolkit" for affecting changes into existing lease structures, to retroactively "green-up" existing leases via a more informal memorandum of understanding.

Legally binding "green" lease clauses in new leases are likely to address issues such as data sharing on water and energy usage, participation in a building management committee and restrictions on alterations and reinstatement.

3.2 Are lease provisions regulated or freely negotiable?

Generally speaking, lease provisions are unregulated and are freely negotiable between the parties, although it is fair to say that there is a recognized format for commercial leases.

There are also a number of industry codes or guidelines that recommend certain standard provisions. Such codes of practice are gaining increasing recognition.

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

In reality, there is no maximum term for a lease although lease terms must not be infinite.

Commercial lease terms can be extended by negotiation although this could give rise to an additional charge to SDLT.

3.4 What are the usual lease terms?

Most commercial leases have between five and 15-year terms although in some industry sectors, such as the leisure sector, longer leases of 35 years are often the norm.

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

Many commercial or business leases enjoy the protection afforded by the provisions of the Landlord and Tenant Act 1954 (the "1954 Act") which, broadly speaking, grant to a tenant the right to call for a new lease at the end of the original term of years unless the landlord objects to such renewal and demonstrates to the court's satisfaction that the renewal should not be granted.

There are a limited number of grounds on which a landlord may object to a renewal and the landlord must prove such ground(s) to the satisfaction of the court. One such ground is that the landlord wishes to redevelop the property at the end of the term. Another is that the landlord wishes to occupy the premises for its own business at the end of the term.

Usually, the parties are able to negotiate the basis of a renewal lease without the need for a court to impose terms. However, if the parties are unable to agree the terms of such renewal lease, then the court will direct that the renewal lease be granted on similar terms to the existing lease but at an open market rent for a maximum term of 15 years.

However, increasingly, parties agree at the beginning of the lease that the tenant will not enjoy the security of tenure protection offered by the 1954 Act. The effect of this is that the lease automatically expires at the end of the original term with no right for the tenant to renew.

The parties must follow a simple statutory procedure to exclude the lease from the provisions of the 1954 Act.

In relation to residential leases, legislation exists that entitles a long residential tenant to demand an extension or renewal of the lease.

3.6 On what grounds may a lease be terminated?

It is not unusual for the parties at the outset of a lease transaction to negotiate formal break or termination rights in a lease which can be either mutual rights or operated by one party only.

In the absence of any contractual right to terminate the lease, then the tenant will have no ability to bring the lease to an end prior to its contractual term. However, a landlord may terminate or forfeit a lease in the event of a breach of covenant by the tenant or upon the tenant's insolvency.

There is a formal procedure to be followed in relation to such termination and it is open to the tenant or any other interested party (such as a subtenant or a mortgagee) to apply to the court for relief from forfeiture. On such an application, the court will consider the relative merits and commercial interest of the parties in deciding whether or not to grant such relief.

3.7 Must rent be paid in local currency?

The parties are free to set the rent in currencies other than sterling but such arrangements are very unusual.

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

Traditionally, rent is paid quarterly in advance on the usual English quarter days of 24 March, 24 June, 29 September and 25 December.

However, it is open to the parties to negotiate different timings for the payments of rent.

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

In a typical commercial lease, the rent is reviewed at regular five-yearly intervals on an upward-only basis, which means that the rent passing can never be less than the rent agreed at the outset of the term.

Traditionally, such rent reviews are carried out on an open market basis with certain agreed assumptions and disregards. However, in recent years, there has been a movement toward fixed rental increases or, possibly, the higher of a fixed rental increase (usually linked to the increase in the Retail Prices Index) or the open market rent at the time of review.

Currently, there are no limits to the increase in rent of commercial leases.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Repair and maintain the structure of the property
- Insure the property
- Manage the property in a multi-tenanted building

The following is usually required of tenants:

- Pay rent
- Pay service charges

- Keep the interior of the premises in good repair and condition
- Comply with the express terms of the lease as to user and signage
- Allow the landlord access for inspections and work

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

There are usually very detailed provisions as to the ability of a tenant to assign or sublet a lease but it is rare that there is a total prohibition against such assignment and subletting.

The landlord is required to act reasonably when considering the tenant's request for an assignment or subletting and must not unreasonably withhold or delay such consent. There are statutory provisions that entitle the tenant to apply to court if it believes that the landlord has either acted unreasonably in refusing consent or has unreasonably delayed the grant of its consent.

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

This is a matter for negotiation between the parties but generally speaking, if the premises are substantially damaged or destroyed by an "insured risk," then the lease will provide that the tenant is relieved from its obligations to pay the rent for a period of up to three years, during which time the landlord takes on an obligation to rebuild or reinstate the premises to allow the tenant to resume its occupation. Accordingly, the landlord will usually take out loss of rent insurance, the premium for which is met by the tenant as part of the service charge.

In circumstances where a landlord is unable to rebuild the premises after the agreed period, then it is usual for either party to have an ability to determine the lease upon notice.

In cases where the damage has been caused by an "uninsured risk," leases are often silent and it is for the parties to negotiate an exit route. The Commercial Leasing Code recommended by the Royal Institution of Chartered Surveyors recommends that the issue of uninsured risk is addressed by the parties at the outset and further recommends that the lease should terminate in the event of damage by an uninsured risk unless the landlord notifies the tenant that it intends to rebuild or reinstate the premises within a specified period of three years. If the landlord makes such an election, then the lease continues but the tenant is not obligated to pay any rent.

3.13 Who is usually responsible for insuring the leased premises?

The landlord is usually responsible for insuring the leased premises and recovers the cost from the tenant as part of the service charge.

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

All leases survive a sale of the immediately superior interest and remain binding upon both the new owner/landlord and the existing tenants.

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

Generally, existing leases will survive any foreclosure.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Land development and environmental regulation are primarily governed by statutory legislation, which in turn stipulates the various bodies with relevant authority.

In the case of land development, the main body with powers to regulate development is the local planning authority for the relevant area (usually the local district council) although there is a separate 'track' direct with a central government body to oversee large infrastructure-type projects.

In London, the Greater London Authority and the Mayor's office also have an overarching role in relation to developments of "potential strategic importance."

In relation to environmental regulation, the principal body overseeing environmental issues is the Environmental Agency, although in some cases, the local district council for the relevant property will also have powers of regulation.

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

The principal statute governing environmental issues in relation to real estate in England and Wales is the Environmental Protection Act 1990 (which creates a contaminated land regime). However, there are numerous other statutes dealing with specific aspects of land that either supplement the Environmental Protection Act or create standalone regimes in their own right dealing with such issues as asbestos, pollution prevention and control, waste, water pollution, protection of wildlife, and habitats and carbon reduction.

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

The principal permit required to either build property or use it in a particular way is a planning permission (which as noted above is usually authorized by the local planning authority for the relevant property). Virtually, all building work also requires building regulation consent, which is again controlled by the relevant local authority.

Specific uses of property by an occupier may also give rise to the requirement for further permits. In particular, the use for the sale of alcohol or operation of a property as a restaurant will usually require a premises and/or restaurant license and also, possibly, food hygiene permits.

4.4 Can an environmental cleanup be required?

Yes. The broad principle under the Environmental Protection Act 1990 is that the person who caused any relevant contamination has the primary responsibility for cleanup. However, the land owner from time to time also has a co-existent liability (which may be enforced if the actual polluter cannot be found) simply through ownership of the land. Some form of environmental risk assessment is almost always therefore required on the acquisition of a property in England and Wales.

4.5 Are there minimum energy performance requirements for buildings?

Yes. In March 2015 the UK Government introduced legislation prescribing minimum energy performance requirements for existing buildings. There are already detailed requirements for the energy efficiency characteristics and certification of new buildings (which are enforced through the planning consent and building regulation regimes).

Legislation has also been introduced in the last few years, which requires energy performance certificates (giving details of a building's energy efficiency) to be provided to a purchaser and/or lessee on any transactional sale. However, such certificates are currently only advisory in nature and do not actually require any rectification to be carried out by any party.

However, from 1 April 2018, new minimum energy efficiency standards regulations mean it will be illegal to grant a new lease or to extend or renew an existing tenancy of a domestic or non-domestic property that does not meet a minimum "E" rating on an energy performance certificate where one exists or is required, unless exemptions apply. A landlord of a non-compliant property will need to make appropriate energy efficiency upgrades or will need to have carried out an assessment and registered any available exemptions before the relevant lease transaction can be completed. Exemptions available include a cost-effectiveness test for the required works based on a seven-year payback calculation; or where

necessary consent cannot be obtained eg, from the tenant, mortgagees or planning; or if the required improvement works would adversely affect the market value of the property by more than 5%; or if wall insulation improvements would cause structural damage.

From 1 April 2020 for domestic properties and from 1 April 2023 for non-domestic properties, it will be illegal for a landlord to continue to lease a property which does not meet the minimum energy efficiency standards, unless before that date it has made appropriate energy efficiency upgrades or has carried out an assessment and registered any available exemptions.

Most exemption applications must be renewed every five years or earlier if the existing tenant vacates. Exemptions are personal and non-transferable and therefore any new investor who becomes a landlord of such a property will need to apply for its own exemptions and will be granted a six month temporary exemption in which to do so.

In either case, fines of up to GBP 5,000 are applicable in relation to breaches concerning domestic properties. For non-domestic properties, fines of up to GBP 50,000 are applicable upon initial breach, rising to a maximum of GBP 150,000 per breach for persistent offenders. Note that compliance with the regulations is entirely the responsibility of landlords. Tenants cannot therefore be fined and the validity of any leases granted in breach of the regulations is unaffected.

The same regulations also allow tenants of qualifying residential properties to request consent, under certain circumstances, from their landlords for relevant energy efficiency improvements even where their leases may otherwise prohibit such alterations. Landlords are under a duty not to unreasonably refuse consent to applicable requests but may insist that any such improvements are undertaken by the landlord instead. The rights and obligations are enforceable through the courts but there is no provision for the imposition of financial penalties for non-compliance.

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

Yes. There is an increasingly strong focus on sustainability of newly constructed and existing buildings in the UK at the moment. This is partly being tackled through the building regulation regime (mentioned above), which requires increasingly sophisticated materials to be used in the construction of buildings. It is also being addressed by local planning authorities through the use of sustainability assessments as part of the production of the local development plan. The local development plan may require environmental impact assessments to be carried out before certain types of development are approved for planning permission, allowing the local planning authority to impose mitigation measures to ensure compliance with its sustainability agenda.

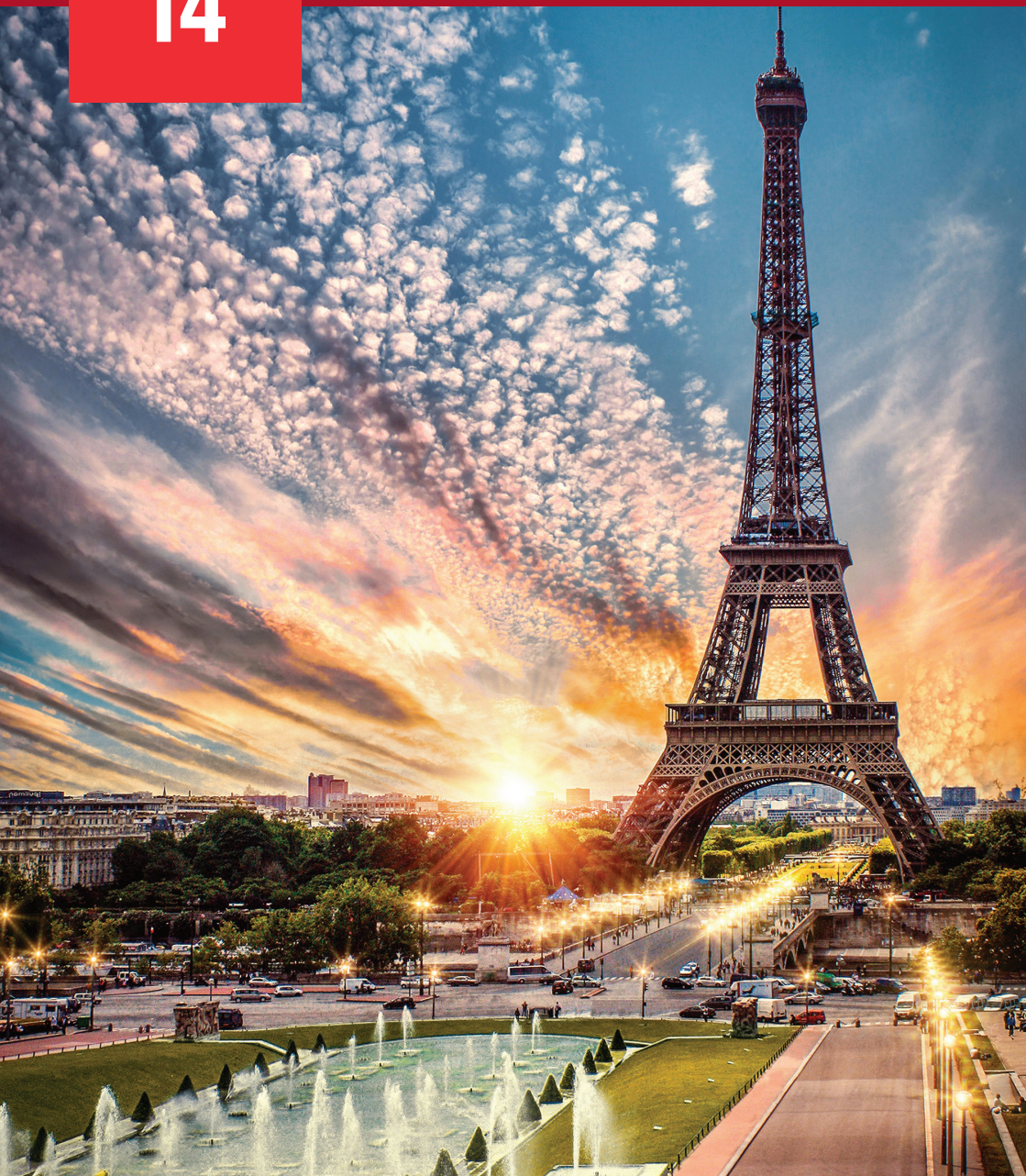
Legislation (known as the Carbon Reduction Commitment Energy Efficiency Scheme) exists which seeks to limit and control energy usage by large business occupiers in the future. This scheme will be abolished from April 2019 but for now, the regulations require large energy users (not heavy industry, which is separately regulated under emissions trading legislation) to purchase credits at the start of the relevant annual period, in anticipation of their energy usage for that year. These credits can be traded and further credits acquired through the year if required.

This is effectively a tax on energy usage and there are civil penalties for reporting failures. Most participants in the scheme are owners of property who are likely to seek to pass a proportion of the costs of purchasing the credits and related administration costs, through to their tenants via the service charge. Clauses to allow recovery of these costs is now appearing regularly in commercial leases.

In addition, there are a number of mandatory and voluntary appraisal techniques and codes that developers will increasingly need to comply

with to secure planning permission, access funding for a project or comply with end-user sustainability strategies. In the UK, these include the BRE Environmental Assessment Method (BREEAM) for non-residential buildings, Part L of the Buildings Regulations for all buildings and the Civil Engineering Environmental Quality (CEEQUAL) assessment and award scheme for assessing the energy performance of civil engineering and public realm projects.

14 France



1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- The land, soil and subsoil
- Any buildings or structures built on it

1.2 What laws govern real estate transactions?

Real estate transactions are mainly governed by the relevant provisions of the French Civil Code.

1.3 What is the land registration system?

All documents transferring immovable property must be published at the Land Registry (Services de la publicité foncière). Until a deed of sale is published at the Land Registry, it is not binding upon third parties.

Documents transferring immoveable property must be drawn up by, and signed before, French notaries. French notaries benefit from a legal monopoly in respect of such documents. French notaries are also responsible for the formalities on transfer of title, including prior declaration to the local authority benefiting from a right of preemption, obtaining Land Registry searches and checking the root of title over a 30-year period.

1.4 Which authority manages the registration of titles?

Registration of titles is managed by the Land Registry.

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

All documents transferring or encumbering real estate properties must be published at the Land Registry.

This includes the following:

- Sale and purchase agreements
- Mortgages
- Easements
- Specific restrictive covenants
- Leases whose duration exceeds 12 years
- Co-ownership agreements

1.6 What documents can land owners use to prove ownership over real property?

Land Registry searches can be obtained from the Land Registry through specific requests to obtain information on the name of owners of real estate properties or the different real estate properties owned by an individual or a company.

Within the context of a sale and purchase agreement of real estate property and once publication of the sale is completed with the Land Registry, a copy of the sale and purchase agreement is provided to the new owner.

1.7 Can a title search be conducted online?

All documents published at the Land Registry are available to the public and information about the ownership of real property can be searched. Specific fees are paid to obtain these documents.

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

There are generally no restrictions on foreign ownership of French lands subject to very few exceptions where authorizations are to be obtained and where administrative declarations shall be made, as the case may be.

1.9 Can the government expropriate real property?

Land is divided into different zones. In some of these zones, local authorities (municipalities or other local authorities) benefit from a right of preemption.

1.10 How can real estate be held?

Real estate property is held by any of the following means:

- Ownership
- Lease agreement

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

Investments in real estate properties are usually made through specific purpose vehicles.

1.12 How are real estate transactions usually funded?

Most real estate financing is arranged through institutional lenders such as banks.

Usually, the borrower will pay for all of the lender's legal and other costs. The lender usually takes securities over the real estate property and the different related assets (ie, pledge over the shares in the purchasing company or in the company owning the real estate property, mortgage over the real estate property, assignment of rent paid by existing tenants in the real estate property and indemnities paid by insurance companies).

1.13 Who usually produces the documentation in real estate transactions?

French notaries will prepare legal documentation for the direct sale and acquisition of real estate property. For sale and acquisition of real estate property through the sale and acquisition of shares in companies, and with the exception of mortgage deeds and deeds of release of mortgages, which are also produced by French notaries, the parties' lawyers usually prepare legal documentation.

1.14 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?

The French Civil Code provides for conditions applicable to all sales of real estate properties but these regulations are not mandatory. As a consequence, parties can waive most of these provisions and agree upon different terms and conditions.

When the real estate property that is being sold was built or renovated less than 10 years prior to the sale, the purchaser is, by law, subrogated in the rights of the vendor vis-à-vis contractors who did participate in the construction or renovation of the real estate property being sold.

Regarding environmental matters, public authorities can require the operator (exploitant) to clean up soil and subsoil contamination when the latter ceases its operating of the site or in case of pollution.

Tenants are not usually held liable for environmental damages caused by a previous tenant, unless it carries out the same activity and can be considered the same operator in the existing business.

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

As mentioned above, the French Civil Code provides for conditions applicable to all sales of real estate properties. Some of these legal provisions are not mandatory. As a consequence, and to some extent,

parties can negotiate and agree upon different terms and conditions in the sale and purchase agreement.

Tenants are generally not held liable for a previous tenant's obligations, unless new tenants continue committing the breaches.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Offer letter

  Parties usually sign an offer letter (Lettre d'intention) for the direct or indirect purchase of real estate property. Such document is usually the first document entered into in relation to a property transaction and includes the purchase price, the tax treatment of the sale, the main terms and conditions of the sale, the different conditions precedent to be fulfilled (as the case may be) and the timing of the transaction, including the timing necessary for the purchaser to complete its due diligence.

- Due diligence report

  Once the offer letter is signed, the purchaser will usually carry out, through its legal and technical advisors, due diligence with respect to the property and/or the company that is in the process of being sold.

  This due diligence will include review of titles, zoning searches, review of building authorizations, review of any leases and carrying out of technical and environmental surveys of the real estate property.

- Sale and purchase agreement (under conditions precedent)

  After completion of due diligence, a sale and purchase agreement under conditions precedent is usually signed between the vendor and purchaser.

This sale and purchase agreement will contain all necessary terms and conditions for the transaction, including description of the land, the purchase price, the tax treatment of the sale, payment of a deposit (if any) and the list of the conditions precedent to be fulfilled, which usually includes a waiver from the public authorities to the benefit of their preemption right. This sale and purchase agreement will also contain specific conditions precedent to the benefit of the purchaser such as the obtaining of the necessary construction authorizations and some representations and warranties granted by the vendor for specific issues identified during the due diligence process carried out by the purchaser.

- Final sale and purchase agreement

  Once all the conditions precedent listed in the sale and purchase agreement under conditions precedent are fulfilled, parties will sign the final sale and purchase agreement drawn up by and signed before a French notary (please refer to the above).

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

As mentioned above, the French Civil Code provides for conditions applicable to all sales of real estate properties which are not, to some extent, mandatory. Parties will therefore negotiate and agree upon appropriate terms and conditions in the sale and purchase agreement. Recent trend, however, is for vendors to give limited representations and warranties.

2.3 When is the sale legally binding?

Parties are legally bound as soon as they execute a reciprocal sale and purchase agreement under conditions precedent and/or a final sale and purchase agreement.

However, under French law, a sale is binding between vendor and purchaser as soon as there is an agreement on the subject matter of the

transaction and on the price. As a consequence, for instance, an unqualified offer letter made by a purchaser which is duly accepted by the vendor could result in a binding sale and purchase agreement.

2.4 When is title transferred?

Parties are legally bound as soon as they execute a final sale and purchase agreement and transfer of ownership will occur upon signing of this agreement before a French notary.

As mentioned above, however, all documents transferring ownership of real estate property must be published at the Land Registry. Until a final sale and purchase agreement is published at the Land Registry, it is not binding on third parties.

2.5 What are the costs usually shouldered by the parties?

Purchasers will usually pay for the following:

- Buyer's agent's fees
- Legal costs borne by the purchaser
- Due diligence costs
- French notaries fees
- Registration duties and/or VAT
- Land Registry fees

Vendors will usually pay for the following:

- Legal costs borne by the vendor
- Income tax on any profit made on the sale of the real estate property

3. Leases

3.1 What are the usual forms of leases?

- Ground leases

  A ground lease (Bail à Construction) is a lease under which the tenant undertakes to construct buildings on the landlord's plots of land and to maintain these buildings in a good state of repair. The term of the ground lease will be between 18 years and 99 years.

  A ground lease grants an immovable property right (Droit Immobilier) to the tenant. Therefore, it must be drawn up by a French notary and published at the Land Registry. During a ground lease term, the tenant will remain the owner of the construction. Upon termination, the landlord will become the owner of the construction and improvements.

- Commercial leases

  The French Commercial Code governs the duration, renewal and termination of commercial leases, rent review, use of the premises, subletting, assignment of the lease and, to some extent, service charges and works.

  Other general terms of commercial leases, which are not regulated by specific provisions of the French Commercial Code, are governed by the general provisions of the French Civil Code applicable to lease agreements.

  French regulations on commercial leases apply to leases of premises in which a business is carried out by an individual or a company. This business shall be duly registered at the relevant Commercial and Companies Registry.

The duration of commercial leases cannot be less than nine years. However, the landlord and tenant can agree on a longer term.

The French Commercial Code allows short-term leases not exceeding three years (Baux Dérogatoires). These short-term leases, which are outside the scope of regulations on commercial leases, are governed only by the general provisions of the French Civil Code applicable to lease agreements.

Unless specific conditions are met, the landlord cannot terminate commercial leases during this nine-year period. On the other hand, the tenant benefits from a triennial right of termination from which the parties cannot derogate, unless in case of commercial leases for offices spaces, storage premises, single-use premises or for a duration of more than nine years. In these cases, the tenant may contract out of such triennial right of termination. Notice to quit must be delivered by process-server (Huissier de justice) six months in advance.

Security of tenure is an essential aspect of French regulations on commercial leases. Security of tenure is the right of the tenant to obtain renewal of the commercial lease upon its expiry and the landlord cannot refuse to grant such renewal without paying the tenant compensation for eviction (Indemnité d'éviction).

As mentioned above, this security of tenure is granted to tenants who are duly registered at the relevant Commercial and Companies Registry.

- Residential leases

  Residential leases are regulated by specific French regulations. Most of these provisions are mandatory and cannot be contracted out by parties.

As a matter of general principle, a residential lease is entered into for six years if the landlord is a company, or for three years if the landlord is an individual. The tenant may terminate a residential lease at any time with three months' prior written notice.

3.2 Are lease provisions regulated or freely negotiable?

Legal provisions applicable to commercial leases concerning the duration and right of renewal to the benefit of the tenant and to service charges and work that can no longer be recharged to tenants are mandatory and cannot be contracted out by parties. Other legal provisions, which are not covered by the French Commercial Code but by the French Civil Code, are negotiable by parties.

Most of the legal provisions applicable to residential leases are mandatory and cannot be contracted out by parties.

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

As mentioned above, the duration of commercial leases cannot be less than nine years. Parties, however, can provide for a longer term.

If the term of a lease agreement is more than 12 years, it must be drawn up by French notaries and must be published with the Land Registry, thus triggering specific costs (notary fees, registration duties and Land Registry fees).

3.4 What are the usual lease terms?

Most commercial leases are entered into for a nine-year term with a break option at the end of every triennial period to the benefit of the tenant.

Most commercial leases for commercial centers are entered into for a ten-year term with partial waiver of the triennial right to terminate the lease for tenant.

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

No.

3.6 On what grounds may a lease be terminated?

As a matter of general principle, the landlord is entitled to terminate leases (either commercial or residential leases) when the tenant breaches the terms and conditions of the lease.

The landlord can terminate a commercial lease if the tenant remains in breach for one month after having received a notice served by court process-server. The court may also allow the tenant more time to cure the breach.

3.7 Must rent be paid in local currency?

As a matter of general principle, foreign currencies cannot be used in agreements in France as it may be considered as a prohibited indexation, except if the currency is in relation with the object of the contract or with the activity of one of the parties to the contract. This prohibition is strictly construed by French courts.

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

For commercial leases, rent is usually paid quarterly in advance.

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

Parties to commercial leases are free to stipulate that rent shall be indexed on an annual basis. However, under French law, as mentioned above, an index is only valid if it is directly related to the object of the contract or to the activity of one of the parties.

For commercial leases, the option is between the Commercial Rents Index (Indice des Loyers Commerciaux or ILC) for commercial activities and the Index of Rents for Services Activities (Indice des Loyers des Activités

Tertiaries or ILAT) for services activities. These indexes are published by the French State Statistical Institute (INSEE).

Under French law, rent of commercial leases may also be reviewed by the landlord or the tenant three years after the date of entry into force of the rented premises or the date of commencement of the renewed lease. Upon renewal of commercial leases (Renouvellement), increase in rent may be capped or rent may be fixed at market value. The rent increase upon rent review and renewal is limited to 10% per year.

3.10 What are the basic obligations of landlords and tenants?

The following must be borne by landlords:

- Repairing and maintaining the structure of the rented premises, identified as major repairs in Article 606 of the French Civil Code
- Specific service charges and work listed under Article R 145-35 of the French Commercial Code

The following is usually required of landlords:

- Insure the rented premises
- Provide tenants with valid notice of termination

The following is usually required of tenants:

- Pay rent and service charges on time
- Keep the rented premises in good maintenance and repair order
- Insure its belongings, merchandise and goods within the rented premises

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

- Commercial leases

  The prohibition of the right to assign a commercial lease is void if it prevents the tenant from assigning the lease to a purchaser of its business. As a consequence, a provision prohibiting the right to assign will only be valid when the assignee purchases the right to the lease.

  Commercial leases usually provide that, in case of assignment, the tenant will remain jointly and severally liable with the assignee for the tenant's obligations under the lease, in particular, for the payment of rent and service charges.

  Unless provided otherwise, subletting of all or part of the rented premises is prohibited. However, in practice, tenants are granted right to sublet to companies of their group.

  Specific preemption rights benefiting towns may apply in case of assignment of the business carried out in the rented premises or in case of assignment of the sole right to the lease when the rented premises are located within a protection perimeter of local stores and craft industries.

  The tenant benefits from the right of first refusal in the event landlord wishes to sell the rented premises, with respect to retail or craft-industry premises (Locaux à usage commercial ou artisanal). Such right, however, can be contracted out by parties.

- Residential leases

  The tenant may not assign or sublet without prior consent of the landlord.

Specific preemption right benefiting to the tenant may apply in case of sale of the rented premises.

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

Unless otherwise agreed upon between parties, specific provisions of the French Civil Code will apply in the event of destruction of rented premises.

Pursuant to these provisions, where during the term of the lease, rented premises are wholly destroyed by a fortuitous event, the lease is terminated as of right. Where the rented premises are destroyed only in part, the tenant may, according to the circumstances, apply for rent reduction or termination of the lease. In either case, no compensation is owed.

These legal provisions, however, are not mandatory and parties can agree upon other terms and conditions.

3.13 Who is usually responsible for insuring the leased premises?

As mentioned above, the landlord is usually responsible for insuring the rented premises and usually recovers the cost of insurance premiums from the tenant through service charges. The tenant insures its merchandise, goods and belongings within the rented premises. In such case, a mutual waiver or recourse between the tenant and the landlord is usually provided for in the lease agreement.

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

Registration of leases with the tax authorities will give leases a fixed date (Date certaine) and will give rank to the landlord's special charge over the tenant's assets in respect of unpaid rent. In addition, this will make the lease binding against the landlord's successors in title.

Pursuant to French regulations applicable to residential leases and when specific conditions are met, tenants benefit from a right of preemption when the landlord intends to sell the rented premises.

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

As mentioned above, registration of the lease with the tax authorities will give the lease a fixed date. This will also make the lease enforceable against a secured creditor of a landlord who carries out a seizure procedure after this date.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Land development is set primarily at the town level. Towns will control land use and density of constructions through zoning by-laws (Plans Locaux d'Urbanisme).

The French Zoning Code and the French Construction and Dwelling Code also set specific standards and regulations for the use of land and construction of buildings.

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

The French Environmental Code set specific standards and regulations affecting the use and occupation of real estate. For instance, specific authorizations and/or administrative approvals and/or declarations are required by environmental legislation for starting or ceasing operation of a classified facility (Installation classée), such as industrial and manufacturing activities.

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

As a matter of general principle, a demolition permit and/or a building permit will have to be obtained if a building is to be built or if a building is to be demolished and rebuilt or renovated.

As regards use of premises, especially in the Paris area, the French Construction and Dwelling Code provides that premises with residential use cannot have any other use unless specific authorization is obtained from relevant public authorities.

Specific authorization is also needed to open retail premises with a sales area in excess of 1,000 square meters.

This threshold has been lowered in Paris on an experimental basis and for an initial period of three years starting 1 January 2018, the above specific authorization is required for sales area in excess of 400 square meters only.

4.4 Can an environmental cleanup be required?

Environmental cleanup of plots of land can be required by relevant authorities when a classified facility (Installation classée) ceases to be operated or when pollution is evidenced.

4.5 Are there minimum energy performance requirements for buildings?

Different French laws enacted over the past few years provide for minimum energy efficiency requirements for existing and new buildings.

A specific energy efficiency report (Diagnostic de performance énergétique) has been created, which states the quantity of energy used or to be used according to the type of use of the building. This report shall be communicated to purchasers and tenants.

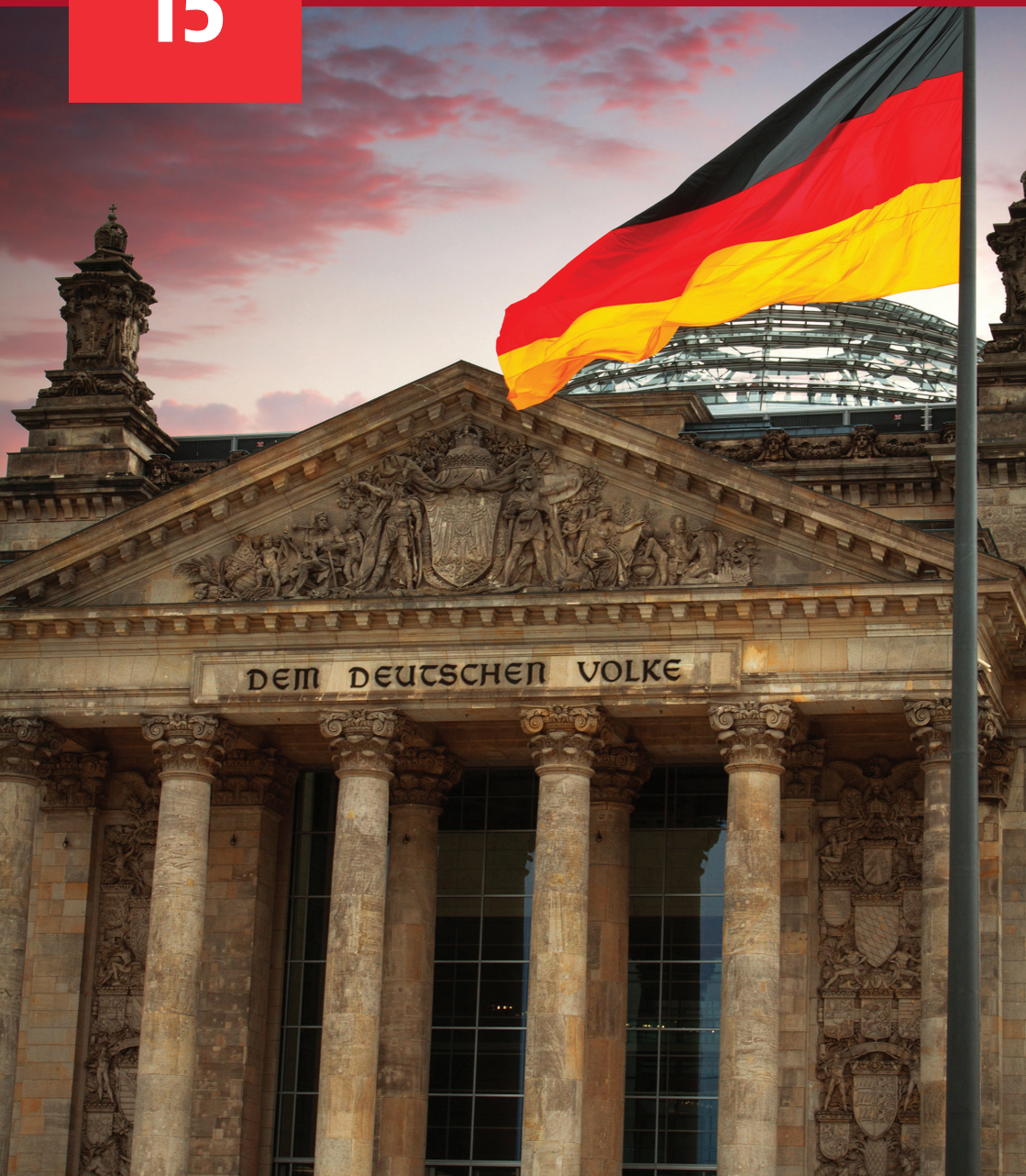
4.6 Are there other regulatory measures that aim to improve the sustainability of newly constructed and existing buildings?

An increasing number of technical reports has been created over the past few years.

A specific technical audit record has been created to bring together information (statements, reports and audits) relating to the safety of the buildings and health and safety of the occupants.

Notably, this shall include a statement referring to the presence/absence of construction materials/products containing asbestos, pollution of the land, soil and subsoil and risk statement (Etat des Servitudes 'Risques' et d'Information sur les Sols) in zones within the perimeter of a plan for prevention of risks or in an earthquake zone. In case of sale of a constructed building, these records, which must be given by the vendor to the purchaser, are attached to the preliminary contract and to the final deed of sale.

15 Germany



1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Any buildings and other integral parts on land

1.2 What laws govern real estate transactions?

Real estate transactions are mainly governed by the German Civil Code (BGB). Other private and procedural property law applicable to real estate transactions is spread over various German acts, including the German Hereditary Building Right Act (ErbbauRG), the German Land Register Act (GBO), and the German Notarial Recording Act (BeurkG).

1.3 What is the land registration system?

In Germany, the entire surface of the country is measured and specified on cadastral maps showing the exact location of a piece of land (ie, its district, parcel and plot). The real estate so specified is registered in the land register (Grundbuch) competent for the district in which the real estate is located. The land register is divided into an inventory and three divisions. The inventory describes the location and size of the real estate. Division I of the land register lists the current owner, Division II lists encumbrances and restrictions of the real estate such as easements, pre-emptive purchase rights, usufruct rights, priority notices and hereditary building rights, except for mortgages and land charges, which are registered in Division III. Unless agreed and registered otherwise, the priority of the rights depends on their respective date of registration.

1.4 Which authority manages the registration of titles?

Title registration is managed by the land register kept at the local court (Amtsgericht) competent for the district in which the real estate is located

in all federal states except for parts of Baden-Württemberg where the land registers are still kept with state notary publics.

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

Most rights in rem over real estate require registration. This includes:

- Ownership (registered in Division I of the land register)
- Encumbrances over real estate (registered in Division II of the land register), such as easements (Grunddienstbarkeiten), pre-emptive purchase rights (dingliche Vorkaufsrechte), usufruct rights (Nießbrauchsrechte), priority notices (Vormerkungen) and hereditary building rights (Erbbaurechte)
- Security interests (registered in Division III of the land register), such as land charges (Grundschulden), mortgages (Hypotheken) and rent charges (Rentenschulden)

Residential and commercial lease agreements do not require registration in Germany.

1.6 What documents can land owners use to prove ownership over real property?

Land registers in Germany do not issue physical title certificates to new property owners. Rather, land ownership can be proven from the registration of the change of ownership in the land register. Excerpts from the land register can be obtained by everyone who can demonstrate a legitimate interest. In practice, it is generally the seller who provides a potential buyer with a current excerpt from the land register. The registration in the land register allows for a bona fide acquisition if (i) the seller is registered in the land register although actual ownership is with a third party; and (ii) the acquirer does not actually know that this registration is incorrect.

1.7 Can a title search be conducted online?

In some federal states, the local courts have already digitized the land registers and offer electronic searches for registered users (mainly notary publics). However, for the majority of land registers only physical hard copies can be obtained. The same is true for underlying deeds and other registered records filed with the land register. In any case, a legitimate interest for an inspection needs to be demonstrated.

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

There are generally no restrictions specifically applying to foreign ownership of German real estate.

1.9 Can the government expropriate real property?

German real estate can be expropriated by quasi-government authorities, but only under very strict requirements (including the payment of adequate compensation).

1.10 How can real estate be held?

Generally, an interest in German real estate can be held by any of the following:

- Freehold/full ownership
- Partial ownership
- Condominium
- Hereditary building right (transferrable real estate-like right entitling its holder to build on land owned by a third party)

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

- Limited liability companies

- Co-ownership
- Partnerships
- Limited partnerships
- Open-ended funds

1.12 How are real estate transactions usually funded?

Most real estate financing is arranged through institutional lenders such as banks, real estate funds, credit unions and insurance companies. Interest rates are generally fixed for a specific time period. Lenders usually ask for real estate-specific collateral such as land charges, security assignments, duty-of-care agreements with the property managers and share pledges over the property holding company.

German open-ended real estate funds are a major source of real estate financing in Germany and on a global level. While the funds have been a safe investment for decades, some of them have been facing serious problems since the beginning of the global economic downturn in 2008. As a consequence, the German parliament has tightened the regulations for open-ended real estate funds to provide more stability.

An alternate source of financing is mezzanine capital. Specialized mezzanine investment funds offer financing against a combination of interest payments and equity allowing the borrower to reduce leverage.

1.13 Who usually produces the documentation in real estate transactions?

Generally, the seller's lawyer will prepare the initial draft of the purchase agreement to be marked up by the buyer's lawyer and subsequently negotiated until a final agreement is reached.

1.14 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?

Real estate liability may not only result from encumbrances registered in the land register (land charges, mortgages, easements, etc.), but also from public burdens on real estate. Such public burdens do not require registration in the land register and include property tax, development charges and settlement contributions for remediation and development measures. Government authorities may require the owner to clean up historic contamination even if the owner did not cause it. In addition, under German tax law, the buyer of the real estate may be held liable for past taxes relating to the property if the acquisition qualifies as the acquisition of a business.

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

Generally, a seller disposing of real estate by way of an asset deal will remain fully liable for contractual liabilities entered into in relation to the sold real estate, unless such liabilities are assumed by the buyer in the purchase agreement. For this reason, German real estate purchase agreements typically provide for the buyer assuming conclusively listed property agreements (such as utility or maintenance contracts or property management agreements). As an exception to this general rule, lease agreements and insurance policies relating to real estate generally transfer to the buyer by operation of law once the buyer has been registered as the property's new owner in the land register.

Similarly, under the Federal Soil Protection Act, government authorities may require the polluter, its legal successor, the owner and/or occupier of the real estate to investigate and clean up any soil and groundwater contamination.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

The key document is the purchase agreement. In the event of a direct acquisition by way of an asset deal, the real estate purchase agreement has to be recorded by a notary public and usually provides for the conveyance of title (Auflassung), ie, a joint declaration by the parties that the title shall be transferred to the buyer. The parties instruct the notary public to file that declaration with the land register once the buyer has paid the purchase price. Upon registration of the buyer as new owner in the land register, the transfer is effective.

Other documents typically involved in German real estate transactions include acquisition finance arrangements, asset/property/facility management agreements, other property agreements and due diligence reports on legal, financial, technical, environmental and/or insurance matters.

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

The recent trend is for sellers to give limited representations and warranties. However, the scope of warranties and indemnities varies and depends on individual circumstances. As a minimum, the seller usually warrants that unrestricted title will be transferred (unless and to the extent encumbrances are not assumed by the buyer or disclosed in the purchase agreement). A buyer is often requested to conduct a comprehensive due diligence with respect to the property that limits the seller's liability under the purchase agreement.

2.3 When is the sale legally binding?

Principally, any undertaking governed by German law to sell or buy real estate must be notarially recorded. This form requirement covers all parts and understandings in connection with the sale, including letters of intent

providing for transfer obligations or side agreements. The notary acts as an independent, impartial and objective adviser to all parties to a transaction. If the purchase agreement is concluded abroad, other form requirements may apply. However, in practice, a conclusion abroad is the rare exception, since the conveyance of title must be notarized by a German notary anyway. Noncompliance with the notarization requirement leads, in principle, to the invalidity of the entire transaction. In certain situations, an invalid transaction may subsequently be cured and become legally effective with the registration of the change of ownership in the land register.

2.4 When is title transferred?

Title transfer occurs upon the registration of the buyer as the new owner in the land register.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- Notary fees
- Due diligence costs for consultants
- Registration fees
- Agent/broker fees
- Financing costs
- Own legal fees
- Real estate transfer tax

The seller usually pays for the following:

- Discharge costs for release of security not assumed by buyer

- Own legal fees
- Income tax on any profit made on the sale of the real estate

Under German mandatory law, the seller and buyer are jointly liable for the notary fees incurred for the recording of the purchase agreement (including the conveyance of title) and real estate transfer tax triggered by the transaction, even if in the purchase agreement they typically agree otherwise.

3. Leases

3.1 What are the usual forms of leases?

- Hereditary building rights (Erbbaurechte)

  A hereditary building right entitles its holder to own and/or develop one or multiple building(s) on real property owned by another party. It must be registered in the land register and can be separately disposed of and/or encumbered. As consideration, the holder pays rent to the owner of the real property. Upon expiration of the hereditary building right's term (for example, 99 years), the title to the building(s) developed by the holder is transferred to the owner of the real property by law. Whether the owner must compensate the holder for the loss of the title to the building(s) depends on the individual agreement. Hereditary building rights are often granted by municipalities or churches to allow building measures on their property without losing title and to create jobs in their area.

- Commercial leases

  Most commercial lease transactions commence with an offer to lease, which contains the business terms agreed upon by the parties, including the space, term, rent and any tenant inducements (such as rent-free periods or construction allowances). Commercial leases generally provide for rent plus additional service charges comprising a

proportionate share of the costs caused by the ownership of the real property, eg, taxes, insurance premiums, utility and common area maintenance charges. In a retail lease, a tenant may also be required to pay rent based on a percentage of its annual sales.

- Residential leases

  Residential leases are subject to a tighter legal regime under German mandatory law, which strongly protects residential tenants. As a consequence, residential lease agreements cannot be fully and freely negotiated or terminated, but compulsory statutory law must be taken into account (eg, limiting the ability of the landlord to terminate the lease or to increase residential rent).

- Tenancy agreements (Pachtverträge)

  Tenancy agreements are similar to commercial leases granting the tenant not only the right to use the leased space, but also the additional right to reap the fruits generated on the leased space (eg, stones from a stone quarry or profits generated by a leased filling station, restaurant, etc.).

3.2 Are lease provisions regulated or freely negotiable?

Generally, lease provisions are freely negotiable. While commercial leases and hereditary building rights can be widely negotiated between the parties, residential leases are strongly regulated. Further restrictions apply if lease provisions qualify as general terms and conditions; if so, they are subject to particular scrutiny and have to comply with a specific set of statutory provisions and case law to be valid. These restrictions mainly apply to standard residential leases, but may also influence the validity of standard clauses in commercial leases that need to be taken into account when drafting the lease agreement.

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

German leases may have an indefinite term subject to termination within the statutory or contractually agreed notice periods. Generally, fixed terms must not exceed a term of 30 years. A lease agreement providing for a fixed term of more than 30 years will be deemed a lease having an indefinite term after 30 years. The 30-year period is calculated as of the day on which the lease term has been agreed or has last been amended. It is therefore possible to extend the term of an existing lease for a further 30 years. Hereditary building rights are not subject to any restrictions as to their term.

3.4 What are the usual lease terms?

Ground leases/hereditary building rights often have a term of 99 years as this term is usually deemed to be the economic lifetime of buildings. Commercial lease agreements usually provide for a term of five or 10 years with one or two options in favor of the tenant to extend the term by five more years. Residential leases must provide for an indefinite term, unless a fixed term is expressly permitted under German law (eg, if the landlord needs the leased space for its own use).

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

Residential tenants may challenge a termination of the lease by the landlord for social reasons.

3.6 On what grounds may a lease be terminated?

German mandatory law provides that each lease agreement may be terminated by either party for cause. Generally, a lease can be terminated if the other party is in material breach of contractual obligations. Further restrictions apply to the termination of residential leases and termination due to insolvency.

3.7 Must rent be paid in local currency?

Parties are generally free to set rent in other currencies but arrangements for paying rent in a currency other than euro are not typical.

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

Rent is usually paid in advance on a monthly basis, before the third business day of each month.

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

Rents are usually fixed for the initial term, unless otherwise agreed in the lease.

The German Price Clause Act generally prohibits an automatic indexation of monetary obligations. As an exception to this rule, rent under commercial leases with a term of at least 10 years may be linked to the consumer price index published by the German Federal Statistic Office on a monthly basis. Sometimes, commercial leases provide for stepped rent or a lease review clause instead to adjust the rent to fair market price at the time of renewal or extension.

Rent increases under residential leases are highly regulated. Generally speaking, rent may be agreed upon as stepped rent, be linked to a certain price index, or increased if the average rent of comparable space in the same area is higher than the rent initially agreed upon. Also, modernization works may entitle the landlord to increase the rent. Effective as of 1 June 2015, the German parliament has adopted a controversial bill aiming to strengthen the rights of tenants in metropolitan areas identified as having overstretched housing markets. The bill entitles German federal states to determine so-called "tight housing areas" where new leases must not exceed the local average rent by more than 10%. So as not to hamper the development of new housing space, the bill provides for an exception for newly constructed and fully renovated buildings.

3.10 What are the basic obligations of landlords and tenants?

The following are usually required of landlords:

- Hand over the leased space in the agreed condition
- Repair and maintain the roof and shell of the property (provided that the general maintenance and repair obligations are effectively shifted to the tenant)
- Insure the property

The following are usually required of tenants:

- Pay rent on time
- Keep the property in good order and to carry out the maintenance and repair works for which the tenant is responsible
- Inform the landlord of required repairs
- Give access to the landlord for inspections or landlord's work (commercial lease)

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

Typically, tenants are only allowed to sublet the leased space with the landlord's consent. Unless the lease provides otherwise, the landlord may grant or withhold such consent at its sole discretion. If the landlord withholds the consent other than for cause, the tenant may terminate the lease. However, in commercial leases such termination right can be excluded. Any transfer of the lease requires the landlord's consent too, and is usually effected by the landlord and both the current and new tenant signing a three-party transfer agreement.

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

If the premises are substantially damaged or destroyed by force majeure, the lease can usually be terminated. Rent generally abates depending on the extent of the damage or destruction.

If the premises are substantially damaged or destroyed due to causes attributed to the tenant, then the tenant remains obligated to pay the rent and may also be held liable for repairs or replacement.

3.13 Who is usually responsible for insuring the leased premises?

The landlord is usually responsible for insuring the leased premises. The cost of standard insurance such as building insurance and landlord's liability insurance can be recovered from the tenant through the service charges. Commercial leases usually obligate the tenant to obtain further insurance such as plate glass insurance, burglary insurance and business interruption insurance.

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

Lease agreements survive and will be transferred to the new owner by operation of law once the change of ownership is registered in the land register.

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

Generally, lease agreements survive, but the new owner is entitled to extraordinarily terminate the lease agreement within the statutory notice periods.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Land development is mainly carried out by the authorities on municipal and district level. Planning law sets forth the legal framework for municipal

land planning through zoning plans (Flächennutzungspläne) and building plans (Bebauungspläne) and determines whether a construction project is permissible under the applicable local planning law. While the zoning plan constitutes the basic guideline for land use within a community and is only binding to the planning authorities, the building plan determines the use of the land it is issued for and defines whether land may be used as a residential area, commercial area, mixed zone or others, and designates the type of buildings permissible in such area.

Environmental issues are typically handled by district and regional authorities or, in case of major cities, on a municipal level.

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

- Nature conservation laws
- Soil protection laws
- Waste laws
- Laws on handling hazardous substances, eg, chemicals
- Regulations on the use and transportation of energy and renewable energy, etc.
- Water resources laws
- Emission protection regulations, eg, with regard to noise, odor and pollutants
- Laws on nuclear safety and radiation protection

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

Except for certain small projects, construction of a building or plant is subject to governmental authorization. This authorization can either be

granted in the form of a separate building permit or, for certain installations that are listed in an ordinance, as part of an emission-control permit issued under the Federal Emission Control Act.

A building permit is required for the construction of a new building, for material amendments or the change of use of existing premises and for the demolition of an existing building. A building permit is granted upon written application by the competent authority if the envisaged project complies with local planning laws and the technical standards set forth under building laws. Furthermore, the project may not conflict with any other requirements established under public law (eg, monument protection law or emission limits pertaining to the project).

The construction and operation of installations which are likely to cause harmful effects on the environment because of their emissions are specifically regulated in the Federal Emission Control Act. If a permit under the Federal Emission Control Act is issued, no separate building permit is required. For certain facilities – eg, power plants, combustion plants or wind farms – an emission control permit must be obtained to erect and operate such installation.

4.4 Can an environmental cleanup be required?

Generally, the authorities may require remediation of historic contamination if necessary to avert hazards to human health and the environment. Measures may be addressed to the owner of the land, to the polluter or its legal successor.

4.5 Are there minimum energy performance requirements for buildings?

The Energy Saving Act and the Energy Saving Ordinance set forth that new buildings shall be erected in line with certain energy efficiency stipulations (concerning warm water supply, heating or ventilation). Initially, the goal of the ordinance was to limit the consumption of new buildings to approximately seven liters of oil or gas per square meter per year.

According to a new law that came into effect in June 2013, only "nearly zero energy buildings" will be permissible as new buildings beginning 2021. Further legislation is currently discussed to reduce the permitted primary energy demand for new buildings to at least 5.36 liters per square meter as of 2016. Existing buildings can also be subject to (rather limited) renovation obligations.

The Act on Energy Services and Further Energy Efficiency Measures requires so-called large enterprises to conduct an energy audit of the entire enterprise including all buildings owned or used by the enterprise at least every four years. The first audit was due on 15 December 2015. A large enterprise is a company employing at least 250 people or having an annual turnover of at least EUR 50 million and an annual balance sheet of at least EUR 43 million. Under certain circumstances, similar buildings may be clustered and only one building per cluster can be audited. Energy auditors may be internal or external experts as long as they render independent advice and fulfil the professional requirements.

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

The German legislator has revised the lease regulations to improve the sustainability of existing buildings: With effect from May/July 2013, principally, landlords may improve the sustainability of existing buildings without the tenant's consent, but subject to an extraordinary termination right for the tenant. Energetic modernization works need to be tolerated by the tenant for a period of three months without being entitled to reduce the rent during that period. Modernization costs may be partly shifted to the tenant. The revised regulations also facilitate heating contracting.

16 Hong Kong

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" is not defined in any Hong Kong statutes or case law. However, "land" has been defined in various statutes to include the following:

- Land covered by water
- Things attached to land or permanently fastened to anything attached to land
- Intangible rights that might exist over or the land

In common law, the ownership of a piece of land includes everything that is above the land (eg, buildings) and everything beneath the land. It also includes fixtures – things that become so attached to the land or a building as to form part of the land, unless the contrary intention is expressed.

1.2 What laws govern real estate transactions?

Hong Kong real estate transactions are mainly governed by the following:

- The Conveyancing and Property Ordinance (Cap. 219), which governs the execution and proof of titles
- The Land Registration Ordinance (Cap. 128), which governs the priority of interests in land

Other relevant statutes include the following:

- The Landlord and Tenant (Consolidation) Ordinance (Cap. 7)
- The Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545)

Hong Kong is a common law jurisdiction. Therefore, in addition to statutes, decisions by Hong Kong courts represent another major source of law pertaining to real estate transactions.

1.3 What is the land registration system?

Hong Kong adopts a system of registration of instruments (deeds) affecting land, not of registration of title to land. Registration does not guarantee title as Hong Kong does not adopt a Torrens system. Registration gives priority to the person holding a prior registered interest over a subsequently registered interest. An unregistered instrument will lose its priority to subsequent buyers or mortgagees for valuable consideration.

Registration is effected by submitting the instrument concerned to the Land Registry together with a memorial in the prescribed form. The memorial describes the property affected and the nature and object of the instrument. A registration fee is payable (between HKD 210 and HKD 2,000 as of December 2017). The land register will be updated to show the registered instrument, which will then be imaged and returned to the lodging party. The Land Registry pledges to complete the process of registration within 15 working days.

1.4 Which authority manages the registration of titles?

Instruments affecting land are registered with the Land Registry.

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

Registration is not mandatory in Hong Kong. However, to protect one's interest in the property, the holder of that interest will almost invariably register the instrument creating or conferring the property interest. Generally, if an instrument is duly presented for registration within one month after the date of its execution, priority will start from the date of its execution. If an instrument is presented for registration more than one

month after the date of its execution, priority will start from the date of its registration instead of the date of execution.

Registrable instruments include deeds, conveyances, judgments and other instruments in writing which affect immovable property.

However, the following documents are not registrable:

- Floating charges (except upon crystallization)
- Wills

In addition, short-term leases (ie, with a term of three years or less) do not have to be registered. Priority will not be affected even if it is not submitted for registration.

1.6 What documents can land owners use to prove ownership over real property?

Normally, land owners will have to produce (i) the land grant and those title documents from the intermediate root document (see paragraph below) to the present if the land grant is more than 15 years; or (ii) the land grant and those title documents from the land grant to the present if the land grant is less than 15 years. An intermediate root document must be an assignment, mortgage or charge dealing with the whole estate.

Land owners have to show an unbroken chain of ownership from the land grant or the intermediate root to the present day and that the ownership is free from any encumbrance. The originals or certified copies of all title documents in the chain must be produced. The original has to be produced if the document relates exclusively to the real estate concerned, and a certified true copy will be acceptable if it relates to the real estate concerned as well as to other properties.

1.7 Can a title search be conducted online?

Online land search can be conducted by using the Integrated Registration Information System (IRIS) Online Services. Land registers and copies or certified true copies of registered land documents are available upon payment of fees (between HKD 10 and HKD 270 as of December 2017). The following information in relation to a particular property can be obtained from a land register:

- Property particulars
- Owner particulars
- Encumbrances
- Deeds pending registration

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

Generally, foreigners can own immoveable property in Hong Kong. There is no nationality restriction on ownership of immoveable property.

1.9 Can the government expropriate real property?

The government may resume land pursuant to the Lands Resumption Ordinance (Cap. 124). The Chief Executive in Council is empowered by law to resume land for public purposes, but the government must pay compensation in respect of the resumption. Such compensation shall correspond to the real value of the property concerned at the time and paid without undue delay. If the amount of compensation offered is not accepted, the matter can be referred to the Lands Tribunal for determination.

The Town Planning Ordinance (Cap. 131) and the Urban Renewal Authority Ordinance (Cap. 563) empower relevant public officers or statutory/public authorities to make recommendations to the Chief Executive in Council to

exercise the power of resumption. The relevant statute provides that a resumption carried out on the recommendation made under the statute will be deemed to be carried out for a public purpose.

Other statutes, eg, the Railways Ordinance (Cap. 519) and Roads (Works, Use and Compensation) Ordinance (Cap. 370), empower the Chief Executive or Chief Executive in Council to resume.

1.10 How can real estate be held?

Under the Basic Law, all land in Hong Kong is state property and the government of Hong Kong is responsible for its management, use and development, as well as for its lease or grant to individuals, legal persons or organizations for use and development. Land is usually granted by the government by way of a lease or an agreement for lease in consideration of an upfront land premium. All tenures in Hong Kong are leasehold, except for St. John's Cathedral, which is held under freehold tenure.

The abovementioned system is essentially a continuation of the system adopted during British rule.

Land was granted for terms of varying duration. Some may run for 999 years, while others may run for 75 years with a right to renew for a further term of 75 years. For land in the New Territories, the lease term could not exceed the term of the lease of the New Territories by China to Britain. As a result, leases that were granted were either 99 years less the last three days from 1 July 1898 (the Crown had a lease reversion of three days), or for 75 years from 1 July 1898, with a right to renew for a further term of 24 years less three days. The New Territories Leases (Extension) Ordinance (Cap. 150) extended leases in the New Territories to 30 June 2047.

After the handover of Hong Kong back to the People's Republic of China on 1 July 1997, the government of the Hong Kong Special Administrative Region has been granting land with terms of 50 years from the date of the land grant.

Subject to the restrictions in the land grant concerned, leasehold interest can be assigned, mortgaged or sublet.

Land parcels are usually granted by public auction (or other competitive processes such as tender) and usually to the bidder who offers the highest land premium or through land exchanges with the government (which will take the form of a surrender of an existing leasehold interest to the government in exchange for the grant by the government of another leasehold interest).

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

Real properties are usually held in the names of individuals or corporate entities.

Before entering into any transaction, the holding structure should be determined after taking professional advice and considering all pertinent factors including tax and convenience of disposal.

In the purchase of a residential property, it is of utmost importance that the person/entity who will be the buyer is determined before entering into any legally binding agreement. Changing the buyer or the holding entity will attract substantial additional stamp duty (with very limited exceptions to this rule).

Subject to the above, it is not uncommon for investors of high value real estate to hold real estate in Hong Kong through a holding structure with two layers of companies. The real estate will be held by a Hong Kong-incorporated company. The Hong Kong-incorporated company is usually held by a company incorporated in a tax haven jurisdiction (eg, the British Virgin Islands).

Such a structure has the following advantages:

- If the real estate is sold by means of a sale of shares in the Hong Kong incorporated company, the transaction will attract stamp duty for an

amount equal to 0.2% of the consideration paid or the value of the shares being transferred, whichever is higher. Hong Kong stamp duty can be avoided if the sale is effected by means of the sale of shares in the non-Hong Kong company.

- If the transaction relates to the sale of the real estate and if the real estate is held by a non-Hong Kong entity, then legal opinions relating to the non-Hong Kong entity and other legal formalities will be required. This will result in longer completion time and extra expenses.

A non-Hong Kong company that is a body corporate and has established a place of business in Hong Kong is required to register with the Companies Registry pursuant to Part 16 of the Companies Ordinance (Cap. 622).

1.12 How are real estate transactions usually funded?

The acquisition of real estate is usually financed by the buyer's own funds and by bank loans (if the buyer does not have enough funds or if the buyer wishes to have gearing).

1.13 Who usually produces the documentation in real estate transactions?

The first document in the process will normally be a "provisional" or "preliminary" agreement for sale and purchase signed between the seller and the buyer. It is very often the case that the "provisional" or "preliminary" agreement for sale and purchase is signed in the broker's standard form. Depending on the size of the transaction, it is usual for the parties to engage lawyers only after they have signed a legally binding "provisional" or "preliminary" agreement for sale and purchase.

Normally, the seller's solicitor will send the draft formal agreement for sale and purchase to the buyer's solicitor for approval. The terms of the formal agreement may be negotiated between the parties. If a provisional or preliminary agreement for sale and purchase has been signed, the formal agreement for sale and purchase should reflect (and not be inconsistent with) the terms of the provisional or preliminary agreement for sale and

purchase. When the terms of the formal agreement for sale and purchase have been agreed, the seller's solicitor will prepare a clean copy for signing.

In Hong Kong, a developer may sell flats off the plan (ie, before completion of the construction). In such a case, the buyer will face the risk of the developer defaulting in its construction obligation. To protect buyers, land grants that were issued since the 1960s very often contain restrictions on off-the-plan sales, which cannot be carried out without the government's consent. This regulatory regime is called the Consent Scheme. For land grants without such restrictions, the Law Society of Hong Kong has put in place a separate regulatory regime called the Non-Consent Scheme.

Under the Consent Scheme, the developer's solicitor will prepare the formal agreement for sale and purchase in the standard form prescribed by the Director of Lands.

Under the Non-Consent Scheme, if the developer and the buyer are jointly represented by the same law firm in the transaction, the developer's solicitor is required to prepare the formal agreement for sale and purchase containing mandatory provisions to protect buyers.

Under both the Consent Scheme and the Non-Consent Scheme, the formal agreement for sale and purchase requires sale proceeds to be held by the law firm representing the developer as "stakeholders." The stakeholders may only release funds first for the payment of construction cost and the repayment of bank financing granted for the development project.

The Residential Properties (First-hand Sales) Ordinance (Cap. 621), which regulates every stage of the sale and purchase of first-hand residential properties (including sales brochure, price list, document containing the sales arrangements, show flats, viewing of properties before purchase, mandatory terms in preliminary agreement for sale and purchase and formal agreement for sale and purchase, register of transactions, website of the development, advertisements, and misrepresentation and dissemination of false or misleading information), has come into full effect

on 29 April 2013. The Sales of First-hand Residential Properties Authority is given the power under the ordinance to administer and implement the same. Subject to certain exemptions, the ordinance applies to any residential property situated in Hong Kong in respect of which neither a preliminary agreement for sale and purchase nor a formal agreement for sale and purchase has ever been entered into, and no assignment has ever been made. All sale and purchase of such first-hand residential properties after 29 April 2013 (including the terms contained in the preliminary agreement for sale and purchase and agreement for sale and purchase), need to strictly comply with the ordinance. There are different offenses under the ordinance, some of which carry a maximum fine of HKD 5 million and imprisonment for a maximum term of seven years.

The assignment, the instrument by which the formal transfer of title is effected, is usually prepared by the buyer's solicitor.

For a real estate transaction taking the form of a sale and purchase of shares in the property holding company, it is common practice for the seller's solicitor to draft the agreement for the buyer's approval.

1.14 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?

An owner or occupier generally does not inherit third party liability relating to the real estate if such liability arises from any matter which occurred before he/she bought or occupied the real estate.

However, in the case of the ownership of a unit in a multiple-ownership building, this principle seems to be distorted somewhat by the Building Management Ordinance (Cap. 344) (BMO). The BMO provides that if a judgment is given against the incorporated owners (ie, a body with separate legal entity formed under the BMO by incorporating the owners of the building), execution to enforce the judgment may be issued against any owner. An "owner" means an owner for the time being, ie, someone who is the owner at the time of an application for leave for judgment to

be enforced against the owners personally, not someone who was an owner at the time the liability was incurred. Therefore, an owner of a property can be liable for damages arising from an event prior to acquiring ownership in the property if the owners of the multiple-ownership building have been incorporated.

When dealing with ownership of a unit in a multiple-ownership building, the following possibilities should also be noted:

- If, before the owner acquires the real estate, the Building Authority (the public authority responsible for building safety) has made an order requiring the owners of a multiple-ownership building to carry out any works to the common parts or any soil retaining or other structure for the maintenance of which the owners are responsible under the land grant, but the manager of the building only makes a demand after the acquisition for contribution of funds to carry out such works, the demand will be made to the owners of the building at the time of the demand, not the owners at the time when the order was made.

- If there is a deficit in the management accounts before completion of the acquisition, the building manager may determine to demand the owners of the building to contribute towards the deficit or to increase the management fees. If such demand is made after the completion of the acquisition, the buyer will be responsible, not the previous owner.

- A buyer will generally be liable for a continuing breach of the deed of mutual covenant (the document governing the rights and obligations of the owners of a multiple-ownership building vis-à-vis the other owners and the building manager) in respect of his/her unit even if the breach started before he/she becomes the owner.

If unauthorized structures exist in the real estate before the acquisition and the real estate was acquired with the unauthorized structures, it is possible for the Building Authority to issue an order, or the building

manager to make a demand, for the demolition of the unauthorized structures after the acquisition. In such a case, the demolition order or the demand by the manager will be issued to the buyer, but not the previous owner, who may have been responsible for the erection of the unauthorized structure.

Moreover, failure to settle land premium payable under the land grant, government rent or any continuing breach of the land grant (even if the payment defaults or breaches occur prior to the current owner purchasing the property) is a breach of a covenant of the land grant and will enable the government, as landlord, to re-enter the property. If the seller assigns the property as beneficial owner, an implied covenant that the premiums and government rent have been paid will be incorporated into the assignment. The buyer, therefore, has a contractual right of action against the seller for damages in respect of the breach of this covenant.

In the Hong Kong legal profession, there are well established practices for making enquiries to ascertain the existence of, and resolving issues which may arise from, the abovementioned matters that may result in post-completion liabilities on the part of the buyer.

1.15 Does a seller or occupier retain any liabilities relating to the real estate after he/she has disposed of it?

Under the Conveyancing and Property Ordinance, a person is not bound by covenants that relate to and run with the land, including those contained in the deed of mutual covenant and the land grant, after it has ceased to have an interest in the land, except in respect of breaches committed before it ceased to have an interest.

Where the seller assigns the property as beneficial owner, the Conveyancing and Property Ordinance will imply certain covenants relevant to the title into the assignment, including the covenant that the deed of mutual covenant and the land grant have been observed and performed by the seller. The seller is therefore liable for breach of the

covenants in the deed of mutual covenant or the land grant with respect to matters which arose prior to the disposal of the property, as well as for breach of other express or implied covenants in the assignment.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

In most transactions, the parties will first sign a provisional or preliminary sale and purchase agreement. A formal sale and purchase agreement will later be signed by the parties, superseding the terms in the provisional or preliminary sale and purchase agreement. On completion, an assignment will be executed for the formal transfer of the title.

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

A formal sale and purchase agreement may contain one or more of the following warranties by the seller to the buyer:

- The government has not given any notice or made any order for the resumption of the land concerned
- The property is not adversely affected by any easement, right, privilege or liability of which the seller is aware other than those disclosed in the agreement or those of which the buyer is aware or could have ascertained on reasonable inspection of the property
- The seller has not received any notice or order requiring him/her to demolish or reinstate any part of the property
- The seller has not received any notice or order requiring him/her as one of the co-owners of a multiple-ownership building to contribute a specified sum towards the cost of repair of any common part of the building

The exact scope of any particular warranty, and whether any particular warranty is to be given, depends on the negotiation between the seller and the buyer.

Where the seller is expressed to assign the property as beneficial owner, certain covenants are implied into the assignment (and will therefore be given on completion of the purchase), including the following:

- The land grant is good, valid and subsisting
- The seller has good right and title to assign the property free from encumbrances save as specified in the assignment
- The covenants contained in the land grant and any deed of mutual covenant have been observed and performed up to the date of the assignment

After 29 April 2013, all preliminary agreement for sale and purchase and agreement for sale and purchase used in the sale and purchase of first-hand residential properties must contain certain provisions (including certain warranties to be given by the seller) as required under the Residential Properties (First-hand Sales) Ordinance (Cap. 621). Any person who fails to include the terms required by this ordinance commits an offense and is liable to a maximum fine of HKD 500,000.

2.3 When is the sale legally binding?

In Hong Kong, a seller and a buyer will very often sign a provisional or preliminary agreement. A provisional or preliminary agreement usually binds the parties.

Whether or not a provisional or preliminary agreement constitutes a binding agreement depends upon the intention of the parties as evidenced by the wording of the agreement. It will depend on whether the execution of a formal agreement is an essential precondition before the parties will be bound or whether it is simply contemplated that the preliminary

agreement, which is already legally binding on the parties, will be superseded by a formal agreement. This is a question of fact and will be determined by the court on a case-by-case basis.

However, under the Residential Properties (First-hand Sales) Ordinance (Cap. 621), after a buyer enters into a preliminary agreement for sale and purchase of a first-hand residential property, and the buyer pulls out and does not sign the formal agreement for sale and purchase within five working days after the date of the preliminary agreement for sale and purchase as required by the ordinance, 5% of the purchase price of the property (ie, the preliminary deposit) will be forfeited to the seller, and the seller does not have any further claim against the buyer.

2.4 When is title transferred?

The legal title will be transferred from the seller to the buyer upon execution and delivery of the assignment.

2.5 What are the costs usually shouldered by the parties?

Buyers and sellers in general will bear their respective agents' fees and legal costs.

In addition, the buyer usually bears the following:

- Ad Valorem Stamp Duty (AVD), which is payable on the sale and purchase of real estate at the rate of 15% (for residential properties) or at the maximum rate of 8.5% (for non-residential properties) of the stated consideration or the market value of the property (whichever is the higher). There is an exemption for Hong Kong permanent residents buying residential properties but do not own any interest in any residential property in Hong Kong on the date of acquisition, the maximum rate is 4.25% of the stated consideration or the market value of the property (whichever is the higher) in such cases. However, from 12 April 2017 onwards, where such a Hong Kong permanent resident buys more than one residential property under one

agreement, the aforesaid exemption will not apply (note: the passing of legislative amendment bill for such a rule is pending as of December 2017). The AVD will be payable on the sale and purchase agreement.

- Buyer's Stamp Duty (BSD), which applies to the acquisition of residential properties by companies and non-Hong Kong permanent residents, the rate is 15% of the stated consideration or the market value of the property (whichever is the higher) in addition to the AVD and the SSD, if applicable.

- Special Stamp Duty (SSD), which is payable if a residential property is sold within three years of acquisition. The SSD has three levels of regressive rates for different holding periods:

- 20% of the stated consideration or the market value of the property (whichever is the higher) if the residential property has been held for six months or less

- 15% of the stated consideration or the market value of the property (whichever is the higher) if the residential property has been held for more than six months but for 12 months or less

- 10% of the stated consideration or the market value of the property (whichever is the higher) if the residential property has been held for more than 12 months but for 36 months or less.

- Fees in relation to registering the agreement for sale and purchase and assignment at the Land Registry (between HKD 210 and HKD 450 as of December 2017)

- Fees in relation to certified copies of the title deeds (where the transaction is in respect of a property purchased from the developer)

- In the case of the first assignment by the developer of a unit in a multiple-ownership building, lump sum payments payable by the first assignee of the unit under the deed of mutual covenant (eg, advance

payment of management fee, management fee deposit, fee for the removal of debris/waste materials resulting from decoration, and fitting out and contribution to sinking fund for the building)

3. Leases/Tenancies

3.1 What are the usual forms of leases/tenancies?

- Fixed term and periodic tenancies

  Tenancies are either fixed-term tenancies or periodic tenancies.

  In a fixed-term tenancy, the term of the tenancy is for a stated period. On expiry of the period, subject to any security of tenure, the tenant must leave. However, domestic leases created before 9 July 2004, and domestic tenancies of certain buildings are subject to separate regulatory regimes.

  A periodic tenancy is granted for a certain term (usually a week or a month), which is automatically renewed for a term of the same duration after the expiry of the previous period. A periodic tenancy can be terminated by the landlord or tenant serving on the other a notice of the same duration as the periodic term. The landlord and tenant may expressly agree on the length of the notice period.

  A periodic tenancy may be impliedly created. For example, a monthly tenancy may be created where a tenant remains in the premises after the expiry of the fixed-term tenancy and continues to pay the monthly rent.

- Domestic and business tenancies

  There is a distinction between domestic tenancies and business tenancies.

The distinction is based on the purposes for which the premises are let. A tenancy under which the premises are let for use as a dwelling is a domestic tenancy. A tenancy under which the premises are let for other kinds of uses is a business tenancy.

The distinction between domestic and business tenancies is relevant as most of the statutory protection given to tenants are given to tenants of domestic tenancies. The importance of the distinction, however, has been substantially diminished in recent years because of the abolition of statutory rent control and tenure protection.

- Public and private sector tenancies

  There is essentially no difference between a tenancy granted by or to a public authority and a tenancy granted by or to a private individual or entity. Tenancies granted by the government or certain public authorities are generally not subject to statutory protections to tenants.

3.2 Are lease provisions regulated or freely negotiable?

In general, the parties are free to agree on the terms of the lease. However, for a lease to have the sufficient degree of certainty to be legally enforceable, it must contain the parties, the premises, the commencement and duration, and the rent.

In common law, certain obligations are implied into a lease. These obligations, however, may be excluded by an express agreement between the parties. For example, the landlord must give the tenant quiet enjoyment of the premises and must not derogate from his/her grant; and the tenant must pay rent and rates. In domestic tenancies, certain terms are implied by the Landlord and Tenant (Consolidation) Ordinance, such as: (i) the tenant must pay rent on the due date; (ii) the tenant must not cause unnecessary annoyance, inconvenience or disturbance to the landlord or to any other person; (iii) the tenant must not make any structural alterations

to the premises without prior written consent of the landlord; and (iv) the tenant must not use the premises for an illegal or immoral purpose.

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

Real estate in Hong Kong are leaseholds granted by the government. A letting of premises by a "landowner," who is essentially a tenant of the government under the land grant, is actually a subletting. Under common law, the term of a sublease must end before the expiry of the term of the head lease. If the term of a sublease ends at the same time as the term of the head lease, the purported subletting will be deemed to be an assignment of the head lease.

An option to renew may be granted to the tenant. If an option is granted, it will usually be provided in the lease itself.

3.4 What are the usual lease terms?

Subject to the principles regarding subletting mentioned above, the duration of the term is a matter for commercial negotiation. Tenants will usually ask for a longer term where the tenant has to incur substantial expenses in the fitting out and decoration of the premises concerned.

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

A tenant may only be entitled to extend the lease if he/she has an option to renew and the option has been properly exercised. Otherwise, a tenant has no right to renew or extend a lease under general law.

3.6 On what grounds may a lease be terminated?

A lease will usually terminate under any of the following circumstances:

- The fixed term of a fixed-term tenancy expires
- A notice to quit is served in the case of a periodic tenancy

- Either the landlord or the tenant exercises any express right of termination in the lease
- Either the landlord or the tenant breaches the lease
- The tenant surrenders the tenancy to the landlord with the landlord's agreement
- The provision for re-entry or forfeiture is triggered

For leases of domestic properties created after 9 July 2004, as well as business properties, the parties can freely negotiate and agree between themselves on how the lease will be terminated. Domestic leases created before 9 July 2004, are subject to a separate regulatory regime.

3.7 Must rent be paid in local currency?

Rent is often specified in Hong Kong dollars. Unless specified otherwise in the lease, the tenant has to pay rent in Hong Kong dollars.

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

The manner of payment of rent is a matter which the parties are free to agree. Rent is usually paid on a monthly basis.

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

Leases often contain a rent review clause. Rent review will generally be carried out at contractually specified intervals during the term or towards the end of the term for determining the rent for the renewed term in cases where the tenant exercises its option to renew.

The general purpose of a rent review clause is to ascertain the level of market rent. A rent review clause will usually provide for the new rent to be agreed between the parties, and in the event that the parties fail to reach an agreement, the rent will be determined by an independent valuer (a valuation surveyor, usually) as expert.

3.10 What are the basic obligations of landlords and tenants?

Some basic obligations of a landlord include the following:

- Permit the tenant to have quiet possession and enjoyment of the premises during the lease term
- Deliver the premises to the tenant in a condition consistent with the agreed handover condition
- Pay property tax in respect of the premises

Some basic obligations of a tenant include the following:

- Pay rent in accordance with the lease
- Pay all rates and outgoings in respect of the premises, except those for which the landlord is liable
- Use the premises for permitted use under the lease
- Keep and maintain the premises in good clean tenantable and proper repair and condition
- Allow the landlord to enter the premises at reasonable times to view the state of repair or to see if repairs need to be carried out
- Do not do anything to prejudice the title of the landlord
- Return vacant possession of the premises at the end of the lease term in the conditions as when leased to him/her
- Indemnify the landlord for the loss or damage caused by defective or damaged condition of the premises or owing to spread of fire or smoke or leakage of liquid

- Effect and maintain comprehensive insurance cover in respect of the premises against damage by perils and also public liability insurance cover

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

A leasehold is an interest in land which is freely alienable. The most typical types of transactions relating to a leasehold interest are assignment of the interest and subletting.

Practically speaking, a lease will almost invariably restrict the tenant's freedom to deal with the leasehold interest, although the extent of such restriction varies from agreement to agreement.

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

Usually, a lease will contain an abatement of rent clause, which provides that the rent or a fair proportion thereof shall be suspended from the occurrence of damage or destruction or order until the premises or the building shall again be rendered fit for occupation or accessible, or until the demolition order or closing order is lifted (as the case may be), and in the event that the premises or the building have not been reinstated within a pre-determined period, either party has the right to terminate the lease.

3.13 Who is usually responsible for insuring the leased premises?

There is usually an express provision in a lease which specifies the tenant's obligations to insure the non-structural interiors of the leased premises and third party liabilities. A typical Hong Kong lease is usually silent on the landlord's obligations to insure the leased premises. However, the landlord may wish to insure the structure of the leased premises for the landlord's own benefit.

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

A lease will generally survive a subsequent sale of the leased premises. However, for leases exceeding three years, section 3(2) of the Land Registration Ordinance requires registration of such leases. All registrable leases which are not registered within one month of its execution may be void against a subsequent bona fide purchaser for valuable consideration of the premises.

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

The answer depends on whether the lease was created before or after the mortgage.

- Lease created before the mortgage

  An existing lease is generally binding on the mortgagee. As such, a sale by the mortgagee will have to be subject to the lease.

- Lease created after the mortgage

  Normally, the mortgage deed will require the mortgagor to obtain the mortgagee's consent before creating the lease. In practice, a subsequent lease will not be challenged if the mortgagee's consent is obtained.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

The zoning of a land parcel is shown in the relevant outline zoning plan (different areas in Hong Kong are governed by different outline zoning plans). The Town Planning Board prepares draft outline zoning plans, which are then submitted to the Chief Executive in Council for approval. For example, in an outline zoning plan, the use of the land parcel concerned can be shown as residential, commercial, open space or government use.

The government cannot approve any building works which is for a use not permitted by the outline zoning plan or modify any land grant so as to permit a use inconsistent with the requirements of the relevant outline zoning plan. Generally speaking, there are two categories of permitted uses in an outline zoning plan: (i) uses which are always permitted; and (ii) uses that have to be permitted by the Town Planning Board under section 16 of the Town Planning Ordinance (Cap. 131).

Applications for re-zoning are to be made to the Town Planning Board.

The conditions of land grants for development are determined by the Lands Department in accordance with the applicable land administration policies of the government and by reference to the applicable outline zoning plan. Such conditions include:

- Permitted uses (determined by reference to the applicable outline zoning plan)
- Development parameters (also determined by reference to the applicable outline zoning plan but may be more restrictive)
- The deadline for the completion of the development
- Restriction on alienation before fulfillment of development conditions
- Requirements that deeds of mutual covenant have to be approved by the Lands Department
- Public facilities to be provided (whether within or outside the lot boundary)
- Parking spaces to be provided
- Requirements that the design, disposition and height of the new buildings should be approved by the Lands Department

The Building Authority is responsible for approving building plans from the building safety and other regulatory angles, granting permits to commence building works and inspecting newly completed buildings to ascertain whether the requirements of statutes have been fulfilled.

For certain designated projects such as specified residential developments, roads, waterways and drainage works and certain recreational facilities (such as golf courses and marinas), a developer is required to conduct an environmental impact assessment and to obtain an environmental permit to proceed with the development. The Director of Environmental Protection has the authority to decide whether or not to issue the environmental permit.

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

The principal environmental statutes are the following:

- Environmental Impact Assessment Ordinance (Cap. 499)
- Air Pollution Control Ordinance (Cap. 311) (which provides for the control of activities that produce air-borne emissions, such as construction work and activities that involve the use or handling of asbestos)
- Waste Disposal Ordinance (Cap. 354)
- Water Pollution Control Ordinance (Cap. 358)
- Noise Control Ordinance (Cap. 400)
- Ozone Layer Protection Ordinance (Cap. 403)
- Dumping at Sea Ordinance (Cap. 466)

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

The main permits for the development and construction of real estate projects include the following:

- Planning permission from the Town Planning Board (if required)
- Approval of building plans from the Building Authority
- Consent to commence building works issued by the Building Authority
- Approvals mentioned in the land grant concerned as requisites to the commencement of building work
- Environmental permits for certain designated projects

For occupying real estate, an occupation permit or temporary occupation permit issued under the buildings ordinance is required.

4.4 Can an environmental cleanup be required?

There is no statute in Hong Kong requiring the cleanup of existing contamination. However, the Environmental Impact Assessment Ordinance provides that the Director of Environmental Protection may, with the consent of the Secretary for the Environment, issue an order requiring persons working on a designated project to carry out works to remedy environmental damage identified by the Director. Unlike many other common law jurisdictions, in which the primary responsibility for cleaning up contaminated land falls on the person who caused or permitted the contamination (ie, the "polluter pays" principle), the ordinance makes the person who wants to develop a contaminated site responsible for any necessary cleanup. This party will not necessarily be the person who has caused or permitted the contamination.

Since land in Hong Kong is held under government leases or subleases, the polluter pays principle may apply, not under statutes, but through the land

grant. Land grants may contain clauses that make the land owner liable to the government for the contamination of the land.

Land grants for industrial sites or godowns may also contain a provision that requires the land owner to carry out all necessary works to prevent soil and groundwater contamination from occurring, to conduct soil and groundwater assessment to the satisfaction of the Director of Environmental Protection and to clean up any contamination. If the owner fails to do any of these, the government may carry out the work at the land owner's expense.

Recent land grants have introduced provisions that require the land owner to indemnify the government against all liabilities arising from any damage or soil and groundwater contamination caused to the land by any use of the lot or any development or redevelopment on the lot carried out by the land owner (the wording of the standard clause only imposes an indemnity but does not refer to a cleanup).

Apart from the express wording of the land grant, there may also be common law doctrines that protect the government (as landlord). One such doctrine is the doctrine of "waste." A waste is a tort based on the alteration by the tenant of the nature of the land. A tenant who has committed waste is liable to pay damages to the landlord for the diminution in value of the land.

4.5 Are there minimum energy performance requirements for building?

To improve building energy efficiency, the government has enacted the Buildings Energy Efficiency Ordinance (Cap. 610), which came into effect on 21 September 2012. Under this ordinance, certain prescribed types of buildings (for example, commercial buildings, hotels and common areas of residential buildings) must comply with the Building Energy Code and/or the Energy Audit Code. Noncompliance is an offence and will be subject the offender to fines.

Energy Efficiency Registration Scheme for Buildings is a voluntary scheme launched by the government in October 1998. This scheme promotes the application of Building Energy Codes which outline the energy efficiency requirements. A registration certificate will be issued to a building that meets the required standards. A registered building can use the Scheme's "Energy Efficient Building Logo" on related documents to publicize the achievement of energy efficiency. However, registration under this voluntary scheme is not regarded as compliance with the Buildings Energy Efficiency Ordinance (Cap. 610).

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

The government has adopted the policy of allowing private buildings to increase floor areas (with an overall cap of 10%) to include recreational facilities and green and innovative features such as balconies, utility platforms, wider common corridors and lift lobbies to enhance living environments.

With a view to reduce electricity consumption by air-conditioning, the government has launched a voluntary scheme on fresh water cooling for non-domestic buildings in designated areas. Under the Waterworks Ordinance and Regulations (Cap. 102 and 102A, respectively), one cannot use city mains water for cooling towers without the permission of the Water Supplies Department. Such permission usually will not be granted except for industrial processes or essential purposes. However, owners of non-domestic buildings in the designated areas may now obtain the permission by applying to participate in this scheme.

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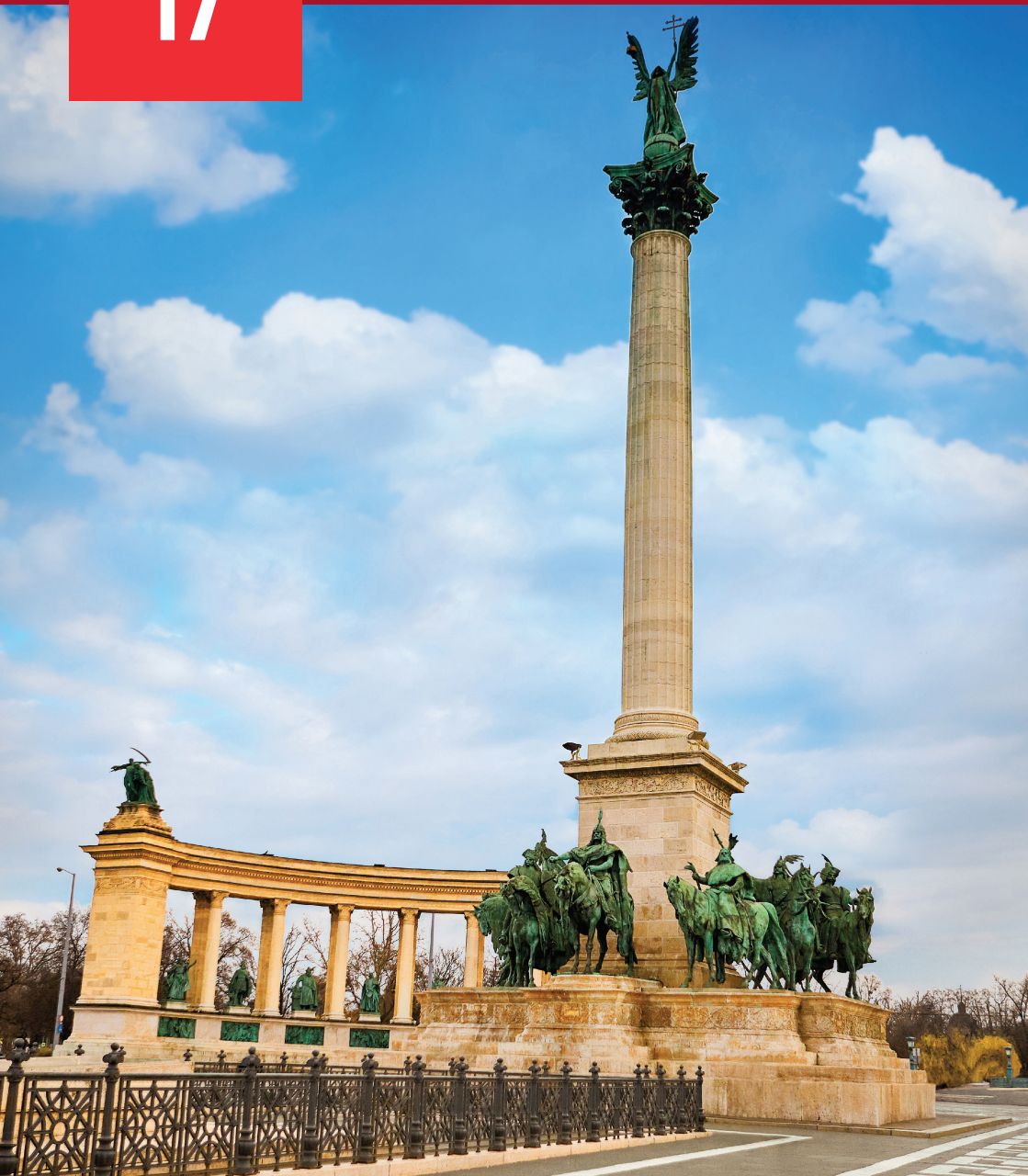

1. Real Estate Law

1.1 What is included in the term "real estate"?

Under Hungarian law, the term "real estate" includes the following:

- Land
- Any buildings or structures located on the land

1.2 What laws govern real estate transactions?

Real estate transactions are governed primarily by the New Hungarian Civil Code, which entered into force on 15 March 2014. However, several other legislative acts provide special provisions relating to the acquisition of agricultural lands and/or commercial leases. Zoning regulations are adopted and enacted by local municipalities.

1.3 What is the land registration system?

There is a single, national land registry system where ownership can be verified and where interests in land are registered. However, since lease agreements cannot be currently registered in the land registry, one cannot verify from an independent source whether a lease agreement has been concluded in relation to specific real estate.

Within certain statutory limits, rights recorded in the land registry are effectively guaranteed.

1.4 Which authority manages the registration of titles?

The Land Registry Office in the national land registry system manages title registration.

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

The following rights are required to be registered:

- Ownership right
- Mortgages
- Usufruct
- Easements

Third parties without notice are not bound by unregistered interests over property. Subsequently, beneficiaries of the rights below usually record their rights in the land registry, including:

- Call options
- Repurchase rights
- Right of first refusals
- Right of enforcement
- Right of support

1.6 What documents can land owners use to prove ownership over real property?

The Land Registry Office issues an official copy of the land registry sheet of the real estate, verifying all rights registered in the land registry with respect to a given real estate.

1.7 Can a title search be conducted online?

Either an electronic or a hard copy of the land registry sheet of the real estate can be obtained from the Land Registry Office for a statutory fee.

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

Foreign legal persons and private individuals outside the EU cannot acquire agricultural land in Hungary. According to the New Act on Arable Land, citizens of the EU, the EEA and countries equivalent under international treaties are allowed to acquire agricultural land with the same strict conditions as those for Hungarian citizens. Domestic natural persons and EU nationals, other than farmers, may acquire the ownership of land if the area of the land in their possession does not exceed one hectare together with the land proposed to be acquired. Legal persons of the EU and the EEA are not allowed to acquire agricultural land. Citizens of the EU and legal persons incorporated in the EU may freely acquire any non-agricultural real estate.

Foreigners who are not EU citizens or legal persons who are not incorporated in the EU must obtain permission from the competent government agency before acquiring any non-agricultural real estate.

1.9 Can the government expropriate real property?

Government and quasi-government authorities can expropriate property, but appropriate, unconditional and immediate compensation must be paid and remedies, including judicial review, is granted to the owners.

1.10 How can real estate be held?

- Freehold
- Leasehold

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

- Limited liability company
- Privately held company limited by shares

As of July 2011, the real estate investment trust (REIT) regime has been introduced in Hungary with significant tax advantages and thus it is expected that the REIT structure will also be used in real estate investments in the future. Under the REIT legislation, a REIT may operate in the form of a public company limited by shares.

1.12 How are real estate transactions usually funded?

Most real estate financing is arranged through institutional lenders such as banks, pension funds and credit unions. Interest rates are generally fixed for a specified period of time or are variable based on a "prime rate" set by the lending institution on a periodic basis. The prime rate is based on either the base rate announced by the European Central Bank or the base rate set by the Hungarian Central Bank, depending on whether the loan has been denominated in euro or Hungarian forint. Typically, the borrower bears the responsibility to pay for all of the lender's legal and other costs, such as commitment and processing fees in arranging property financing.

Lending institutions typically take a mortgage as security, registering it in respect of the land registry's real estate.

1.13 Who usually produces the documentation in real estate transactions?

The purchaser's lawyer generally prepares the transactional document and will proceed before the Land Registry Office in connection with the registration of purchaser's title to the real estate. However, the seller's legal counsel is also usually involved in drafting the documentation.

1.14 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?

Yes. The new owner can inherit liability regarding the site condition of a land (archaeological and environmental materials). However, in respect of environmental pollution, the owner may escape liability by proving, with substantial certainty, who caused the contamination, and the polluter can still be obligated to carry out the cleanup.

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

A seller can retain liabilities relating to the real estate even after it has disposed of it. However, the sale and purchase agreement can nullify this.

For properties held in leasehold, the tenant is not held liable for the obligations of previous tenants.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Due diligence report

  The purchaser, usually through his/her lawyer, conducts due diligence with respect to the property being acquired before signing a sale and purchase agreement. This includes title and zoning searches and a review of any leases and surveys of the property. An independent environmental and archaeological assessment is often recommended and an independent engineering review of the property is common in case of properties with older buildings. The purchaser's lawyer will also provide a title report to the purchaser. While a number of insurance companies offer title insurance for purchasers, it is not market practice in Hungary for purchasers to obtain title insurance due to unreasonably high insurance fees.

- Sale and purchase agreement

  Once the purchaser has concluded the due diligence report and is satisfied with the findings, the purchaser and the seller will sign a sale and purchase agreement. This agreement should contain all necessary business terms relating to the transaction, including the description of the land, purchase price, deposit (if any), the closing date and any other special terms. This agreement also typically contains conditions

for the benefit of the purchaser and representations and warranties by the seller.

- Preliminary sale and purchase agreement

  In case a sale and purchase agreement cannot be signed because (i) the seller must fulfill certain preconditions such as rezoning of the real estate or obtaining a permit for the reclassification of an agricultural land into a non-agricultural property; or (ii) there are third parties who have a right of first refusal in respect of the real estate, then the parties undertake in the preliminary sale and purchase agreement to conclude a final sale and purchase agreement once the pre-conditions are satisfied or the holder of the right of first refusal issues a declaration that it does not want to acquire the property. A preliminary sale and purchase agreement, which is a binding agreement, would include all main terms and conditions that will be included in the final sale and purchase agreement. According to the New Civil Code, the possibility to refuse to contract after a binding preliminary sale and purchase agreement is more restricted.

2.2 What are the warranties given by a seller to a purchaser?

Sellers tend to give limited representations and warranties for the site/property condition. Therefore, a purchaser is generally responsible for conducting an extensive due diligence report with respect to the property to be acquired.

However, based on the law, the seller must issue legal warranties to the purchaser that the seller has a good title over the property.

2.3 When is the sale legally binding?

Parties are legally bound when they execute the sale and purchase agreement or a preliminary sale and purchase agreement. The sale and purchase agreement must be made in writing and the final sale and

purchase agreement, which is to be filed with the Land Registry Office, must also be countersigned by an attorney.

2.4 When is title transferred?

Title is transferred once the Land Registry Office registers the purchaser as the new owner of the real estate.

2.5 What are the costs usually shouldered by the parties?

The purchaser usually pays for the following:

- Purchaser's agent fees
- Legal costs
- Due diligence costs for consultants who have prepared building condition reports, environmental assessments, archaeological assessments, valuation appraisals and real estate surveys
- Due diligence inquiries made to statutory and government bodies
- Registration fees
- Transfer taxes

The seller usually pays for the following:

- Listing agent's fees
- Legal costs
- Income tax on any profit made on the sale of the real estate

3. Leases

3.1 What are the usual forms of leases?

- Commercial leases

  Commercial leases are very common for holding office and retail space, and to a more limited extent, for industrial buildings and plants. Most commercial lease transactions commence with an offer to lease in the form of a letter of intent or head of terms, which contains the business terms agreed upon by the parties, including the space, term, rent and any tenant inducements. Commercial leases are typically on a net/net rental basis, which requires a tenant to pay basic rent and a proportionate share of realty taxes, insurance, utility, service charges and common-area maintenance charges. In a retail lease, a tenant is generally required to pay turnover rent in addition to basic rent.

- Residential leases

  In contrast to commercial leases, residential leases are heavily regulated in Hungary and legislation favors tenants. Rent fees are not regulated and there is no cap on rent increases either. However, termination of a lease and eviction of a tenant are not easy under currently applicable regulations.

3.2 Are lease provisions regulated or freely negotiable?

Generally, commercial lease provisions are not regulated and are freely negotiable. However, residential leases have several compulsory statutory provisions which cannot be negotiated to the detriment of the tenant.

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

There is no maximum term for leases – parties may conclude a commercial or residential lease for a limited or unlimited term.

However, the tax authority may qualify the leases with significantly long lease terms (such as 50 or 99 years) as acquisitions by imposing the related transfer tax consequences.

If the lease agreement provides so, the lease term can be extended.

3.4 What are the usual lease terms?

For office leases, the usual lease term is five years with an option for the tenant to extend for an additional five years.

Most commercial retail leases are for a 10-year or 15-year term with an option for the tenant to extend the term for five or 10 years.

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

No, except when expressly provided for in the lease contract.

3.6 On what grounds may a lease be terminated?

A landlord can generally terminate the lease when the tenant breaches the terms of the lease, which usually includes failure to pay the rent, the service charge, or any other payment under the lease. In addition, based on court practice, if the lease agreement provides so, either party may terminate the lease without cause (break option for termination). Under the New Civil Code, the tenant can terminate the lease if the leased premises poses health hazards.

3.7 Must rent be paid in local currency?

No. In the case of commercial lease agreements, rent is typically paid in euro since the landlord usually obtains financing for the development in euro.

For residential leases, rent is generally paid in Hungarian forint.

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

This will depend on the agreement of the parties. In case of residential leases, rent is usually paid at the beginning of each month. For commercial leases, rent and service charges are paid quarterly in advance.

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

Rent is usually indexed each year, either on the basis of the Monetary Union Index of Consumer Prices (MUICP) published by the European Central Bank if the rent is paid in euro, or on the basis of the International Comparison Program (ICP) published by the Hungarian Statistical Office if the rent is paid in Hungarian forint.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Repair and maintain the structure of the property
- Insure the property
- Provide various services under a commercial office or retail lease
- Provide tenants with a valid notice of termination (in writing) if terminating the tenancy

The following is usually required of tenants:

- 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

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

Tenants are generally allowed to assign the lease or sublet the premises provided that they obtain the consent of the landlord. The landlord is usually required to act reasonably when considering the tenant's request.

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

According to common market practice, if the premises are substantially damaged or destroyed by an act of God, then the landlord has a specific period within which to reconstruct or repair the leased premises. If the landlord doesn't do so, both landlord and tenant are entitled to terminate the lease. Rent generally abates according to the extent of the damage or destruction.

The tenant may be liable for repairs or replacements if the damages or destruction of the premises are attributable to the tenant.

3.13 Who is usually responsible for insuring the leased premises?

The landlord is usually responsible for obtaining adequate insurance coverage relating to the leased premises and the landlord will usually recover the cost of insurance from the tenant in a net lease. The tenant is usually required to insure the area it leases within the leased premises.

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

Lease agreements survive and are binding upon the new owner. According to the New Civil Code, the old and the new owner have joint and several liability for landlord obligations, unless it is excluded in the lease agreement.

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

In the absence of a non-disturbance agreement, if a foreclosure is the result of a prior mortgage over the property, the lease will not survive at the option of the lender.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Property development is regulated primarily at the municipal level. Municipalities typically control land use and the density of the development through official plans and zoning by-laws. The ability of an owner to subdivide property is restricted and regulated in municipal zoning regulations.

Any kind of construction activity is subject to national and municipal legislation. Building codes set specific standards for the construction of buildings, and a building permit must be obtained from the local municipality before the commencement of the construction. Pursuant to national regulation, in case of the construction and reconstruction of shopping centers more than 400 square meters of gross floor space, also in case of enlargement of shopping spaces up to 400 square meters, the administrative recommendation of the Government Office of Hajdú-Bihar County as the authority designated for that purpose is required in the official procedure for construction.

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

An environmental permit must be obtained for industrial properties and for certain types of retail properties before commencing any industrial or retail activity on the real estate. An environment impact study must be prepared in the course of obtaining the environmental permit and both locals and NGOs may express views and concerns in connection with the planned development.

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

Generally, a building permit is required for construction or reconstruction and an occupancy permit is required before occupying the building.

4.4 Can an environmental cleanup be required?

Generally, an environmental cleanup may be required where authorities seek to reduce or mitigate potential dangers to human health. It is important to note that in the case of greenfield development, developers may be required to carry out an archaeological excavation before construction.

4.5 Are there minimum energy performance requirements for buildings?

Currently there are no such requirements. In most real estate transactions, an energy certificate is required.

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

Green building requirements will be applicable for newly built residential properties in the near future. In respect of commercial properties, several energy efficiency requirements shall be fulfilled as conditions precedent to the issuance of the occupancy permit. The issuance of an energy efficiency certificate indicating the energy properties of the building is also mandatory.

18 Indonesia

1. Real Estate Law

1.1 What is included in the term "real estate"?

Indonesian law and regulations do not specifically use the term "real estate." However, the term real estate in the Indonesian language includes the following:

- Land
- Any buildings or structures on it

Generally, buildings or structures on land are also owned by the land owner. However, Indonesian land law acknowledges the horizontal land separation principle (asas pemisahan horizontal), where buildings or structures on a land are not part of the land, ie, the rights over the land does not automatically cover ownership over the buildings or structures on it.

1.2 What laws govern real estate transactions?

Real estate in Indonesia is covered by land laws. In Indonesia, the government holds title to all land under Law No. 5 of 1960 on Basic Agrarian Provisions (the "Agrarian Law"). Generally, anyone who wants to use land must obtain a land title from the government. Most land titles have fixed validity periods. Where applicable, the validity period of a land title may be extended after the holder of the land title has met the extension requirements and there are no zoning changes or other public interest requirements.

Other than the Agrarian Law, land in Indonesia is regulated in various government regulations and decrees/regulations issued by the State Ministry of Agrarian or Chair of the National Land Agency (Badan Pertanahan Nasional) (the "Land Office"). Some of these regulations are:

- Government Regulation No. 40 of 1996 on the Right to Cultivate, Right to Build and Right to Use
- Government Regulation No. 103 of 2015 on Property Ownership by Foreign Citizens
- Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency issued Regulation No. 29 of 2016 on Procedure for Granting, Releasing, or Transferring Land Rights over Residential Houses to Foreign Nationals in Indonesia
- Government Regulation No. 24 of 1997 on Land Registration ("GR 24/1997")
- Law No. 20 of 2011 on Apartments

1.3 What is the land registration system?

Indonesia's land registration was initially based on a system commonly known as "registration of deeds." After the Agrarian Law was enacted in 1960, Indonesia adopted a system known as "registration of title" because (i) land registrations are recorded in a land registration book at the relevant Land Office; and (ii) land title certificates are issued to serve as strong evidence of ownership to land. However, the Land Office does not provide a guarantee on the status of the land being registered as land certificates do not construe absolute evidence of ownership, ie, a land certificate may be cancelled if other parties can prove in a court of law ownership over the plot of land title that the land certificate covered.

GR 24/1997 provides that a certificate is a proof of rights which serves as strong evidence of the physical and juridical data stated therein, as long as the physical and juridical data is in accordance with the data stated in the related measurement letter and land registration book.

In brief, the process for issuing a land certificate is as follows:

- Once all requirements to obtain a land title have been fulfilled, the relevant Land Office will issue a decision letter on the granting of a new land title
- After the granting of the new land title, the new land title holder will need to register the land, and the land title certificate will be issued by the regional Land Office
- The issuance of a land title certificate will occur after the company/individual pays the administrative fees in relation to the issuance of the land title (which can be substantial depending on the circumstances) and the land acquisition duty (Bea Perolehan Tanah dan Bangunan) at a rate of 5% of the estimated value of the land (determined by the government)

1.4 Which authority manages the registration of titles?

Land title registration is managed by the Land Office having jurisdiction depending on size and where the land/premises is located.

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

According to the Agrarian Law, the main types of registered land titles are:

- Right to own (Hak Milik) ("HM")

  HM is the strongest and fullest/highest hereditary right that may be held with respect to land. HM does not have any time limit and can only be owned by Indonesian citizens (individuals) and some entities determined by the government (eg, social and religious institutions). Other Indonesian corporate entities and foreign citizens may not own land with HM. If business entities want to obtain this HM, the HM must consequently be converted into a title that can be owned by the entity which intends to acquire it.

- Right to cultivate (Hak Guna Usaha) ("HGU")

  HGU title is the right to cultivate land which is administered by the state. HGU can only be used for agriculture, plantations, fisheries and/or poultry farming.[6]

  HGU can be granted for a maximum of 35 years and can be extended for an additional maximum of 25 years. A holder of HGU can also renew this land right for a maximum subsequent period of 35 years after the term of the extension expires. HGU may be granted only to (i) Indonesian citizens; and (ii) Indonesian corporate entities that are domiciled in Indonesia, including PT PMA.

- Right to build (Hak Guna Bangunan) ("HGB");

  HGB title is a right to establish and construct buildings on a plot of land. Similar to an HGU title, an HGB title may be encumbered for security purposes. HGB is granted for a maximum period of 30 years and can be extended for an additional maximum period of 20 years. A holder of HGB can also renew this land right for a maximum subsequent period of 30 years after the term of the extension expires. HGB may be granted to (i) Indonesian citizens; and (ii) Indonesian corporate entities established under Indonesian law and domiciled in Indonesia, including PT PMA.

- Right to use (Hak Pakai) ("HP")

  The Agrarian Law defines HP as the right to use and/or collect the products from the land directly administered by the state. The land on which HP title can be granted includes state land, the HM and right to manage (Hak Pengelolaan) ("HPL") land. This means that HP title can

[6] Please note that in practice, this would depend on the interpretation of the Land Office. The Land Office could interpret the HGU usage broadly as "cultivation activities."

be created on top of these land titles (HM and HPL) and is not a title to the land itself. HP may be owned by any of the following:

- Indonesian citizens
- Foreigners residing in Indonesia
- Corporate bodies established according to Indonesian law and domiciled in Indonesia
- Foreign corporate bodies with representatives in Indonesia
- Departments, non-department government bodies and regional governments
- Foreign country representatives and international organization representatives
- Religious and social institutions

Based on the regulations, HP title is granted for a maximum of 25 years and can be extended by a maximum of 20 years (except for HP title for residential property of resident foreigners (see below)). HP on HM land is granted for a maximum of 25 years but cannot be extended, although it can be renewed based on a new agreement between the holder of the HM and the holder of the HP. The agreement must be made before a land deed official (Pejabat Pembuat Akta Tanah or a "PPAT") and the HP must be registered at the relevant Land Office.

1.6 What documents can land owners use to prove ownership over real property?

Land ownership may be proven using a certificate of land title.

1.7 Can a title search be conducted online?

Indonesia does not have a centralized database where a party can access and obtain public information on a particular Indonesian company. If a company owns land and you want to verify this, land searches can be conducted at the local Land Office where the land is located. Similar to courts, every municipality/regency in Indonesia has its own local Land Office. The local Land Office operates under the coordination of the central Land Office in Jakarta.

Each Land Office maintains a land registration book that contains records of land ownership in its jurisdiction, including the land certificates issued to landowners/holders of land titles and whether the land is subject to any security/encumbrance (ie, Hak Tanggungan). The land registration book is also maintained and updated manually.

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

Foreigners can hold land title in Indonesia if they reside in Indonesia as evidenced by a valid stay permit ("resident foreigner"). The land title that can be held by resident foreigners are limited to HP over HM, HP over state land, or HP originating from the conversion of HM or HGB.

As an exception to the HP title in general, HP titles issued for resident foreigners is granted for a maximum period of 30 years and can be extended for an additional maximum period of 20 years, and may be renewed for a maximum subsequent period of 30 years after the term of the extension expires.

Under the new HP related regulations, if a house or apartment currently under HM or HGB title is purchased by a resident foreigner, then the conversion of the title to become HP will automatically happen, and if the house or apartment is then transferred to an Indonesian, the title can be re-converted to a HM and HGB title.

If a resident foreigner buys a residential property (built on land with HGB title), the title of the residential property will be deemed to be converted into HP upon the signing of the sale and purchase document before a PPAT. The PPAT will then register the transaction at the relevant Land Office so that the Land Office can manually update the title certificate to reflect the change of the residential property from HGB to HP.

For strata title apartments or HMSRS, the title of the underlying land will remain HGB title. So upon a purchase by a resident foreigner, only that particular unit will be converted into a HP strata title (Hak Pakai Atas Satuan Rumah Susun). Only if all apartment units are owned by resident foreigners can the underlying land be converted to HP title.

The government stipulates minimum prices for houses or apartments that can be purchased by resident foreigners depending on the location of the house of apartment. For example, in Jakarta the price of a house must be IDR 10 billion or more while for an apartment it must be IDR 3 billion or more. For the Banten and Bali provinces, the price of a house must be IDR 5 billion or more while for an apartment IDR 2 billion or more.

Resident foreigners (except for foreign country representatives or international agency representatives) can only have one plot of land per person/family and the maximum land area is 2,000 square meters (which can be increased subject to approval from the Minister of Agrarian Affairs and Spatial Planning/Head of Land Office).

1.9 Can the government expropriate real property?

Land titles granted by the government have a specific permitted use and the holder of the land title is obligated to use the land in accordance with the permitted use. Failure to fulfill this obligation will give the government the right to initiate a land title revocation process.

Further, if the government intends to use plots of land that have been granted land titles to other parties prior to the expiry of the validity period

of the land title, the government is obligated to provide compensation to the holder of the land title.

1.10 How can real estate be held?

Generally, real estate interest can be held under the following land titles:

- Land ownership
- Land lease

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

- Direct ownership

  Please see above on land ownership by a resident foreigner. Otherwise, if a foreign entity wishes to invest in real estate, it needs to establish an Indonesian legal entity to own a land title in Indonesia.

1.12 How are real estate transactions usually funded?

Real estate transactions can be funded by the company's internal funds or by institutional lenders such as banks.

An institutional lender will likely take collateral security over the plot land in the form of security interest over a land right (Hak Tanggungan).

Hak Tanggungan is a security interest over a land right (with or without an asset which is inseparably attached to the land) in favor of the lender. Hak Tanggungan provides a preferred position over the proceeds of the sale of the land to the grantee (creditor who is granted a Hak Tanggungan) vis-à-vis other creditors.

1.13 Who usually produces the documentation in real estate transactions?

Generally, the buyer's lawyer will prepare the documentation related to the acquisition of real estate. To transfer title due to sale and purchase, exchange, grant, or in-kind contribution, the parties to the transaction

must sign a title transfer deed in a form already prepared by the government, and the execution of such deed must be conducted before a PPAT who is licensed to practice in the area where the land is located.

1.14 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?

As a general rule, the new owner does not inherit liability for matters that occurred prior to it holding title to the real property.

With respect to taxes imposed on the land and building, the land law and its implementing regulations require those taxes to be settled prior to a transfer of title.

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

As a general rule, the seller retains historical liabilities relating to the real estate after they have disposed of it.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Conditional sale and purchase agreement

  This document is suggested if the title transfer is subject to certain conditions. For example, a title transfer over certain types of land title, such as HGU, is subject to government approval. This document also contains the details of the commercial terms of the transaction such as deposit (if any).

- Deed of land sale and purchase (Akta Jual Beli Hak Atas Tanah)

  Deed of land sale and purchase is the required document for the transfer of ownership over land. The deed of land sale and purchase is

prepared by a PPAT and signed by the buyer and the seller before the PPAT.

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

A seller is obligated to give warranties that they are the legal owner of the real estate and that the real estate is free from encumbrance, dispute and attachment.

2.3 When is the sale legally binding?

The sale is legally binding when the seller and the buyer execute a title transfer deed before a PPAT.

2.4 When is title transferred?

Title is transferred when the seller and the buyer execute a title transfer deed before a PPAT. Following the execution of a title transfer deed, the PPAT must register the transfer with the Land Office having jurisdiction over the land. The transfer will be recorded in the land certificate.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- Buyer's agent's fees (if any)
- Legal service fees
- Due diligence fees
- PPAT service fees
- Land registration fees
- Land acquisition duty
- VAT

The seller usually pays for the following:

- Listing agent's fees (if any)
- Legal service fees
- Income tax on the sale of the real estate

3. Leases

3.1 What are the usual forms of leases?

Leases are not registrable. There is no required form of leases.

3.2 Are lease provisions regulated or freely negotiable?

The lease provisions are freely negotiable. The parties are free not to follow the provisions of the Indonesian Civil Code (the "ICC") on leases. Consequently, the provisions of the ICC on leases apply unless they are waived or the parties clearly deviate from these provisions.

Please note that the ICC provides that a sublease of the lease object is subject to the lessor's approval. Further, the sale of the lease object does not terminate the lease unless it has been agreed upon at the entry of the lease.

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

There is no maximum term for leases in Indonesia as they are freely negotiable. However, since most land titles in Indonesia exist for a certain period of time, the term of lease must take into account the term of the land title being the subject of the lease. The land owner as the lessor may be required to extend and/or renew the land title if the lease term is longer than the term of the land title itself.

3.4 What are the usual lease terms?

There is no required term for the lease because it is freely negotiable between the parties. The mandatory provisions are the rent and the lease term.

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

An extension of the lease is a purely commercial issue.

3.6 On what grounds may a lease be terminated?

This is subject to the terms for termination of an agreement. However, a landlord can generally terminate the lease when the lessee breaches the terms of the lease (eg, failure to pay rent).

3.7 Must rent be paid in local currency?

In June 2011, the Indonesian government enacted Law No. 7 of 2011 on Currency (the "Currency Law"). Article 21 (1) of the Currency Law states that the use of rupiah is mandatory in the following:

- Every transaction that has the purpose of payment
- Settlement of other obligations that must be satisfied with a cash payment
- Other financial transactions

There is an exemption of payment in rupiah for international commercial transactions.

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

There is no mandatory term of payment for the lease since the parties are given the liberty to agree on the term. However, it is quite common for rent to be paid in advance.

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

Rent review is subject to agreement between the parties. However, the general benchmark is the comparable market value at the time of renewal.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Pay the relevant land and building taxes
- Repair the structure of the premises
- Insure the property
- Provide tenants with a valid notice of termination (in writing) if terminating the tenancy

The ICC also provides that the following is further required of lessors:

- Deliver the leased goods in a maintained condition in every respect to the lessee
- Maintain the goods in such condition that they may serve the intended purpose
- Give the lessee a peaceful enjoyment on the leased goods during the lease period
- Guarantee the lessee for any defect of the leased goods that impedes use

The following is usually required of lessees:

- Pay rent in a timely manner
- Give the landlord access (often by appointment) for inspections and landlord's work

- Use the leased goods in accordance with the purpose of granting the goods according to the lease agreement
- Pay for the lease price at the agreed time

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

Unless it is stated otherwise in the lease agreement, a transfer of the lease is subject to the lessor's prior written consent.

Unless it is stated otherwise in the lease agreement, subletting is subject to the lessor's prior written consent.

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

The ICC provides that if the leased premises are completely destroyed beyond the control of the parties, the lease is terminated by law. If the leased premises are only partially destroyed, the lessee is free to choose whether it will require an adjustment to the rent or to terminate the lease. In either case, the lessee is not entitled to compensation.

If the leased premises require immediate repairs and such repairs exceed 40 days, then the rent must be adjusted accordingly. If such repairs result in the lessee not being able to occupy the premises, the lessee may choose to terminate the lease.

Further, if the premises are damaged or destroyed due to causes attributed to the tenant, then the tenant may be liable for repairs or replacement.

3.13 Who is usually responsible for insuring the leased premises?

Usually, the owner is responsible for insuring the leased premises. However, insurance over the lessee's assets will need to be purchased by the lessee.

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

Yes. The ICC provides that the "selling of a leased object does not terminate the lease on the object unless it has been agreed upon entry into the lease agreement."

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

As a general rule, an enforcement of security interest by a lender will not prejudice the rights of a tenant under the lease prior to the security interest being created.

According to the ICC, change of ownership of a lease object does not terminate the lease unless it has been agreed upon at the entry into the lease agreement.

However, based on Law No. 4 of 1996 on Hak Tanggungan (similar to a mortgage) over Land and Things Related to Land (the "Hak Tanggungan Law"), the deed of the granting of Hak Tanggungan (Akta Pemberian Hak Tanggungan) may include a clause restricting the grantor (borrower) of the Hak Tanggungan to lease out the Hak Tanggungan object without prior consent from the holder (lender) of the Hak Tanggungan.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

In general, land development is controlled and monitored by the provincial and sub-provincial governments as well as the Land Office. The authorized party for environment is the Ministry of Environmental Affairs. However, each province may have specific regulations on land development and environment.

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

Environmental laws must be taken into account when the use and occupation of real estate impacts the environment. Documents to manage environmental impact may need to be prepared.

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

- A building permit is required for the construction or renovation of real properties
- A building use permit/ building occupational permit is required to be obtained before occupying a building (depending on the applicable regional regulations)

4.4 Can an environmental cleanup be required?

There is no specific regulation requiring an environmental cleanup in Indonesia.

However, in exceptional circumstances, the competent authorities may impose government's compulsion without having to first issue a written warning under the following circumstances:

- The violation poses a serious threat to the lives and health of humans and to the environment and requires immediate solution
- The violation would cause greater and wider impact if not stopped immediately
- The violation would cause greater damage to the environment if not stopped immediately

Government's compulsion consists of actions that are imposed to stop a violation of environmental obligations and restore the functions of the environment. These actions include the following:

- Suspension of production activity
- Removal of production facilities
- Closure of waste water or emission disposal tunnels
- Confiscation of goods or tools that have the potential to cause violation
- Suspension of the entire activity of a party (that could be responsible for violating the environmental regulation)

Furthermore, Indonesian environmental law also recognizes the "strict liability" principle, which implies that the element of "fault" as a basis for requesting compensation need not be proven by the claimant. This applies if a party's action, business or activity uses hazardous and toxic substances, manages hazardous and toxic waste, or poses a serious threat to the environment.

4.5 Are there minimum energy performance requirements for buildings?

No.

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

There are applicable regional regulations.

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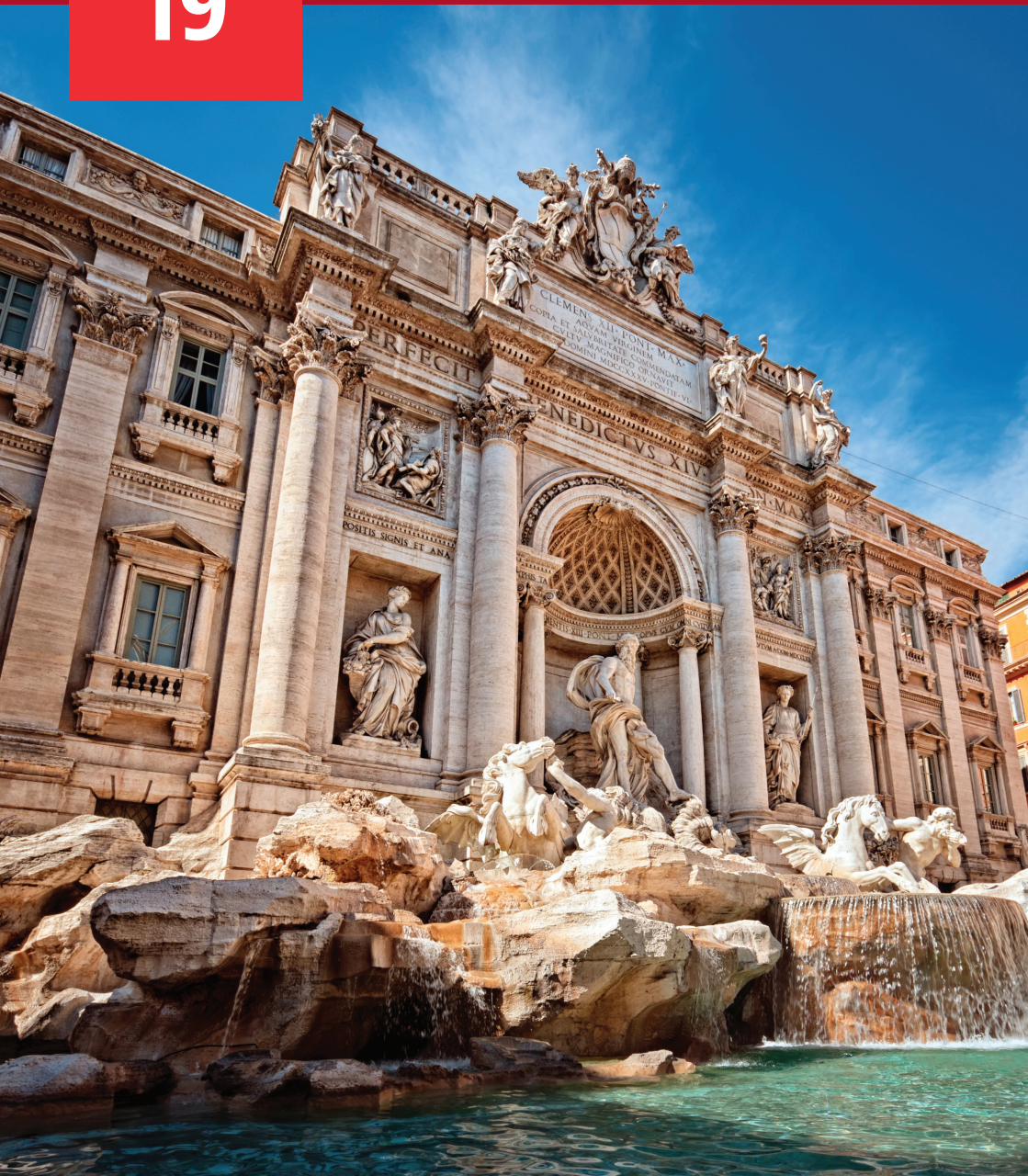

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes relative[7] and real[8] rights on the following:

- Land
- Any buildings above or under the ground

1.2 What laws govern real estate transactions?

Property law is governed by the Italian Civil Code, in particular, the following:

- Ownership of properties or lands and other in rem rights (eg, usufruct, use, emphyteusis and building right)
- Sale and purchase agreements
- Lease agreements and gratuitous bail agreements

Real estate is increasingly governed by special laws (such as Law No. 397/1978, and Law No. 431/1998, which deal with commercial leases and

[7] Relative rights are rights not enforceable vis-à-vis third parties (eg, the tenant right with respect to rent).

[8] Real rights are the rights enforceable vis-à-vis third parties. Such rights are a limited category – numerus clausus (numero chiuso). In particular, such rights are: 1) ownership (piena proprietà); 2) right of use (diritto d'uso); 3) usufruct (usufrutto); 4) right of housing (abitazione); 5) "surface" lease (diritto di superficie); and 6) emphyteusis.
Easements (servitù prediali) are considered burdens or benefits connected to a particular piece of land, (which obliges the owner of that land to bear the use of such land by the owner of the beneficiary land in a particular manner).
A mortgage of land is the use of that land as security for the repayment of a loan.
Some burdens or benefits may be established on the property by public authorities (such as cultural heritage liens).

leases of residential properties and therefore apply to most leases, and Law No. 164/2014, which deregulated non-residential leases meeting certain conditions such as an annual rent of more than EUR 250,000).

Also, there are some differences in the laws applicable to Italian regions; the main difference concerns the regions of Trentino Alto Adige and Friuli Venezia Giulia (two of the special regions (Regioni a Statuto Speciali)) where the acquisition of the ownership (or other in rem rights) of land or properties becomes effective (both vis-à-vis third parties and between the parties) only once the acquisition is registered in the property register (instead of becoming effective between the parties when the relevant sale and purchase agreement is executed in writing as is the case in other regions).

1.3 What is the land registration system?

Land and buildings must be registered with the Cadaster (Catasto) for tax reasons, and with the Land Title Registry (Conservatoria dei Registri Immobiliari) for the purpose of ensuring that ownership of the land is enforceable vis-à-vis third parties.

Such registration system in the regions of Trentino Alto Adige and Friuli Venezia Giulia is different; land needs to be registered with the Land Title Registry, otherwise transfers of such land are not effective even between the parties.

1.4 Which authority manages the registration of titles?

Title registration is managed by the Land Title Registry.

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

Ownerships, in rem rights, easements and mortgages are registered. Notarization of the relevant agreements and registration are not necessary for the validity of the agreement executed in writing and enforcement between the parties, while they are required for enforcement vis-à-vis

third parties (except for the two special regions as mentioned above). In this respect, it is highly recommended to promptly register any transfer or constitution of real rights over the property — agreements (inter vivos) as well as inheritance (mortis causa).

With respect to mortgages, pursuant to Section 2808 of the Italian Civil Code, mortgages become effective upon inscription in the Land Title Registry.

Certain easements and other burdens, encumbrances or liens that may be established on the property by public authorities (such as cultural heritage liens) could also be registered in some cases.

1.6 What documents can land owners use to prove ownership over real property?

Land ownership may be proven through the notarial certificate (relazione notarile ventennale) which shows the change of ownership of the property over the past 20 years and the legitimacy of the title.

1.7 Can a title search be conducted online?

Yes – it is usually conducted online by the notary public or, if a title certificate is not required, by service providers.

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

There are generally no restrictions for foreigners on ownership in Italy.

However, citizens of a country that does not grant reciprocity (ie, does not allow Italian citizens to purchase properties in its territory) cannot buy real estate in Italy, unless otherwise provided by international treaties to which Italy is a party.

1.9 Can the government expropriate real property?

Property can be expropriated by the government and other public authorities, and appropriate compensation must be paid.

1.10 How can real estate be held?

Generally, real estate are held through one of the following rights:

- Ownership

  The owner owns the property (land and buildings) forever (ie, for unlimited time). Ownership can be restricted by enjoyment rights (lease rights and gratuitous bail rights) and/or in rem rights.

- In rem rights

  The title on the property (land and building) established by in rem rights has the same nature of a freehold title but is subject to certain degrees of limitation. It may be limited in time and vary greatly in scope.

- Lease right

  The lessee's right is limited in time to the length of the lease and may also contain restrictions relevant to the use of the property (ie, the lease of properties for non-residential use, such as industrial, commercial, professional and similar activities).

- Condominium ownership

  Under commonhold, common parts of a building (usually a block of flats) are owned by the "condominium," which is composed of all the owners of freeholds on relevant flats. Such owners resolve the relevant management decisions for the common parts in a meeting where each owner has voting power corresponding to the ratio between the value of his/her flat and the overall value of the building.

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

- Ownership
- Time-share property (multi-proprietà)
- Leasing

1.12 How are real estate transactions usually funded?

Several approaches may be used to purchase a property. The property is usually purchased directly, but the following are also common:

- The use of a new special purpose vehicle (Newco) to purchase each property or a portfolio of properties
- The transfer of properties within a sale of a going concern in case a going concern can be established according to Italian law
- Causing a leasing company to purchase the property and then enter with the leasing company into a leasing agreement with an option to buy the property at the end of the leasing period

1.13 Who usually produces the documentation in real estate transactions?

Generally, the buyer's lawyer prepares the initial draft of the purchase agreement, while the seller provides the documentation for due diligence.

The notarial certificate (relazione notarile ventennale) can be obtained by both parties.

1.14 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?

Both owner and occupier could inherit liabilities for matters that occurred before they bought or occupied the real estate (just by way of an example, both of them inherit the obligation of reporting to the authorities in case pollution is detected in the premises).

In the event that the polluter is not identified or is insolvent, the authorities could proceed with the remediation autonomously. The property is subject to a lien securing recovery of the remediation costs advanced by the authorities, even if the owner was not the polluter; thus, the property could be expropriated if the remediation costs are not borne by the owner or the polluter.

Moreover, condominium charges and expenses are considered "real burdens" (oneri reali) and as such follow the ownership of the property. Thus, the purchaser of a property encompassed in a condominium could be required to pay the amounts due to the condominium left behind by previous owner.

Finally, the public authorities retain a lien/privilege on the property in case taxes on the same are not paid by the seller.

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

A seller can retain liabilities relating to real estate vis-à-vis the new owner (such as the guarantees relevant to the defects and eviction).

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

Usually, before the signing of the sale and purchase agreement, there are several searches that may be carried out when performing a due diligence.

- Searches in the Land Title Registry (to verify ownership and limitations to the interests being transferred, if any)
- Certificate of urbanistic destination (Certificato di Destinazione Urbanistica or CDU) and energy efficiency certificate

- Searches in the cadastral register to verify the compliance of the property with the registered maps, the existence of building violations, if any
- The "fit-for-use" certificates or other plants certificate (generally requested by the buyer to the seller)
- The energy performance certification of the property (Attestazione di Prestazione Energetica APE)

Moreover, the sale and purchase agreement is usually preceded by a preliminary sale and purchase agreement, which sets up the undertaking of the parties to execute the definitive sale and purchase agreement.

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

A seller usually gives the following warranties:

- Full title guarantee (ie, the seller shall dispose the property free from all charges and third party rights)
- Compliance with town planning, construction and environmental laws
- Absence of defects

2.3 When is the sale legally binding?

Once the sale and purchase agreement (or the preliminary agreement) is executed in writing, the sale is binding between the parties. However, the preliminary agreement does not cause the immediate transfer of ownership of the property, but only the obligation to execute a definitive agreement for the transfer of the property at a later date.

2.4 When is title transferred?

The ownership is passed to the buyer upon execution in writing of the relevant agreement. Please also refer to Section 1.5 above in this regard. In

the special regions, title passes to the buyer once the registration in the land registry is performed.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- His/her own legal costs
- His/her own surveyors' fees
- Searches in the land registry and in the cadaster
- Registration tax (imposta di registro), mortgage tax (imposta ipotecaria) and calastra tax (imposta catastale)
- Stamp duty (imposta di bollo)

The seller usually pays for the following:

- His/her own legal costs
- His/her own surveyors' fees
- Costs relevant to the certificates of title for the property

3. Leases

3.1 What are the usual forms of leases?

Residential leases (locazioni di immobili urbani adibiti ad uso abitativo): according to Law 431/1998, the usual minimum term for a residential lease is four plus four years. Nevertheless, there are different categories of lease agreements that allow for a shorter term, such as the so-called agreed upon (convenzionato) agreement and the temporary (transitorio) agreement.

Non-residential leases (locazioni di immobili urbani ad uso diverso da quello di abitazione): leases of properties used for industrial, crafts, commercial, tourism, professional and similar activities are governed by Law No. 392/78, which provides for a minimum duration of six plus six years or nine plus nine (for hotels and theaters). Law No. 164/2014 has deregulated material non-residential leases (ie, those leases providing for an annual rent of more than EUR 250,000 and not involving "premises qualified as having a historical interest pursuant to a regional or municipality order" (locali qualificati di interesse storico a seguito di provvedimento regionale o comunale)). The above-mentioned new Law has introduced the possibility for the parties to a material non-residential lease to expressly derogate from all the mandatory provisions set forth by Law No. 392/78. Essentially, the parties acquire total freedom in the determination of the contractual terms, having, for example, the ability to:

- establish a duration of less than six years
- agree on increases in rent, independent from the traditional mechanisms of cost-of-living adjustments
- exclude the loss-of-goodwill indemnity
- exclude the tenant's preemptive right in the event of the sale or new lease of the premises
- differently regulate the tenant's withdrawal right or the renewal of the agreement

3.2 Are lease provisions regulated or freely negotiable?

Some lease provisions (eg, the minimum duration) are regulated by law (except if the lease qualifies as a material non-residential lease, as described in Section 3.1 above). The remaining provisions (eg, the price) are freely negotiable by the parties.

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

Unless otherwise provided for by the law, the maximum term of the lease is 30 years.

3.4 What are the usual lease terms?

The minimum duration of non-residential leases is six years. Most of the non-residential leases are for a six-year term (or a nine-year term, if the building is leased as a hotel or for theater activities). A shorter term is allowed in case the activity carried out is temporary by nature. At the expiration date, the lease is automatically (tacitly) renewed for an additional contractual period of not less than six years (or nine years for hotels) and so forth, unless either of the parties gives 12 months' (or 18 months for hotels) written notice of its intention not to renew the lease.

Nevertheless, at the expiration of the first contractual period, the landlord is entitled to issue the termination notice only upon the occurrence of the following circumstances:

- The landlord intends to occupy the premises for its own purposes
- The landlord intends to renovate the premises.

At the expiration of any further contractual period, the landlord is entitled to issue the termination notice without any restriction. If the parties have not agreed on any term, the six-year term applies (minimum term).

Similar renewal or refusal of renewal schemes apply to residential leases (four plus four years).

The duration and renewal mechanisms of material non-residential lease, as described in Section 3.1 above, can be freely determined by the parties.

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

No.

3.6 On what grounds may a lease be terminated?

A landlord can generally terminate the lease when the tenant breaches the terms of the lease (eg, by assigning or subletting the property without the consent of the landlord or by not paying the rent).

The tenant is allowed to terminate the lease at any time, giving at least six months' notice to the landlord, only if such faculty has been expressly agreed between landlord and tenant and provided for in the relevant lease agreement. Even if the lease does not include any such clauses, the tenant is allowed to terminate the lease in case of the occurrence of "serious grounds" by delivering a six-month termination notice to the landlord. The definition of "serious grounds" is not expressly provided for by the law. However, case law has stated that "serious grounds" can be identified as events beyond the tenant's control, unforeseeable by the tenant at the time of execution of the lease agreement and occurred after the establishment of the lease relationship, which resulted in the fact that the lease has become excessively burdensome for the tenant.

3.7 Must rent be paid in local currency?

The parties are free to set rent in other currencies. However, arrangements for payment of rent in foreign currencies are not common.

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

This will depend on the agreement of the parties. Usually, rent is paid in advance on a quarterly or monthly basis.

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

The right to increase the annual rent should be expressly provided for in writing in the agreement. In this case, the rent is subject to a maximum annual indexation equal to 75% of the annual increase of consumers' prices as assessed by the Italian National Statistic Institute (ISTAT). The above-mentioned maximum indexation limit does not apply in case of material

non-residential leases (as described in Section 3.1 above) and to leases having a duration in excess of the minimum provided by Law. 392/1978 (ie, six plus six years). In the latter case, the maximum indexation limit is equal to 100% of the annual increase of the consumers' prices as assessed by ISTAT.

3.10 What are the basic obligations of landlords and tenants?

The following are usually the basic obligations of landlords:

- Deliver the premises in good condition
- Keep the premises to permit the agreed use
- Grant the "quiet enjoyment" of the premises

The following are usually the basic obligations of tenants:

- Keep the property in good order and observe due diligence in managing the same (diligenza del buon padre di famiglia)
- Pay rent on time

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

The tenant is allowed to assign the lease or sublease the premises provided that he/she obtains the consent of the landlord. The landlord is usually required to act reasonably when considering the tenant's request.

Moreover, notwithstanding anything to the contrary provided for in the lease, the tenant is entitled to sublease the unit or to assign the lease in the event the sublease or the assignment takes place in the context of a sale or lease of the business concern of the tenant. In this case, nevertheless, the landlord may oppose the assignment or the sublease within 30 days for serious reasons.

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

If the premises are destroyed by an act of God, the lease is terminated.

If the premises are damaged or destroyed due to causes attributed to the tenant or landlord, then the responsible party may be liable for damages, repairs or replacement.

3.13 Who is usually responsible for insuring the leased premises?

The tenant is usually required to insure the leased premises.

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

Usually, lease agreements survive and are binding upon the new owner.

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

Yes.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

The relevant municipality with respect to the planning of the land development in accordance with the applicable regional plan, and the state with respect to environmental regulation.

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

Legislative Decree No. 152/2006 (the "Environmental Code") represents the environmental laws consolidation act and can therefore be regarded as the core of all Italian environmental regulations.

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

- A building permit (permesso di costruire) granted by the local municipality is required for any "new construction" such as new

buildings, building area enlargements, etc. (Presidential Decree No. 380/2001)

- A simple notification to the municipality (Segnalazione Certificata di Inizio Attività or SCIA) is required for minor construction work (eg, renovations)
- No real estate can be occupied or be generally used if the fit-for-use certification (certificato di agibilità/abitabilità) has not been issued by the competent municipality
- Depending on use of the property, environmental permits may be required (wastewater discharge authorization, air emission authorization, fire prevention certificate, etc.)
- If a building is classified as having a special architectural merit of historical interest or is situated in an area of historical or environmental significance several controls and limitations are applied in accordance with Legislative Decree No. 42/2004

4.4 Can an environmental cleanup be required?

Yes. All land contamination legislation is now governed by the Environmental Code.

Article 242 of Decree No. 152/2006 provides for a special clean-up procedure to be followed in cases of contamination, or actual and current risk of contamination, in accordance with the "polluter pays" EU principle.

Article 240 of the Consolidated Act states that land is considered "contaminated" when one of the risk-concentration values (polluting capability and risk analysis) of polluting substances in the soil, subsoil, groundwater or superficial waters, exceeds the acceptable limits of concentration (indicated in the Enclosure I of the Decree).

Clean-up is required if one of the concentration values of polluting substances in soil, subsoil, groundwater or superficial waters exceeds the acceptable limits of concentration indicated in Enclosure I of the Decree No. 152/2006.

Each polluting substance can be present on the site up to a certain level. However, if any polluting substance exceeds the acceptable limits, then the clean-up procedure must be carried out in accordance with the above-mentioned law. Please note that the acceptable level in the soil varies depending on the intended use of the site (ie, residential or industrial).

Article 245 of the Consolidated Act provides that the owner or the operator of the site which are not responsible of the contamination, must immediately take the appropriate preventive measures and report to the competent authorities any discovery of historical contamination exceeding the acceptable limits of concentration. They are not obliged to carry out remediation, but failure to take such preventive measures and report may originate liability for damages if any (eg, in case of dynamic contamination and worsening of the situation due to the non-adoption of preventive measures).

Note that in case the polluter is unknown or is unable to undertake the remediation costs, the authorities investigate the situation to identify the polluter. If the polluter remains unknown or does not remediate for whatever reason, the authorities proceed with remediation on their own. In such a case, the property is subject to a lien guaranteeing the remediation costs, even if the property owner was not the polluter and the site could be expropriated if the remediation costs are not born by the parties.

4.5 Are there minimum energy performance requirements for buildings?

Minimum energy efficiency requirements have been introduced for new buildings.

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

Italian legislation on energy performance certificate is contained under Law 192/2005, which has been subject to several amendments. The current version of the Law provides that (i) during the negotiations of a lease agreement, the landlord shall make available the energy performance certificate to the prospective tenant; (ii) at the end of the negotiations, the landlord shall provide copy of said certificate to the prospective tenant; (iii) the parties of a lease agreement are requested to insert in the text of the agreement a special clause in which the tenant acknowledges that it has received the information and documentation, including the certificate, concerning the energy performance of the leased building or unit; (iv) for the lease of whole buildings, the parties are also requested to attach a copy of the energy performance certificate to the agreement. This is not requested for the leases of single units; and (v) in case the tenant's declaration that it has received the information and documentation concerning the energy certificate of the leased premises is omitted or, for leases of whole buildings, in case the certificate is not attached to the agreement, the parties will be subject to payment, jointly and in equal parts, of an administrative fine. The national legislation must then be coordinated and integrated with the regulations issued at regional level, if any.

20 Japan

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Buildings or structures on or under it

1.2 What laws govern real estate transactions?

Property law is governed by the following:

- The Civil Code
- The Land and Building Lease Law
- The Law Concerning Sectional Ownership of Buildings
- The Real Estate Registration Law
- The Real Estate Brokerage Law
- The Real Estate Syndication Law
- The Asset Liquidation Law (the "TMK Law")
- The Building Standards Law
- The Fire Protection Law
- The City Planning Law
- The Land Appropriation Law
- The Agricultural Land Law
- The National Land Use and Planning Law

1.3 What is the land registration system?

Real property registrations are regulated by the Real Property Registration Law. Real property registries are maintained at the local Legal Affairs Bureaus of the Ministry of Justice throughout Japan. Real property registries consist of the land registry and a separate building registry if a registered building exists. Registered rights are presumed to be valid and. generally, the first to complete registration will have priority over others.

1.4 Which authority manages the registration of titles?

Title registration is usually managed by the local office of the Legal Affairs Bureau in the jurisdiction in which the property is located.

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

- Freehold ownership of land and buildings
- Leases of land and buildings
- Mortgages
- Easements
- Preference/option rights
- Redemption/repurchase rights
- Liens
- Attachments
- Stone quarry rights

1.6 What documents can land owners use to prove ownership over real property?

Land ownership may be proven by the certified original of the title deed.

1.7 Can a title search be conducted online?

Yes, for properties in certain areas through the website of the Ministry of Justice.

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

Yes. There is generally no restriction on foreign ownership of real estate in Japan.

1.9 Can the government expropriate real property?

Yes, but the eminent domain powers in Japan are very weak and often involve long-term negotiations between the government and the property owners.

1.10 How can real estate be held?

Generally, an interest is held by the following:

- Freehold
- Leasehold
- Condominium or strata title ownership

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

- Individuals
- Co-ownerships
- Corporations
- Trusts

- GK-TKs (structure using a Japanese limited liability company (godo kaisha) or a silent partnership agreement (tokumei kumiai), which is similar to a limited liability partnership)
- TMKs (structure using a Japanese limited liability company (tokutei mokuteki kaisha), formed pursuant to the Asset Liquidation Law)
- REIT

1.12 How are real estate transactions usually funded?

All cash or by a down payment in cash plus recourse financing from a local lender. Limited-recourse financing is also available for certain investment properties but mostly to institutional investors or funds using a bankruptcy remote holding structure.

1.13 Who usually produces the documentation in real estate transactions?

Generally, the seller's real estate broker will use a standard form sale and purchase agreement for most single family homes and residential condominiums. For commercial properties, either the seller or buyer will prepare the sale and purchase agreement. Title transfer documents are often prepared by a licensed judicial scrivener who will file the title transfer documents with the local Legal Affairs Bureau where the property is located.

1.14 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?

Yes. The owner generally inherits such liability, including obligations under existing leases and environmental liability, although the owner will retain the right to seek recourse against the previous owner and others that have caused such liability unless the owner has agreed otherwise by contract.

An occupier generally does not inherit such liability unless the occupier has contractually agreed to assume such liability under a lease agreement or another document.

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

Yes – to the extent the seller or the previous occupier was responsible for such liabilities except with respect to the subsequent owner or occupier if they have agreed to contractually assume such liabilities in a sale and purchase agreement or another document.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Sale and purchase agreements
- Financing-related documents
- Title transfer-related documents

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

A seller usually gives the following warranties:

- Ownership
- Right to sell the property and convey title
- No third party claims
- No notice of condemnation
- Real property taxes not delinquent

- Compliance with the Building Standards Law, the Fire Protection Law, the City Planning Law, the National Land Use and Planning Law and environmental laws

If a licensed real estate broker is involved, the real estate broker is mandated by law to provide written disclosures and verbal explanations about the important matters concerning the sales contract and the property. The seller's licensed real estate brokers usually provides such disclosure and explanations if there is one representing the seller.

2.3 When is the sale legally binding?

The sale is legally binding upon the execution of the sale and purchase agreement, subject to the terms and conditions therein.

2.4 When is title transferred?

Title transfers on the date agreed to in the sale and purchase agreement, usually the date when the sales price is paid in full, the property is delivered to the buyer, and/or the title transfer documents are delivered to the buyer and filed with the local Legal Affairs Bureau.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for:

- Buyer's real estate broker fees
- Judicial scrivener's fee (if retained by the buyer, or a portion if retained by the buyer and the seller)
- Stamp tax on the sale and purchase agreement
- Title transfer filing fees
- Real estate acquisition tax
- Real estate license and registration tax

- Consumption tax on value of the building

The seller usually pays for:

- Seller's real estate broker fees
- Judicial scrivener's fee (if retained by the seller or a portion if retained by the buyer and the seller)
- Income tax on any profit

3. Leases

3.1 What are the usual forms of leases?

- Ordinary leases (with statutory right of renewal except in certain instances)
- Fixed-term leases (with no right of renewal)

3.2 Are lease provisions regulated or freely negotiable?

Lease provisions are generally freely negotiable subject to certain statutory restrictions, such as ground leases must be 30 years or more except a fixed-term ground lease, which must be 50 years or more, but ground leases for a business can be from 10 to 20 years.

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

There is no maximum term for leases.

3.4 What are the usual lease terms?

Ordinary leases for residences and office space are often for two years and fixed-term leases can still be for two years but are often for five to 10 years but are used mostly for commercial leases.

Ground leases must be 30 years or more except fixed-term ground leases, which must be 50 years or more, but ground leases for business can be from 10 to 20 years.

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

Yes, tenants under ordinary leases generally have the statutory right to have their leases renewed subject to the payment of market rent. Tenants under fixed-term leases do not have the right to any extension or renewal (a new lease will need to be entered into subject to the parties agreeing to the terms and conditions of the new lease).

3.6 On what grounds may a lease be terminated?

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

- End of the lease term for a fixed-term lease and subject to the statutory renewal right being exercised by the tenant under an ordinary lease
- Upon material breach of the lease terms

3.7 Must rent be paid in local currency?

No, but landlords almost always require payment of rent in local currency.

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

Yes – rent is usually paid monthly and in advance but not required to be paid monthly or in advance if otherwise agreed.

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

Some longer-term leases have rent review clauses but it is usually based on the then market value subject to negotiations between the tenant and the landlord. Pursuant to the Land and Building Lease Law, the landlord or

the tenant may request a review of the rent if the rent has become unreasonable due to change in taxes, impositions, the economy or other circumstances.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Repair and maintain the land and building of the leased premises for its intended purposes
- Insure the property other than within the leased premises
- Comply with applicable laws

The following is usually required of tenants:

- Pay rent and other amounts on time
- Use the premises within the scope of use permitted under the lease
- Keep the leased premises in good order
- Comply with applicable laws and building rules

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

The transfer or assignment of the lease is usually not permitted without the landlord's consent. Granting consent to sublet is often at the landlord's sole discretion. The landlord may sometimes agree to permit a sublease without the landlord's consent if the sublease is to an affiliate of the tenant.

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

If the premises is substantially damaged or destroyed by an act of God, the lease is often subject to termination. Some leases include a rent abatement

clause determine based on the extent of the damage or destruction if the damage or destruction does not trigger termination.

If the premises is damaged or destroyed due to causes attributed to the tenant, then the tenant would be liable for repairs or replacement. Likewise, if the premises is damaged or destroyed due to causes attributed to the landlord, then the landlord would be liable for repairs or replacement.

3.13 Who is usually responsible for insuring the leased premises?

The tenant is usually responsible for insuring improvements in the leased premises and the landlord is usually responsible for insuring the building shell and common areas.

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

Generally yes – the landlord's position under leases in most circumstances would transfer to the new owner of the property upon sale.

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

If the tenant's leasehold rights existed before the mortgage was registered, the lease would survive after the leased premises is foreclosed. However, if the tenant's leasehold rights were created after the registration of the mortgage, the lease can be terminated upon foreclosure of the leased premises.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

- The Ministry of Land, Infrastructure, Transport and Tourism
- The Ministry of the Environment
- Local governmental agencies

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

- The Air Pollution Prevention Law
- The Water Quality Pollution Prevention Law
- The Soil Pollution Prevention Law
- The Waste Management and Public Cleaning Law
- The Special Measurement Law Concerning Polychlorobiphenyl

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

A construction confirmation document (kenchiku kakunin), similar to a building permit, and the certificate of inspection (kensazumi sho), similar to a certificate of occupancy, from the local government agency are required.

4.4 Can an environmental cleanup be required?

Yes, the government can, under applicable environmental laws, order an environmental cleanup.

4.5 Are there minimum energy performance requirements for buildings?

The Energy Conservation Law sets certain energy efficiency standards through the Criteria for Clients on the Rationalization of Energy Use for Buildings for Non-Residential Buildings, and the Design and Construction Guidelines on the Rationalization of Energy Use for Homes.

Local building codes such as the ordinances of the Tokyo Metropolitan Government also provide energy-efficiency requirements.

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

No, but a number of voluntary standards for environmentally sustainable buildings are becoming more popular among some developers and tenants that seek certifications from third-party programs such as the Leadership in Energy and Environmental Design (LEED) and the Comprehensive Assessment System for Built Environment Efficiency (CASBEE).

21 Luxembourg

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Any buildings or structures of any kind on the land

1.2 What laws govern real estate transactions?

The laws governing real estate transactions can be divided into two categories.

General legislation:

- Constitution of the Grand-Duchy of Luxembourg (the "Constitution")
- The Luxembourg Civil Code (the "LCC")
- The Criminal Code

Specific laws (including the following):

- Law dated 16 May 1975 on the status of divided co-ownership
- Regulation dated 3 September 1985 regarding the selling of floor-plan buildings (immeuble en l'état futur d'achèvement)
- Law dated 25 September 1905 on the transcription of real property rights

1.3 What is the land registration system?

There are three public authorities involved in the Luxembourgish land registration system:

- Public notaries

- The Luxembourg land tax registry (Administration de l'Enregistrement et des domaines or AED)
- The cadastral authority (Administration du cadastre et de la topographie or ACT)

The land registration procedure entails three steps:

- The sale of land property must be enacted before a public notary, who will carry out inquiries into the seller, the existence of mortgages, or any other charges on the property
- The notarial deed will then be submitted to the AED for transcription
- The relevant information (size of the land, geographic situations) are transmitted to the ACT for the registration in public records

1.4 Which authority manages the registration of titles?

Title registration is jointly handled by the following authorities:

- A subdivision of the AED, namely the mortgages office (Bureaux de la Conservation et des Hypothèques)
- The ACT

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

- Transfer of property ownership (sale, donation)
- Ownership sharing agreements (usufructus)
- Mortgage over real estate properties
- Long-term leases (with a duration period exceeding nine years)

1.6 What documents can land owners use to prove ownership over real property?

First, land owners can prove their ownership over real estate property via notarial deeds or their transcription by the AED. Secondly, a document evidencing the transcription can be obtained upon written request of the owner to the AED.

1.7 Can a title search be conducted online?

Only public administrations, administrations of municipalities, public entities operating in the real estate sector, geometers, bailiffs and notaries may perform an online search of title.

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

Foreigners are entitled to own real property in the same way as nationals; there are no nationality restrictions on land ownership.

1.9 Can the government expropriate real property?

Real estate property owners can be expropriated by the government only in case of public interest. Appropriate financial compensation must be paid to an expropriated owner according to Article 16 of the Constitution and Article 545 of the LCC, notably according to administrative procedure and regulations.

1.10 How can real estate be held?

Generally, an interest in real estate is held by any of the following means:

- Ownership
- Undivided property co-ownership (indivision)
- Long-term lease

- Short-term lease

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

The usual structures used in Luxembourg for investing in real estate are either regulated or unregulated vehicles.

Unregulated real estate investment vehicles include the following:

- Corporate companies – this is most commonly used by professional, institutional and private investors for the acquisition of real estate
- Public limited company (Société Anonyme) or private limited company (Société à responsabilité limitée) – in practice, these are the most popular corporate forms in the Luxembourg real estate market
- Securitization vehicles – this is where a wide range of assets, tangible or intangible, movable or immovable, including real estate, are to be securitized

Regulated real estate investment vehicles include the following:

- Undertakings for collective investment – real estate UCIs must invest their funds in real estate, open their shares or units to the public by means of a public or private offer, and have the exclusive objective of investing in real estate assets in accordance with the principle of risk diversification
- Specialized investment funds – SIFs are considered one of the most successful tools in the real estate market, being operationally flexible and fiscally efficient
- SICARs (Sociétés d'investissement en capital à risque) ie, companies investing in risk capital – real estate investments need to have risk capital characteristics to be classified as eligible assets. However, such

vehicles can invest 100% of their assets in one target investment as they do not need to comply with risk diversification requirements

1.12 How are real estate transactions usually funded?

Short-term or long-term bank loans, mortgages, multi-currency and revolving credit line facilities represent the main source of financing of real estate investments in Luxembourg. However, external financing and equity may be pushed down in the form of inter-company loans, profit participating loans and other kinds of hybrids.

1.13 Who usually produces the documentation in real estate transactions?

If a notarial deed is required, the notary will prepare the documentation. Lawyers often prepare a letter of intent (compromis de vente).

If private seal documentation is sufficient for the purpose of the transaction, documentation is usually drafted by lawyers.

1.14 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?

An owner is liable for matters relating to the real estate even if they occurred before he/she bought it, meaning that he/she, in principle, inherits the liabilities for such matters. However, in most real estate transactions and especially relating to pollution matters, sales contracts often set forth that the real estate is sold without pollution casualties. Such clause allows the current property owner to shift liability to the former property owner.

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

Under Luxembourg law, the liabilities of the seller can be divided into two categories:

- General provisions

The law provides for a guarantee in respect of latent defects (vices cachés) of the sold property which renders it unfit for the purpose for which it was intended, or which affects the use of this property. The seller would be liable if the buyer would not have acquired, or would have paid a lower price, if he/she had known of such condition. The seller is not liable for latent defects which the buyer was able to discover himself/herself.

- Liabilities relating to the purchase of buildings under construction

  The seller/constructor of a building to be constructed is liable for hidden defects for 10 years upon acceptance of the construction used by the purchaser, pursuant to the LCC.

  The action arising under this guarantee may be exercised by subsequent purchasers only against the original seller, ie, the constructor.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Letter of intent (not mandatory but commonly used)
- Notarial deed (mandatory for transcription purposes)
- Security documentation, if any (eg, mortgages, pledge agreement, bank account or share pledge)

The following documents are usually prepared for purchases of buildings under construction (Article 1601-1 and the following articles of the LCC):

- Construction plans
- Description of the technical characteristics and data of the building and the materials to be used

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

The main warranties given by a seller to a buyer are as follows:

- Quiet and peaceful possession of the property
- Warranty against latent defects of the property
- Warranty in case of eviction from the premises
- Warranty in case of pollution

2.3 When is the sale legally binding?

Parties are legally bound as soon as they execute the letter of intent (as the case may be), such document being equivalent to a sale agreement. The letter of intent usually provides for a penalty clause pursuant to which the party who would not execute the notarial deed would be indebted to pay 10% of the purchase price to the other party.

If there is no letter of intent, the sale is legally binding upon execution of the notarial deed.

2.4 When is title transferred?

The transfer of ownership usually takes place upon execution of the letter of intent, in case the parties have executed such document before the notarial deed.

However, parties may insert a clause in the letter of intent stating that the title will only be transferred only upon execution of the notarial deed.

If there is no letter of intent, title is transferred upon execution of the notarial deed.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- Notary fees
- Registration fees (6% of the property sale price)
- Transcription fees (1% of the property sale price)
- Agent fees (generally range from 2-5% of the purchase price)

3. Leases

3.1 What are the usual forms of leases?

There are three main types of real estate leases:

- Commercial leases (bail commercial) – the landlord provides the tenant with premises for the purpose of trade activities
- Residential leases (bail à loyer) – the landlord provides the tenant with premises for residential purposes
- Agricultural leases (bail à ferme) – the landlord provides the tenant with land for the purpose of cultivating and harvesting it

3.2 Are lease provisions regulated or freely negotiable?

Lease provisions are mostly freely negotiable (especially regarding commercial leases), but there are some legal provisions with which the parties have to comply. For instance, the lease period for residential leases is freely set by the parties, but the renewal provisions of the lease agreement are regulated.

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

According to Luxembourg law, there is no maximum term for leases. The lease agreement may be open-ended or with a fixed term; in the latter case, Luxembourg law does not prevent the term of leases to be extended. The extension can be set forth contractually either expressly or by tacit renewal.

3.4 What are the usual lease terms?

Leases are concluded for an indefinite period, unless the parties specified a duration, which in practice are as follows:

- Three years (house and big apartment) or between one and two years (small apartment) for residential leases
- Three years with tacit renewal up to nine years for commercial leases

Leases can be concluded either for a limited or unlimited duration. If not specifically indicated, commercial leases are presumed to be concluded for an undetermined period.

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

For commercial leases, there is one possible lease extension:

- Preferential renewal (renouvellement préférentiel) – when the business lease agreement comes to end, the tenant may claim for a preference right for the renewal of the business lease agreement. The landlord may refuse the renewal of the lease agreement for certain reasons (eg, non payment of rent, occupation by the landlord of the premises, etc.). The landlord may refuse the renewal of a lease after nine years of occupation without reason if he/she pays an eviction indemnity to the tenant. That compensation can be also paid by a third party (eg, a new tenant who will occupy the premises)

For residential leases, if the landlord terminates the lease agreement for personal needs, the tenant may claim an extension of the notice period, up to a maximum of one year, before a Luxembourg court.

3.6 On what grounds may a lease be terminated?

In case of commercial leases, parties are bound for the duration of the lease and may not terminate the lease contract before the end of the lease

term. However, in case of major breach, a party may request termination before a court.

A landlord may terminate a residential lease for any of the following reasons:

- Personal needs (wanting to use the leased premises for himself/herself or his/her family)
- A serious and legitimate ground (motif grave et légitime) (eg, demolition of the building in case of unhealthy conditions insalubrité)
- If the tenant does not comply with its obligations under the lease agreement

The tenant may terminate the lease agreement if the landlord does not comply with the terms and conditions of the lease contract.

3.7 Must rent be paid in local currency?

Rent may be paid in local or foreign currency. In theory, it can also be paid in goods or wares of any kind (mostly applicable in case of agricultural leases).

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

Parties are free to specify the period of rent payments in the lease agreement. In practice, rent in Luxembourg is mostly paid on a monthly basis for residential leases and on a quarterly or yearly basis for commercial leases.

There is no mandatory legal provision regarding timing of payment. The parties generally agree that the rent has to be paid before or at the beginning of the month for which the rent is due.

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

As for commercial leases, there are no legal provisions relating to the review of rent.

As for inflation, the landlord may insert an indexation clause in the lease agreement so that the rent will automatically be adapted in case of a variation in the inflation index.

For residential leases, rent can be reviewed only every two years. Luxembourg law distinguishes two cases for residential rent review:

- For lease agreements concluded before 1 November 2006, a written notice has to be sent to the tenant, who has three months to accept the rent increase or terminate the contract; if the rent increase exceeds 10% of the current lease amount, this increase must be split over the next three years (eg, a 3.3% increase per year).

- For lease agreements concluded after 1 November 2006, the 10% limit does not apply, so the landlord may increase the rent above 10% without the three-year split described above. In any case, the aggregate annual amount of the rent may not exceed 5% of the amount invested by the landlord to acquire the building. The landlord shall first send a notice to the tenant and if no arrangement can be found within a month, a mediator (commission des loyers) may intervene, whose decision may be appealed before a Luxembourg court.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Deliver the leased premises in a good state

- Proceed with major repairs to provide the tenant with leased premises in a good state

- Guarantee the right to peacefully use the leased premises
- Guarantee the tenant against hidden defects and conformity defects (défauts de conformité)

The following are usually required of tenants:

- Use the leased premises according to the "prudent-man rule" (en bon père de famille), for the purpose indicated in the lease agreement
- Pay the rent
- For residential leases, proceed with minor repairs, except if damages are due to wear and tear (vétusté), in which case the landlord shall proceed with such repairs

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

The tenant is allowed to sublet the leased premises or to transfer the lease contract, except if this is expressly prohibited in the lease agreement.

Leases often contain a prohibition clause. Notwithstanding such prohibition clause, subletting a commercial lease agreement is possible under the following conditions:

- Subletting is carried out together with the sale of the business ongoing in the premises
- An identical business remains carried out in such premises

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

If, during the term of the lease, the leased premises are totally destroyed by force majeure, the lease contract is automatically terminated. If the leased premises are only partially damaged, the tenant may request either (i) a reduction in rent; or (ii) termination of the lease.

3.13 Who is usually responsible for insuring the leased premises?

The landlord is responsible for insuring the leased premises (ie, the building) and the tenant is responsible for insuring all furniture and other items in the leased premises.

The tenant is responsible for any damages (even to the building) caused by fire and therefore has the responsibility to be insured against such risk.

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

If the leased premises are sold by the landlord during the lease, the lease agreement is transferred to the purchaser. The new landlord may not terminate the lease agreement except if this is expressly allowed in the lease contract.

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

The lease will survive in the event of foreclosure.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

The Ministry of Sustainable Development and Infrastructures is the main Luxembourg authority responsible for land development and environmental regulation. Its department of environment and two main administrations, ie, the environment administration and the nature and forests administration, as well as local authorities, promote and implement the environmental policies.

The Ministry of the Interior also has authority over land development and environmental regulation through its administration of water management.

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

The main environmental laws relating to the use and occupation of real estate are the following:

- Law of 10 June 1999 relating to classified establishments (commodo/incommodo)
- Law of 30 July 2013 on land planning
- Law of 19 July 2004 relating to the organization of communities and the development of cities

In addition, there is a Luxembourg Environmental Code, which compiles all legislation and regulations on environmental aspects.

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

- The main permit required in Luxembourg for building real estate is the construction permit (autorisation de construire). Legal entities and physical persons shall apply before local administration to obtain this mandatory permit for construction, arrangement, transformation or expansion of houses and residential or commercial buildings.
- Certain activities, installations or constructions require a special authorization (commodo/incommodo procedure). The law provides a list of these establishments classified in accordance with their potential polluting or other hazardous activities. If any modification to the activity occurs, the classified establishment has to notify the competent authority, which decides if a new authorization is required.
- Permits (so-called plan d'aménagement du territoire) relating to municipalities' lands, which have to be approved by the counsel of the municipality and the Interior Minister
- Specific permit is also required for building in a "green zone."

4.4 Can an environmental cleanup be required?

Most of the legal provisions on environmental cleanup can be found in the framework of hazardous activities. Luxembourg law allows investigations from environmental authorities and imposes certain obligations on companies with hazardous activities such as site rehabilitation at the end of the activity.

4.5 Are there minimum energy performance requirements for buildings?

In case of sale or lease, sellers or owners must provide an energy performance certificate.

This EPC is required for all newly constructed buildings as well as for existing buildings.

The EPC is issued by qualified experts and remains valid for a period of 10 years.

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

It is possible to obtain state financial aid for energy-saving structures (ie, photovoltaic systems, heat pumps) relating to newly constructed and existing buildings.

22 Malaysia

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "land" includes the following:

- The land (including anything on or forming the surface and earth below the surface)
- All things attached or permanently fastened to the earth including any buildings or structures constructed on the land
- All vegetation and other natural products on or below the surface
- Land covered by water

1.2 What laws govern real estate transactions?

The principal legislation governing all land in West Malaysia is the National Land Code 1965 (the "NLC"). The Strata Titles Act 1985 (the "STA") is the legislation that governs all subsidiary titles and is issued where there is a subdivision or stratification of buildings (ie, condominiums and apartments) in West Malaysia. The STA is to be read and construed together with the provisions of the NLC.

Additionally, save in certain circumstances, land falls within the purview of the state governments (states) and are subject to the land rules enacted by the relevant states where the land is located. The federal land commissioner has authority over land in the three federal territories of Kuala Lumpur, Putrajaya and Labuan.

Where title has not been issued, where the land has not been alienated or where there is a disposal of interest relating to interests forming part of master titles in a development, the law of contract and common law of equity in addition to the NLC and STA applies.

In East Malaysia, the Sabah Land Code governs all lands in the state of Sabah while the Sarawak Land Code governs all lands in the state of Sarawak.

1.3 What is the land registration system?

The NLC codifies the Torrens system of ownership by registration where the register at the relevant land registry/office reflects all interest in land. All dealings are to be carried out using prescribed forms and registration with the land authorities.

1.4 Which authority manages the registration of titles?

Title registration is managed by the land registrar or the land administrator of the relevant states, depending on the locality, size and the category of use of the land. Where the land falls under the jurisdiction of the land registry, the registration of title is managed by the land registrar. Where the land falls under the jurisdiction of the land office, the registration of title is managed by the land administrator.

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

All dealings in respect of the land must be registered and such registration shall be reflected on the title of the property. The following are dealings under the NLC:

- Transfers
- Leases
- Charges
- Easements
- Liens

1.6 What documents can land owners use to prove ownership over real property?

Where title has been issued in respect of the land, the issue document of title proves the ownership to the property. If the title has not been issued, the instrument of the ownership over the land will usually be the original sale and purchase agreement, and where there have been assignments, the original deeds of assignment together with the original sale and purchase agreement will reflect the owner of the land.

1.7 Can a title search be conducted online?

Although details of land in Malaysia are public records, in general, title searches cannot be conducted online save for the federal territory of Kuala Lumpur. The federal territory of Kuala Lumpur has a portal for conducting title searches online for a fee. In other states, title searches can be done for a fee at the relevant land registry or land office.

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

Generally, alienated land in West Malaysia may be transferred freely unless expressly restricted by a condition on the issue document of title. Under the NLC, foreigners must obtain the prior approval of the relevant authority of the state before acquiring real property in West Malaysia.

Economic Planning Unit (EPU) approval is required for real property transactions resulting in the dilution of Bumiputera or government interests in real property as follows:

- Direct acquisition of real property where:
    - there is a dilution of Bumiputera or government interests in real property; and
    - the property is valued above MYR 20 million.

- Indirect acquisition of real property through acquisition of shares if:
    - the transaction results in a change in control of the company owned by Bumiputera interest and/or government agency;
    - real property makes up more than 50% of the said company's assets; and
    - the real property is valued at more than MYR 20 million.
- Additionally, pursuant to the Guideline on the Acquisition of Properties issued by the EPU (the "EPU Guidelines"), foreign interests may only acquire commercial, industrial and residential properties above the value of MYR 1 million. Approval will not be forthcoming for properties below this threshold.
- Special conditions apply to agricultural lands. Under the EPU Guidelines, foreigners may only acquire agriculture lands (whether directly or indirectly) valued at MYR 1 million or above or at least five acres for the purposes of any of the following:
    - Commercial scale agricultural activities using modern or high technology
    - Agro-tourism projects
    - Agricultural or agro-based industrial activities for the production of foods for export

The following are defined under the EPU Guidelines:

- "Foreign interest" means a person who is not a Malaysian citizen, or a foreign incorporated company or a local incorporated company with 50% or more of its equity interest held by a Malaysian citizen or a foreign incorporated company

- "Bumiputera interest" means any interest, associated group of interests or parties acting in concert comprising:
- a Bumiputera individual (a Malay individual or aborigine as defined under the Federal Constitution);
- a Bumiputera institution and trust agency; or
- a local company or institution where the parties stated in item (a) and/or (b) above hold more than 50% of the voting rights in that local company or institution.

Further, as land matters fall within the purview of the state governments, each state also has specific policies restricting the acquisition of land by foreigners, which vary from state to state.

In other instances, approval is unlikely to be granted.

Notwithstanding the EPU Guidelines, foreigners are generally restricted from directly acquiring agriculture lands in West Malaysia under the policies of the individual states.

1.9 Can the government expropriate real property?

Yes. The state authority having jurisdiction over the land can compulsorily acquire whole or any part of a property in limited circumstances but adequate notice and appropriate compensation needs to be given to the land owner.

1.10 How can real estate be held?

Generally, in West Malaysia an interest over real property can be held by any of the following means:

- In perpetuity (ie, freehold)

- For a term not exceeding 99 years (leasehold land and leases, leases over part of land, tenancies and temporary occupation licenses have shorter terms)

Note: Ownership and interest derives from registration and may also arise by way of contract (tenancy or license agreement).

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

- Companies (including joint ventures)
- Trusts including real estate investment trusts

Individuals may also hold real estate.

1.12 How are real estate transactions usually funded?

The most common methods of financing real estate transactions are through the following:

- Cash
- Shareholders' advance/loan
- Financing through institutional lenders such as financial institutions
- Issuance of securities (ie, notes, bonds, shares, etc.)

Where financing is obtained from an external source (ie, banks or financial institutions), the property will usually be placed as security or collateral (by way of charge or assignment) for the repayment of the loan. Depending on the situation and the credit history of the borrower, the lender may also require additional security such as personal guarantees from the directors of the borrower and/or corporate guarantees from the borrower, the borrower's parent company or its associated company.

Typically, it is the borrower's obligation to bear all costs in relation to the transaction including the lender's legal fees, processing fees, the relevant

stamp duty payable on the loan documentation and such other incidental charges in relation to the transaction.

1.13 Who usually produces the documentation in real estate transactions?

Typically, the buyer's solicitors will prepare the initial draft letter of offer and the sale and purchase agreement. However, if the property is disposed prior to the issuance of title, then as a matter of practicality, the seller's solicitors will prepare the initial draft of the purchase agreement.

1.14 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?

Generally, the owner will only be liable for the property from the date the owner becomes the registered proprietor of the property.

However, an owner could inherit liability prior to the property being transferred where there is a breach, and such breach continues after the transfer, of any of the following:

- Condition of title
- Environmental requirements

By way of example, the land registry/land office may require the current owner to comply with specific conditions on title and the Malaysian Department of Environment (DOE) may require the current owner to clean up contamination even if the owner had not caused the contamination.

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

To the extent that the seller did not commit an offence, the seller will not retain any liabilities.

Where the seller committed an offence while being the registered owner or occupier of the land, then disposal of the land does not in itself automatically release the seller from such offence.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Letter of offer

  This is usually the first document to be signed in any real estate transaction. The letter of offer records the parties' mutual intent to sell/buy the property and the key terms (ie, price, time and manner of payment of the price, conditions precedent, if any, conditions of title, if any, and time period to negotiate and finalize the SPA, etc.). The letter of offer is normally binding against the parties and pending the execution of the formal sale and purchase agreement, the letter of offer will bind the parties to the transaction.

- Searches/due diligence report (where necessary)

  Depending on the nature and value of the property, the buyer may instruct their solicitor to conduct due diligence on the property prior to the execution of the sale and purchase agreement. It is the norm that the buyer's solicitor conducts a land search on the property (with title) to ascertain ownership by the seller and also whether there are any issues arising from the land that are relevant to the buyer.

- Sale and purchase agreement

  The sale and purchase agreement will record all relevant terms in respect of the transaction and to the property. The sale and purchase agreement should also contain the typical rights and benefits accruing to the buyer and the representations and warranties of the seller.

- Instrument of transfer

  This refers to the instrument of transfer prescribed by the NLC to be presented to the relevant land registry or land office to affect registration and is applicable where title to property has been issued.

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

In addition to warranties in relation to title to the property, a seller usually gives the following warranties:

- The seller has all appropriate authority to dispose the property
- There are no encumbrances on the property (usually save for a legal charge/assignment in favor of the seller's current financier)
- The seller shall not further encumber the land in any way whatsoever without the buyer's consent
- The seller has complied with all restrictions in interest and conditions on title to the property (express and implied)
- The seller is not aware and has not received any notice for compulsory acquisition in respect of the property

2.3 When is the sale legally binding?

Parties are usually bound upon the execution of the letter of offer. Where the letter of offer is expressed as not binding, then upon execution of the sale and purchase agreement (subject to any conditions precedent provided in the agreement).

2.4 When is title transferred?

Under the Torrens system, title to or interest in land vests only upon registration. Although the process of registration may take a few months, upon completion of the registration process, title/interest is transferred to

or vested in the purchaser as of the date of presentation of documents at the relevant land registry/office.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- Stamp duty on all copies of the sale and purchase agreement
- Stamp duty on the instrument of dealing
- The buyer's own legal costs (including due diligence costs, professional consultation charges, etc.) in connection with the preparation and completion of the transaction
- Registration fees for the dealing and for any approvals/consents required to be obtained by the buyer
- Goods and services tax (save for acquisition of residential property)

The seller usually pays for the following:

- The seller's own legal costs (including due diligence costs, professional consultation charges, etc.) in connection with the preparation and completion of the transaction
- Fees for any approvals/consents required to be obtained by the seller
- Real property gains tax
- Goods and services tax (depending on whether parties have agreed the purchase consideration is exclusive or inclusive of goods and services tax) – does not apply to residential property

3. Leases

3.1 What are the usual forms of leases?

The NLC distinguishes between "leases," which have a term exceeding three years (and are required to be registered) and "tenancies," which have a term up to three years (and are not registrable).

Registration of a lease accords a lessee certain rights against future owners of the land. However, tenancies may be endorsed giving the tenant similar rights to that of a registered lessee.

Leases and tenancies may be made up of the following:

- Lease or tenancy over the whole or part of a land

  Where the lease or tenancy is over vacant land, the lessee or tenant may have rights for development or further use of the land. Where there is vegetation, buildings or structures on the land, by implication of the definition of land, the lease or tenancy would include such vegetation, buildings or structures.

- Lease or tenancy over part of a building or structure

  Leases or tenancies may also be in respect of only part of a building or structure. Lessees or tenants in this instance will not normally have rights in and to the land.

3.2 Are lease provisions regulated or freely negotiable?

Generally, provisions of a lease agreement are freely negotiated by the parties. However, certain provisions in the NLC, unless specifically excluded, are implied in lease agreements.

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

The NLC sets forth the following:

- Where the lease is over the entire land, the maximum tenure of the lease is 99 years
- Where the lease is over part of a land, the maximum tenure of the lease is 30 years

Parties may negotiate to provide for an extension of the lease by election by one or more parties or by mutual agreement. In the absence of such extension, the lease will expire.

3.4 What are the usual lease terms?

The length of the term usually depends on the purpose of the lease. Most leases of office or retail spaces are for three- or five-year terms with options to extend the term for a further period(s) of three or five years.

Leases for industrial and commercial lands are normally for longer periods ranging 5–10 years or 15–30 years. Often, lessees are entitled to rights of renewal for additional terms.

Large commercial and industrial facilities will sometimes require an electricity substation to be built on the land and the utility company will normally take a long-term lease over the land for the portion where the substation is situated.

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

These are to be contractually agreed by the parties. In the absence of an agreement, lessees or tenants do not have an express right to extension.

3.6 On what grounds may a lease be terminated?

Lease and tenancy agreements normally provide that parties may terminate upon breach of the terms of the lease/tenancy. A landlord can generally terminate a lease should the tenant fail to honor the terms of the lease agreement, including failure to pay rent and to maintain the property

in good condition. Damage and destruction to the property and compulsory acquisition may also allow a lease to be terminated.

3.7 Must rent be paid in local currency?

Parties are free to decide currency of payment, but Malaysian ringgit is typically used.

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

Rent is usually paid monthly and in advance (within the first seven days of the month). However, this is subject to contract.

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

Rent is usually fixed for the initial term, but this is subject to contract. The mechanism for determining the revision of rent for a renewal period is usually provided for in the lease agreement. It is common when considering rent revision that rent for the renewal period takes into account the current market value of the property. Otherwise, a formula may be provided, which may provide limits for increasing the rent.

There is no specific limitation on rent increases.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Maintain and keep the structure of the building in good and tenantable condition and repair
- Take out fire insurance on the property
- Pay all quit rent and assessment in respect of the land
- Permit the tenant to peaceably hold and enjoy the property during the term without any interruption or disturbance by the landlord (subject to the tenant not breaching the lease)

The following is usually required of tenants:

- Pay rent to the landlord in a timely manner
- Keep the interior of the property in good and tenantable condition and repair
- Pay all utilities due
- Take out fire insurance on the tenant's property

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

Typically, a lease can only be transferred, assigned or sublet to a third party with the prior written consent of the landlord. However, parties are free to contractually agree to subletting rights.

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

Depending on the severity of the destruction, the landlord may opt to rebuild the property. In the meantime, rent of the property is often suspended.

In the event that the leased premises becomes untenantable, the tenant usually has the right to terminate the lease agreement without any penalty.

3.13 Who is usually responsible for insuring the leased premises?

The landlord is responsible for insuring the premises. However, the tenant is usually responsible for insuring the tenant's property within the leased premises.

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

Given that a lease is a registrable transaction and the NLC provides that leases are to be registered, upon registration of a sale of property, the new

owner will be aware of the existence of the lease. The terms of the lease will survive and are binding on the new owner.

Do note that tenancies are contractual and are not registrable and will therefore not bind the new owner unless it is endorsed on the title.

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

If the foreclosure is in respect of a legal charge registered prior to the lease, then in the absence of a non-disturbance agreement, the lease may be terminated at the option of the chargor.

Where the lease was registered prior to a legal charge, then the lease will survive foreclosure proceedings. Again, tenancies generally do not survive foreclosure proceedings.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

The relevant local authority having jurisdiction over the property has the authority over land development.

The Ministry of Natural Resources and Environment has the overall responsibility and authority in ensuring a balance between the management of natural resources and the environment in achieving sustainable development. The DOE (an enforcement arm of the Ministry of Natural Resources and Environment) has authority over environmental regulation.

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

The primary legislation that is related to the prevention, abatement, control of pollution and enhancement of the environment in Malaysia is the Environmental Quality Act 1974 (the "EQA") and all subsidiary legislations.

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

A development order and approved building plans must be obtained prior to the commencement of any construction on land. Upon completion of the construction and prior to occupation of the building, the owner or occupier will have to obtain a Certificate of Fitness (a "CF") or a Certificate of Completion and Compliance (a "CCC").

Where the proposed activity on the property falls under the category of "prescribed activity" within the meaning of the EQA, an environmental impact assessment must be conducted and approved by the director general of environmental quality.

Additionally, where manufacturing activities are to be undertaken on the property, the owner or occupier must obtain prior approval from the Ministry of International Trade and Industry of Malaysia before the commencement of operations.

4.4 Can an environmental cleanup be required?

Under the EQA, the director general may issue a notice to the owner/occupier of land to take steps to reduce, mitigate, disperse, remove, eliminate, destroy or dispose of pollution within the time specified in the notice.

4.5 Are there minimum energy performance requirements for buildings?

No. However, there is a voluntary rating system known as the Green Building Index, which rates green and sustainable buildings designed and constructed that provide energy savings, water savings, a healthier indoor environment, better connectivity to public transport and the use of recycling and greenery for their projects, and which reduce environmental impact.

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

In Malaysia, construction practices are regulated by the Uniform Building By-Laws (the "UBBL"). Two of the provisions of the MS 1525: Code of Practice on Energy Efficiency and Use of Renewable Energy for Non-Residential Building were incorporated into the UBBL by the State Government of Selangor; specifically clause 38A Energy Efficiency in Buildings, which states that:

- New or renovated non-residential buildings with air-conditioned space exceeding 4,000 square meters shall be designed to meet the requirements of MS 1525 with regards to the Overall Thermal Transfer Value (OTTV) and the Roof Thermal Transfer Value (RTTV); and provided with an Energy Management System.
- The roof of all buildings, residential and non-residential, shall not have a thermal transmittance U value greater than: 40 W/m2.K for a lightweight roof of under 50 kg/m2; 60 W/m2.K for a lightweight roof of under 50 kg/m2; unless provided with other shading or cooling means.

Where the buildings are not constructed in accordance with these by-laws, the local authority will not issue the CF or CCC.

23 Mexico

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" is generally defined as follows:

- Land
- All fixtures adhered to the land
- Any type of personal and real right to the land such as the right of use or the lifetime usufruct
- All infrastructure built over and under the land
- All fruit, vegetation and products generated from the land
- Any construction built on the land
- Land itself in Mexico is classified in two categories: "private" property and "public" property. Private property can be "private" or "social" property. Under the category of social property, there is "Ejido" property and "communal" property.

  Private property is owned by individuals or legal entities for their exploitation and use as they may deem convenient.

- Ejido property

  Ejido property is land granted by the Mexican government to a group of individuals for agricultural and ranching purposes. Ejidos are structured as communities or townships. They have internal administration and surveillance boards, respectively known as the Ejido Commissary (Comisariado Ejidal) and the Supervisory Committee (Comite de Vigilancia). Ejido property may exist either for the exclusive use of an individual beneficiary (Ejidatario) in the form of "Ejido

Parcels" or for the common benefit of the Ejido community in the form of "Ejido Community Parcels."

- Communal property

  Communal property is land that belongs to the community for its common use and enjoyment.

  Except for certain specific cases, Ejido and communal properties are inalienable and not subject to liens or attachments. Both, Ejido and communal property require registration with the National Agrarian Registry. This kind of property can be released from its regime and converted into private property; however this involves a complex and formal legal procedure. In the event of release from the Ejido and communal regime, the land would be registered before the Public Registry of Property in the appropriate jurisdiction and subject to civil law provisions.

- Public property

  Public property is the land that belongs to the nation, also known as national property. The national property is property that (i) has not been acquired as private property; (ii) has not been granted by the Mexican government to an Ejido or community; or (iii) is under a federal regime, such as the federal zone, water bodies or federal communication routes.

1.2 What laws govern real estate transactions?

The Mexican legal system is a civil code-based system. A real estate transaction is generally governed by the local civil code and other local laws of the jurisdiction where the property is located.

Real estate transactions in Mexico are subject primarily to civil law as opposed to commercial law, to which they may be subject when the main corporate purpose of the parties involved in a given transaction is to

commercialize real estate. Civil law is within the jurisdiction of the states; commercial law falls under federal jurisdiction, governed primarily by the Federal Code of Commerce. There is substantial uniformity among the different civil codes and related statutes of the states.

1.3 What is the land registration system?

Conveyances of title are executed by the parties before a notary public. The Civil Law Notary, as a licensed attorney, has the duty of verifying that proper title is being conveyed, that the respective no-liens certificate and no property tax debt certificate have been obtained, property appraisal has been done, the transfer tax has been paid, and the description of metes and bounds of the property has been properly transcribed in the corresponding background section of the public instrument that contains the title deed (Escritura Pública) whereby title to a property is conveyed. All real estate transactions must be recorded before the Public Registry of Property in the appropriate jurisdiction. Although recording the instrument issued by the notary public containing the corresponding real estate contract is not the operative formality that creates the rights and obligations between the parties, its declaratory effects are necessary for it to be effective vis-à-vis third parties.

1.4 Which authority manages the registration of titles?

Title registration is usually managed by the Public Registry of Property with jurisdiction over the area in which the property is located. This Registry is the administrative entity in charge of maintaining the official records of the legal status of title of real estate. The Registry's records would reveal limitations of domain and/or use burdening the property such as easements, leases, purchase options, promise agreements, as well as liens or encumbrances.

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

Any legal acts creating or evidencing an interest in real estate are generally considered as recordable instruments, including the following:

- Title transfers
- Mortgages
- Easements
- Restrictive covenants
- Leases (only under certain circumstances such as: (i) if their term or duration exceeds a certain period, generally six years, or (ii) if a tenant pays rents in advance for a certain period, generally for more than three years)
- Co-ownership agreements
- Options to purchase
- Promise agreements (to purchase and/or sale)
- Condominium regimes

1.6 What documents can land owners use to prove ownership over real property?

Land ownership is evidenced by providing the title deed (Escritura Pública) recorded with the Public Registry of Property regarding private property and a Parcel Rights Certificate recorded with the Agrarian Registry regarding Ejido or communal land.

1.7 Can a title search be conducted online?

Yes, in certain Public Registry of Property offices. Not all Public Registry of Property offices in Mexico have the infrastructure to conduct online title searches.

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

Pursuant to the Mexican Constitution and the Foreign Investment Law and its regulations, foreigners cannot acquire real estate lying within 50 kilometers of the coastline or within 100 kilometers of the land borders (the "Restricted Zone") for residential purposes. This area encompasses approximately 40% of the land in Mexico.

A real estate trust approved by the Ministry of Foreign Affairs (SRE) with local banking institutions acting as trustees and foreign investors acting as beneficiaries/possessors/occupants respectively, is the legal structure set forth in Mexican law to allow foreign investors to acquire beneficiary rights over real estate for residential purposes located within the Restricted Zone.

Foreign investors can own non-residential real estate (commercial, industrial or hotel-related purposes) through a Mexican corporation instead of a trust.

Mexican law permits the acquisition of title over land and over mining and water concession rights by foreign individuals outside of the Restricted Zone under certain conditions. Individuals may acquire direct title over land, and over mining and water concession rights by obtaining a special

permit from the SRE and by agreeing to what is known as the "Calvo Clause."[9]

Pursuant to the Mexican Constitution, the state has direct title with respect to minerals, water and hydrocarbon resources that exist below the land's surface. The exploitation of mineral and water deposits, excluding hydrocarbon fuels, may be carried out by private parties through a concession from the federal government. Concession rights on minerals are recorded in the Public Registry of Mining, while water rights are registered with the National Water Commission.

1.9 Can the government expropriate real property?

Yes. Real property can be expropriated by the government provided due compensation is paid to the owner.

In addition, and as a result of the recently published Hydrocarbons Law, exploration and production of petroleum (upstream activities) are considered to be of social and public interest, hence, they should prevail over any other activity implying the exploitation of the surface or subsoil of lands affected by the same.

In connection therewith and pursuant to the terms of the Hydrocarbons Law and its regulations, for petroleum exploration and production activities, the terms, conditions as well as the consideration for the use, enjoyment or encumbrance of lands, property or rights necessary to perform such activities must be negotiated by the contractors or entitlement holders (an "Interested Party") with the owner of the land, or with the holders of the rights or assets (the "Owner"). The negotiation will be carried out taking into account the following process:

[9] A foreign national must agree not to seek the protection of his/her government, otherwise he/she is subject to forego his/her rights over the property acquired for the benefit of the Mexican state.

1. The Interested Party will express in writing its interest in using or acquiring the property, land or right to the Owner (the "Expression of Interest").

2. The Interested Party must describe the project that it intends to develop under the corresponding entitlement or exploration and production contract.

3. The Interested Party must notify the Ministry of Energy (SENER) and the Ministry of Agrarian, Territorial and Urban Development (SEDATU) of the negotiations with the Owner.

4. The Owner's property may be occupied by the Interested Party through a lease, easement, superficial or temporary occupation, sale or any other suitable contract for the development of the project, as long as it does not contravene the applicable legislation.

5. The consideration payable to the Owner should cover: (i) the payment for affecting property or rights, as well as the possible damages and lost profits arising from the performance of upstream operations; (ii) the rent regarding the occupation, easements, or the use of the land; and (iii) in case of extraction of petroleum projects, a percentage of the revenue of the Interested Party in the project. In such case, SENER, assisted by the National Hydrocarbons Commission (CNH), will establish the methodology, guidelines and parameters for the determination of such percentage. The consideration may be paid in cash.

6. The consideration, and the other terms and conditions for the occupation of property or affecting goods or rights, should be determined through a contract in writing, pursuant to the model contracts issued by SENER considering the opinion of SEDATU.

Furthermore, if the land, assets and rights are comprised within any of the regimes of the Agrarian Law, the provisions of such law will also apply.

The contract reached between the Interested Party and the Owner, should be submitted before a civil district judge or before a unitary agrarian court (jointly the "Courts"), to have full validity by considering it res judicata. The Courts will validate whether the contract complied with the requirements provided by the applicable regulations.

If parties do not reach a contract after 180 calendar days as of the date of reception of the Expression of Interest, the Interested Party may file before any of the Courts a request for the creation of a legal petroleum easement, that will comprise the right for individuals to transit and the right of transportation and conduction and storage of materials of any kind. On the other hand, the Interested Party may also request before SEDATU a mediation which should deal with the forms or models of acquisition, occupation, enjoyment or encumbrance of the lands, property or rights as well as the relevant consideration.

1.10 How can real estate be held?

Generally, an ownership interest is held by any of the following means:

- Fee simple conveyance
- Conveyances with retention of domain
- Trusts
- Co-ownership
- Condominium regime

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

- Corporations
- Co-ownerships
- Trusts

1.12 How are real estate transactions usually funded?

Real estate transactions are usually funded by institutional lenders such as banks, non-bank banks and investment funds. Interest rates are based on the rate published by the central bank. A borrower pays for all costs, including the lender's costs.

A lender usually asks for collateral security in real property and related assets. The formalities to create and perfect a lien depends on the type of goods or assets to be encumbered. Certain liens require to be recorded with the applicable Public Registry.

The following are the most common collaterals:

- Mortgage or guarantee trust over a real property
- Stock pledge on the project entities
- Floating pledge over inventory
- Pledge without transfer of possession over non-fixed assets
- Personal guarantee granted by the holding entity or the majority stockholder

1.13 Who usually produces the documentation in real estate transactions?

Generally, the purchaser's attorney will prepare the initial draft of the purchase agreement along with the acting notary public.

1.14 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?

Other than environmental liabilities, hidden and/or apparent defects, real estate taxes, lack of governmental permits, an owner or occupier would generally not inherit liability for matters relating to the real estate even if they occurred before the real estate was acquired or occupied.

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

Yes, a seller or occupier would in certain scenarios retain environmental liabilities, responsibility for hidden and apparent defects, past due taxes and for indemnifying buyer for the case of eviction, that is, when a third party's prior and better right is recognized by a Mexican court adversely affecting the buyer.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Promissory agreement of purchase and sale or letter of intent

  The first document in any real estate acquisition is normally a promissory agreement of purchase and sale, or a binding or non-binding letter of intent between the buyer and the seller. This promissory agreement – as well as a binding letter of intent – are recognized and allowed under the Civil Code, and are binding if the same contain all necessary business terms for the transaction, including the description of the property, purchase price, payment terms (ie, deposit and installments), conditions precedent for closing, the closing date and any other special terms and conditions of the transaction. These agreements would also typically contain conditions for the benefit of the buyer, such as representations, warranties and indemnities by the seller.

- Due diligence report

  Once the promissory agreement of purchase and sale or the letter of intent is signed, it is generally the responsibility of the buyer, usually through buyer's local counsel, to conduct due diligence with respect to the property being acquired. This includes title search, procurement of a no-lien certificate, zoning verification, topographical survey and a

review of any other restrictions affecting the property (ie, construction restrictions, setbacks, owner association regulations, easements, etc.). An independent environmental assessment is often recommended and an independent engineering review of the property, particularly in the case of property with older buildings and properties located in an industrial area. The buyer's counsel will also provide a title report to the buyer or obtain title insurance for the buyer (in which case the counsel will provide a title report to the insurer).

- Title transfer deed that contains the final agreement of purchase and sale

  The final document executed in any real estate acquisition is a title deed signed before a local notary public that formalizes the sale and purchase agreement between the buyer and the seller.

  This agreement typically reflects the terms and conditions included in the letter of intent or promissory agreement, including all representations, warranties and indemnities by the seller. When this agreement is signed, title is typically conveyed to the buyer with no reserves, except if, for instance, the seller provides for special conditions precedent, subsequent or it withholds domain of the property conveyed until full payment of the purchase price is received from the buyer.

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

Generally, sellers would only tend to grant limited representations and warranties typically related to the absence of liens and encumbrances, payment of real estate taxes and they provide an indemnity to the buyer in case of eviction. Thus, a buyer is generally responsible for conducting extensive due diligence with respect to the legal and physical condition of the property to be acquired. It is also relatively common to include provisions and warranties that deal with liabilities derived from the

environmental conditions of the property, hidden defects, conditions of title, absence of legal proceedings, infrastructure and utilities available on site, etc.

2.3 When is the sale legally binding?

Parties are legally bound as soon as they execute the promissory sale and purchase agreement (or a binding letter of intent, which would be considered a promise to purchase and sell) and if all conditions precedent for closing are met, or as soon as the parties execute a private sale and purchase agreement. For the purchase and sale to be effective against third parties, the corresponding title transfer deed has to be recorded with the Public Registry of Property.

2.4 When is title transferred?

Execution of the title transfer deed whereby the final sale and purchase agreement (or some other form of agreement such as donation, contribution to a trust, etc.) is formalized before a notary public is the event that marks the transfer of title from the seller to the buyer. However, parties can also agree to transfer the title upon payment of the price in full or upon fulfillment of other conditions.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following costs, that typically range from 5-7% of the transaction value:

- The buyer's own legal costs
- Due diligence costs
- Environmental assessments, appraisals and real estate surveys
- Registration fees
- Appraisal fees

- Title insurance fees
- Real estate acquisition tax (typically from 2-5% of the higher of appraised value or transaction value)
- Value-added tax on improvements existing on the land (16%)
- Notary public's fees (typically from 0.25-1% of the transaction value)
- Trustee's fees and costs (when acquiring through a trust)

The seller usually pays for the following:

- Real estate agent's fees
- The seller's own legal costs
- Real property tax up to the closing date
- Income tax and/or single rate corporate tax on any profit made on the sale of the real estate
- Government fees for subdivision, regularization, etc., of the real property

3. Leases

3.1 What are the usual forms of leases?

Mexican applicable law recognizes these forms of leases:

- Civil
- Commercial
- Administrative
- Financial

The civil leases may be determined by exclusion, meaning, when a lease is not commercial, administrative or financial. According to Mexican laws, commercial transactions are all the acquisitions, transfers and leases executed with the intent of commercial speculation.

Commercial leasing of real estate is not recognized, even if there is intent to obtain profit, due to the lack of recognition from Mexican laws and the provisions of the Mexican Supreme Court, which holds that the real estate leases are always of a civil nature.

A lease is administrative if the leased premises belong to the Mexican federation, states or municipalities and is regulated by the applicable administrative law.

Financial leases are regulated in the General Law of Auxiliary Credit Organizations and Auxiliary Activities of Credit.

3.2 Are lease provisions regulated or freely negotiable?

Most of the provisions governing lease agreements are included by statute in Mexican civil codes (each state has its own applicable civil code).

However, the parties may freely discuss and determine other different terms to regulate the lease and all its legal consequences.

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

Most state codes provide that a lease term shall not exceed a certain term specific to different types of use, generally 10 years for residential use and 20 years for commercial and industrial use. When the parties do not stipulate the term of the lease, the lease may be terminated generally upon two months' prior notice from one party to the other if the property is urban; one year's notice is required if the property is in the countryside.

. In addition, the landlord and the tenant may freely agree in the lease agreement the extension options that they may deem mutually convenient.

3.4 What are the usual lease terms?

The terms that a lease agreement in Mexico would typically include are the following:

- Description and features of leased premises (surface, address, available utilities and its capacities)
- The term and renewal options
- Intended use of the premises
- Rent and applicable annual increases
- Maintenance responsibilities
- Modifications and alterations of the leased premises
- Insurance
- Taxes
- Guaranties (corporate guarantee, letter of credit, bonds and/or security deposit)
- Assignment and subletting
- Default provisions and penalties

To enter a lease, the landlord must either own the property subject matter for the lease or have authorization from the owner to lease it. The Federal Civil Code provides that the rent of the lease may be for a sum of money or equivalent item that is certain and determined.

A co-owner shall not lease an undivided interest in a property without the consent of the other co-owners. In addition, a lease contract must be entered into in writing, and depending on the term of the same, sometimes should be formalized before a notary public and registered before the corresponding Public Registry of Property. Mexican lease contracts commonly include representations and warranties, and requirements for estoppel certificates when dealing with institutional landlords.

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

Most civil codes provide a one-year statutory extension right for the tenant, as long as the tenant is up to date with rent payments. Moreover, if upon the termination of the lease term and renewal, if any, the tenant continues with the use and enjoyment of the leased premises without opposition from the landlord, the lease will be deemed to continue for an indefinite time as a month-to-month lease. In leases where the tenant has had possession of the premises for a term of three to five years, the tenant will have the right to be preferred, under equal conditions, over any other interested party for a new lease, provided he/she has fulfilled all of its obligations and paid rent on time.

3.6 On what grounds may a lease be terminated?

A lease may be terminated for any of the following reasons:

- Termination or expiration of the term provided in the contract or in law, or for satisfying the purpose for which the premises were leased
- Express agreement
- Nullity
- Rescission (termination by default)
- Confusion (when the landlord and tenant become the same)

- Total loss or destruction of the leased premises
- Expropriation of the leased premises
- Eviction of the leased premises

A landlord may generally terminate the lease due to the following:

- Lack of rent payment
- Use of the premises in contravention to its provided nature and purpose
- Sublease of the leased premises without consent of the landlord
- Damages to the leased premises attributable to tenant
- Alteration of the leased premises without the consent of the landlord

A tenant may generally terminate the lease due to the following:

- The landlord has not properly maintained the leased premises in the same condition during the lease
- Total or partial loss of the leased premises
- Hidden defects in the leased premises

3.7 Must rent be paid in local currency?

Leases may provide for rent payments in foreign currencies, provided however, that a Mexican tenant has the legal right to choose to pay such rent in Mexican pesos at the then prevailing official exchange rate, published in the Federal Official Gazette on the payment date in accordance with Article 8 of the Mexican Monetary Law.

For payment of rent regarding urban properties for residential purposes, the Federal Civil Code provides that this must be in local currency.

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

Parties may freely agree on the amounts, interests and terms related to rent payments. If there are no terms of payment, payment for urban property is due monthly and semi-annually for rural property.

Under Mexican laws, rent generally must be paid once the leased property is delivered to the tenant. Nevertheless, there is an advance payment to the landlord as a security deposit. This deposit generally is the equivalent of one or two months' rent, which may be subject to annual increase. At the end of the lease, the deposit is returned to tenant provided that the tenant has no outstanding obligations to the landlord or any payments due for services and/or utilities related to the leased property.

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

The only important rent control statute in Mexico is the one that applies in the federal district and a few other states, which provides that in certain leases, annual rent may not be increased by more than 85% of the percentage of increase of the general minimum salary in effect in the federal district in the year the lease is extended or renewed.

Another case where the landlord may increase the rent, even up to 10% compared to the previous rent, is when a tenant renews his/her lease agreement for one year.

Contractually, it is very typical that lease agreement rents are adjusted annually by the increase presented under a given Consumer Price Index identified by the parties, typically referenced to the increase in the Consumers Price Index (CPI) of the United States of America if the rent is in dollars, or of the INPC (Indice Nacional de Precios al Consumidor) if the rent is set in Mexican pesos.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Transfer the use or temporary enjoyment of the leased premises to the tenant
- Deliver the leased premises in good condition to the tenant
- Maintain the leased premises in the same conditions throughout the term of the lease
- Perform necessary repairs
- Not to disturb the use and enjoyment of the leased premises by the tenant, except in the event of emergency repairs
- Guarantee the peaceful use and enjoyment of the leased premises
- Be liable for damages and losses in the case of hidden defects of the leased premises
- Be liable for damages and losses in the case of eviction
- Return the balance of the security deposit if there are no outstanding obligations of the tenant due to the landlord

The following is usually required of tenants:

- Pay the rent in the form, place and time set forth in the agreement
- Be liable for damages to the leased premises due to the tenant's fault or negligence, or as a result of negligence on the part of its assignees, employees or sub-tenants
- Use the leased premises only according to its nature and purpose

- Notify the landlord of the need for repairs; otherwise, the tenant will be liable for the damages caused by lack of notification
- Make repairs resulting from minor damage or normal wear and tear

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

The tenant cannot sublet the leased premises nor assign its rights from the lease without the express consent of the landlord. If the tenant sublets or assigns its rights without the consent of the landlord, the tenant shall be jointly responsible with the subtenant or assignee for all damages caused to the landlord and the leased premises, and could be a cause of rescission of the lease agreement.

If the sublease agreement is entered into as a result of the general authorization from landlord granted in the original lease agreement, the tenant shall remain responsible before the landlord for the liabilities derived from the use and enjoyment of the leased premises by a subtenant. If the landlord expressly approves the sublease agreement through a separate document of the lease agreement, the subtenant will subrogate all the rights and obligations of the tenant, unless otherwise agreed by the parties.

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

In the event of damage or destruction of the leased premises by Acts of God or force majeure, totally preventing the use or enjoyment of the leased property for more than two months, the lease can be terminated by the parties. The party responsible for causing damages to the leased premises shall be responsible before the other party for the damages and losses incurred as a result thereof.

3.13 Who is usually responsible for insuring the leased premises?

Usually, the landlord will contract the insurance policies covering any fire, damage or casualty to the property and, in certain cases, rental interruption insurance. Typically, the tenant would also contract a civil liability policy and will reimburse the amount incurred by the landlord in the purchase of the corresponding policy insurances in the case of a triple net lease.

The tenant is typically liable to insure its personnel and personal property to be placed within the leased premises during the term of the lease agreement.

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

If during the term of the lease agreement, title to the leased premises is transferred, the lease agreement will survive in the same terms. In connection with the rental payment, the tenant shall continue to have the obligation to pay to the new owner the stipulated rent under the lease agreement, since the judicial or extrajudicial notification date of such transfer was delivered.

If the ownership transfer is for public purposes, the lease agreement will be terminated, but the landlord and the tenant will be indemnified by the expropriating authority, in accordance with law.

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

Yes. Leases are senior and totally independent from mortgages or foreclosures. The rights and obligations acquired during the lease agreement will prevail and remain effective in the event of a foreclosure. Once a foreclosure occurs, the new owner has the obligation to notify the tenant of the transfer of ownership to legally collect the rent.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

In general terms, the municipal authorities have jurisdiction over land use (commonly enacting urban land use development plans), but federal and state authorities may also enact different general provisions (such as zoning laws), which set standards as to the use that may be given to determined areas.

The federal, state and municipal authorities may also establish limits to land uses derived from the enactment of different kinds of environmental regulations. Some examples of this are the enactment of environmental land use programs or the creation of natural protected areas, which establish certain restrictions as to the activities that may be developed in a determined area and/or establish limits to the density of developments, where the same are allowed.

Federal land is regulated by the federal government, and depending on the kind of property, a specific ministry may have authority over land development. As an example, the Ministry of Environment and Natural Resources (SEMARNAT) has authority over the federal maritime land zone, which is the area comprising 20 meters of beach after the maximum tide.

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

Several federal, state and municipal laws, regulations and standards may affect the use and occupation of real estate, either directly or indirectly.

The following are among the most important federal environmental laws in this regard:

- The General Law of Ecological Balance and Environmental Protection
- The General Law of Wildlife

- The General Law for the Prevention and Integral Management of Waste
- The Law of National Waters
- The General Law of National Property
- The General Law of Sustainable Forest Development
- The Federal Law of Environmental Liability
- The Law of the Agency or Industrial Safety and Environmental Protection on the Hydrocarbon Sector

These commonly have a local version in each state, regulating any areas that are described to be of local jurisdiction by the aforementioned federal laws.

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

At the municipal level, land use and construction licenses are commonly required, as well as an occupancy (or work completion) license and an operating license, to be able to perform activities on the premises to be built or occupied.

Other permits, licenses or concessions, commonly required either at the federal or local levels of jurisdiction, are the following:

- Environmental impact authorization
- Environmental risk assessment
- Consolidated environmental license
- Concession for the occupation of a federal zone
- Federal permits to build on a federal zone

- Permit to discharge wastewater
- Concession to exploit a national source of water

4.4 Can an environmental cleanup be required?

Yes. The General Law for the Prevention and Integral Management of Waste establishes that in case of contaminated land where pollution exceeds the applicable standards, cleanup is required.

There are five standards that classify and/or establish specific limits to the discharge and use of certain pollutants:

- PCBs (NOM-133-SEMARNAT-2015)
- Hydrocarbons (NOM-138-SEMARNAT/SSA1-2012)
- Heavy metals and other hazardous pollutants (NOM-147-SEMARNAT/SSA1-2004)
- To classify the special waste handling (NOM-161-SEMARNAT-2011)
- Waste waters (NOM-001-SEMARNAT-1996/NOM-002-SEMARNAT-1996/NOM-003-SEMARNAT-1997)

Other pollutants may require a risk study to evaluate if cleanup is required.

Aside from the above, it is important to note that the conveyance of contaminated land requires prior authorization from SEMARNAT and that the environmental authorities may request remediation either from the owner or current occupier of the property, even if the discharge, generation, managements, leak or incorporation of materials and/or hazardous waste was caused by a third party or by the former owner.

4.5 Is there any environmental responsibility?

Per the General Law for the Prevention and Integral Management of Waste, whoever is in possession of a real property, before the

environmental authorities, is jointly and severally liable with the owner of the property and with whoever contaminated the same, to carry out the remediation required by such contamination.

In addition, on 16 June 2013, the federal government enacted the Federal Law of Environmental Liability, which determines the liabilities for environmental damages in addition to the civil, criminal or administrative liabilities for the same.

The aforementioned law regulates the liability derived from the damages caused to the environment, as well as the remediation and compensation of such damages when the same are enforceable through applicable judicial or administrative procedures.

Under this federal law, not only can the environmental authorities initiate a claim of liability, but, in fact, collective actions may be filed either by individuals who are neighbors of the affected site or private Mexican non-governmental entities.

4.6 Are there minimum energy performance standards for buildings?

Yes. NOM-020-ENER-2011 establishes energy efficiency standards for residential buildings that are applicable to new buildings and expansions of existing ones.

NOM-007-ENER-2014 and NOM-008-ENER-2001 establish energy efficiency standards for non-residential buildings. Both are applicable to new buildings or expansions of existing ones, and do not include buildings that are mainly used for industrial activities.

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

Yes. The Law for Sustainable Use of Energy provides for a voluntary certification process for private parties to apply energy efficiency standards and sustainability measures in their operations before the

National Commission for the Efficient Use of Energy and to implement energy efficiency standards in the buildings they occupy.

In addition, on a local level, different energy efficiency standards and incentives to increase sustainability practices may be available.

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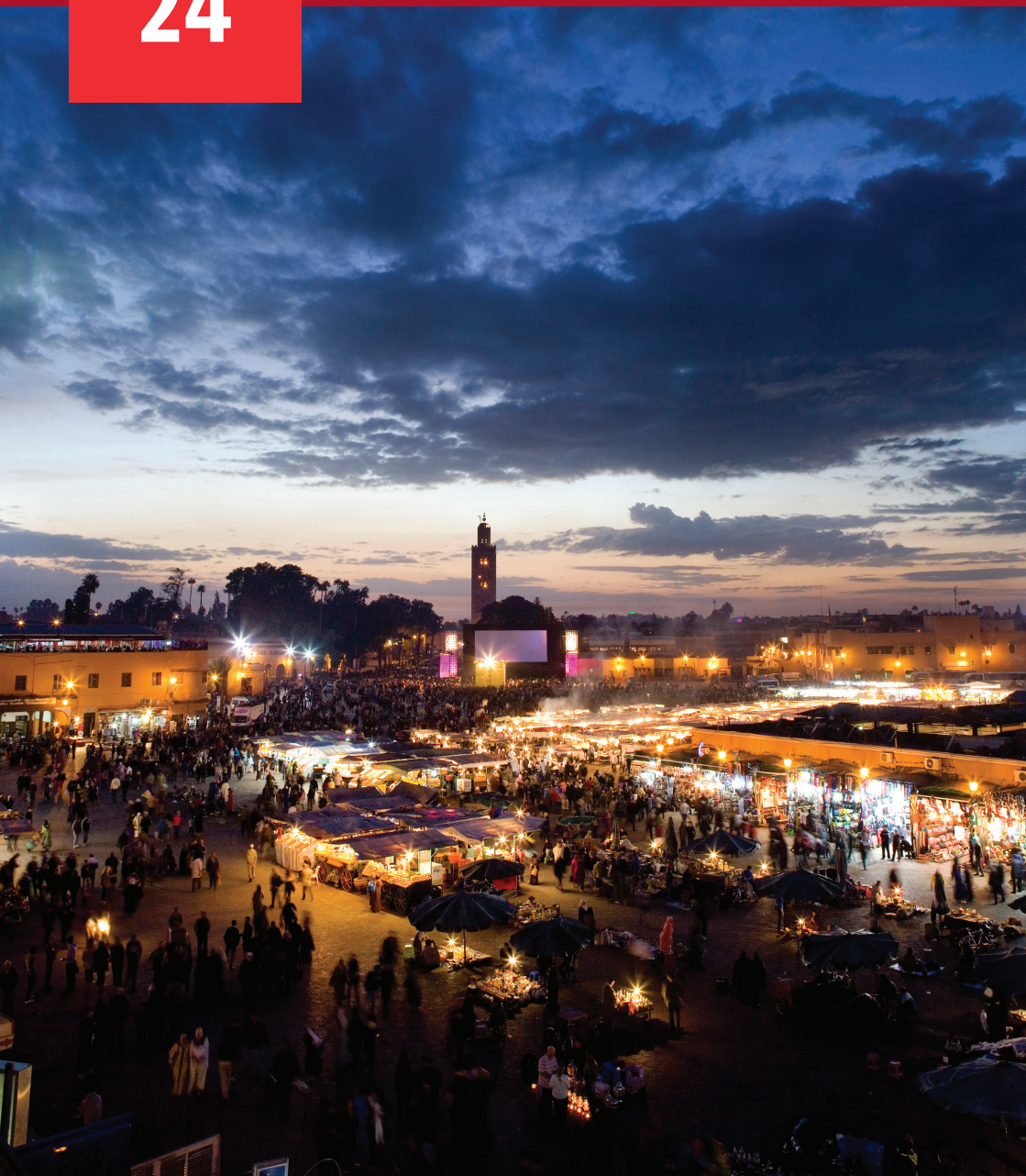

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Any buildings or structures on it

1.2 What laws govern real estate transactions?

In Morocco, real estate transactions are mainly governed by the Moroccan Civil Code, a Napoleonic code derivative.

1.3 What is the land registration system?

The land registration system allows the owner of a property to obtain a property title registered in a national real estate registry. This registration cancels all previous rights with respect to this property.

The land registration system may be defined as a real estate publicity system. This publicity aims to ensure complete transparency with respect to land properties.

1.4 Which authority manages the registration of titles?

The land property and mortgage registrar is in charge of the registration of titles. Each court of first instance has it own land property and mortgage registrar that is in charge of the real estate registry with respect to properties located within the district of the relevant court of first instance.

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

In Morocco, the registration of a property is optional. However, once the registration of a property has been made, the rights over this real property must be registered within the same registry. Consequently, owners must register rights of real property, including the following:

- Temporary seizure
- Mortgages
- Transfers
- Easements

1.6 What documents can land owners use to prove ownership over real property?

Once all the formalities are completed, the landed property registrar provides the owner with a property title. This document proves ownership of real property.

1.7 Can a title search be conducted online?

The land property registrar provides a website that records information with respect to most property titles. However, this database is not available to the public (a username and a password are required). This database is available mainly to notaries, property surveyors and topographers.

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

There are generally no restrictions on foreign ownership of Moroccan land except in very specific cases. For example, Moroccan law prohibits the acquisition by non-Moroccan people of interests in agricultural land without the prior consent of a provincial agency.

1.9 Can the government expropriate real property?

Property can be expropriated by the government and other authorities, but appropriate compensation must be paid.

1.10 How can real estate be held?

Generally, an interest is held, in particular, by any of the following means:

- Transfer of property (purchase, donation or inheritance)
- Leasehold
- Co-ownership

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

- Corporations (including real estate investment companies)
- Co-ownership
- Partnership

1.12 How are real estate transactions usually funded?

Most real estate financing is arranged through institutional lenders such as banks. Interest rates are generally fixed for a specified period of time or are variable. The interest rate is based on a rate announced periodically by the central bank (Bank Al Maghrib).

Lending institutions usually take a primary security in real property and related assets. The primary security includes, in general, a mortgage.

1.13 Who usually produces the documentation in real estate transactions?

Generally, the notary is in charge of drafting the documentation in real estate transactions. Each party may choose its own notary without additional costs. Sometimes, the assistance of a lawyer is recommended.

1.14 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?

For properties held in freehold, government authorities can require the owner to clean up contamination even if the owner did not cause it.

For properties held in leasehold, tenants are not usually held liable for environmental damages caused by a previous tenant.

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

A seller can retain liabilities relating to the real estate even after they have disposed of it. The seller is liable for any contamination caused before, during, or after their ownership and for any indebtedness secured by a mortgage placed by the seller on the real estate.

For properties held in leasehold, the tenant is generally not held liable for a previous tenant's obligations.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Bilateral promise

  The bilateral promise generally includes a detailed description of the real estate property, the sale price, the terms of payment, the delivery date and the property specifications comprising useful information relating to the technical characteristics of the property. The property specifications are executed by the parties and a certified true copy is issued to the purchaser. Although it is a binding agreement, it is merely a promise to sell/buy, and the completion of the transfer remains subject to various conditions precedents.

- Final purchase agreement

  The main document in any real estate acquisition is normally the purchase agreement to be executed between the buyer and the seller.

  According to Moroccan law, this agreement should contain, in particular, the following:

- Information as regards the parties
- Information as regards the property title and all the rights over this real property (real surety, easement or lien)
- Description of the land
- Purchase price and the payment terms
- Date of delivery

Several documents must be attached to this agreement. The list varies on a case-by-case basis but often includes a guarantee (if any), architectural maps and a certificate provided by an engineer.

Before the execution of the purchase agreement, the buyer may conduct due diligence. Due diligence may include title and zoning searches and a review of any leases and surveys of the property. An independent environmental assessment is recommended as well as an independent engineering review of the property, particularly for older buildings.

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

Under the purchase agreement, the seller may provide representations and warranties.

If the property has buildings that have been constructed recently, the buyer benefits from the decennial guarantee provided for by Moroccan law. This guarantee is provided by the constructor and not the seller. Consequently, for a period of 10 years following the completion of the construction of the building, the decennial guarantee covers all damages, including the safeness of the project and, more specifically, defects in the constituting elements, that could make the project unsuitable for its use (roof defects, water leaks, wall and foundation structural defects, etc.).

2.3 When is the sale legally binding?

Parties are legally bound as soon as they execute a promise of sale.

2.4 When is title transferred?

Registration of a deed of transfer is typically seen as the event that marks the transfer of title from the seller to the buyer.

2.5 What are the costs usually shouldered by the parties?

It is a common practice in Morocco that the buyer bears all the fees and costs in relation with the transfer. The buyer usually pays for the following:

- Due diligence costs
- Due diligence inquiries made to statutory and government bodies
- Registration fees
- Transfer taxes
- Notary fees
- Legal costs

The seller usually pays for the following:

- Legal costs
- Income tax on any profit made on the sale of the real estate

3. Leases

3.1 What are the usual forms of leases?

In Morocco, the main forms of leases are the following:

- Commercial leases – required to run a business in Morocco and governed by Dahir dated 24 May 1955.
- All other leases – residential leases, professional leases without any commercial purpose, etc. are governed by Law No. 6-79 (except for specific cases).

3.2 Are lease provisions regulated or freely negotiable?

Generally, lease provisions are not regulated and are freely negotiable. According to Moroccan law, there is no requirement as regards the writing of a lease agreement. The lease agreement may therefore be verbal.

However, commercial leases are subject to a specific regulations prohibiting certain previsions. For instance, the contract cannot remove tenant's renewal right, the termination notice cannot be less than six months, the indexation of the rent is capped, etc.

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

In Morocco, the maximum term of a lease, including renewals, is 99 years. These leases are called emphyteutic leases and they are deemed to be ownership.

3.4 What are the usual lease terms?

Usually, leases are for a five-year or a 10-year term, with an option to extend the term for another five years.

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

As regards commercial leases, from the moment the tenant has occupied the premises for more than two years, the tenant is entitled to lease renewal, despite any agreement to the contrary. The lessor can refuse the renewal only in very specific and limited cases.

3.6 On what grounds may a lease be terminated?

The lessor may terminate the lease agreement at the end of the period agreed between the parties in case the tenant fails to pay rent or breaches the terms of the lease.

3.7 Must rent be paid in local currency?

Generally, rent must be paid in local currency.

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

This will depend on the agreement of the parties. Rent is usually paid on a quarterly basis for commercial leases and monthly for residential leases, at the beginning of each quarter or month.

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

Rent is sometimes fixed for the initial term.

However, the lessor or the tenant may request that the rent be fixed at the rental value at the end of each three-year period. This increase should not exceed 8% for residential premises and 10% for other premises (per three-year period). Commercial leases are often revised on the basis of indexes but within the limits of said 10% cap.

3.10 What are the basic obligations of landlords and tenants?

In general, the lessor is responsible for major repairs (repair and maintenance of the structure of the property, insuring the property, etc.) whereas the tenant is responsible for minor repairs (keeping the property in good order, etc.).

The lessor must ensure the tenant's peaceful enjoyment of the premises, and the tenant must comply with the intended use of the premises.

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

Tenants are sometimes allowed to assign the lease or sublet the premises but this is always subject to the lessor's prior consent. The head tenant will remain liable for due performance of the sub-lessee or assignee.

However, in case the tenant wishes to sell the business operating in the premises, the tenant shall be entitled to assign the lease to the purchaser of its business. Any provision to the contrary is null and void.

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

If the premises are substantially damaged or destroyed by an act of God, the lease is often terminated, unless the premises can be repaired within a reasonable timeframe (usually less than six months).

If the premises are damaged or destroyed due to causes attributed to the tenant, then the tenant may be liable for repairs or replacement.

3.13 Who is usually responsible for insuring the leased premises?

Moroccan law does not provide any requirement as regards insuring the leased premises. However, the lessor often requires that lessees insure the premises against the most common risks.

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

Lease agreements survive and are binding upon the new owner.

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

Lease agreements survive foreclosure of the leased premises.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Property development is regulated mainly by the land property and mortgage registrar and the competent court of first instance.

Construction of new projects is subject to provincial and municipal approvals. Building permits are required before the commencement of construction.

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

Law No. 11-03, adopted by Dahir No. 1-03-59 dated 12 May 2003 as regards environmental protection, provides for environmental requirements with respect to real estate.

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

Generally, a building permit is required for the construction or renovation of real property.

At the end of the work, the owner must obtain a certificate of compliance.

4.4 Can an environmental cleanup be required?

Yes. This is the case when authorities seek to reduce or mitigate potential dangers to human health or the environment.

4.5 Are there minimum energy performance requirements for buildings?

Law No. 47-09 as regards energy performance in Morocco provides for specific requirements applicable to buildings. However, the decree related to this law has not been published yet. The application of Law No. 47-09 will thus be delayed.

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

No.

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1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Any buildings or structures on it
- The use that will be assigned to the land and buildings (including regulatory matters)
- The guarantees regarding land
- Any agreement regarding any operation over this concept (acquisitions, use, guarantees, financing, etc.)

1.2 What laws govern real estate transactions?

Real estate transactions are governed primarily by the Peruvian Civil Code, a law that is enforceable to the whole Peruvian territory. However, diverse independent laws govern this practice as well, depending on which the items in section 1.1. is treated.

For instance, Law No. 27157 establishes the rules for building regularization, factory declaration and regime of common and exclusive property (established to regulate the common life of people sharing common areas in a same building). Law No. 29090, or the Law of Urban Renovation and Construction, regulates the requirements and legal procedures to obtain an urban renovation license and the resolution before the corresponding municipality.

Another example is Law No. 28976 or the Master Law of Functioning Licenses, which, jointly with its regulation, establishes the criteria for every municipality to grant functioning licenses for each business. There is also Law No. 28611, or the Environment Act, which was approved in 2005 and

establishes the legal framework that governs environmental affairs in Peru. This law regulates a series of well-known environmental principles and acknowledges environmental rights.

1.3 What is the land registration system?

The National Superintendence of Public Registry (Superintendencia Nacional de los Registros Publicos or "Sunarp") is the centralized public entity in charge of Peruvian register and has nearly 60 offices in the whole Peruvian territory. Sunarp maintains a public land title registration system where ownership can be verified and where registration of deeds records can be found. Also registered in this system are all the relevant real estate matters of the land, such as the rights of use granted to third parties, guarantees and liens.

There is one register entry for each registered land.

1.4 Which authority manages the registration of titles?

As mentioned in section 1.3. above, Sunarp manages all registration matters.

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

By general rule, rights are not required to be registered due to the fact that according to Peruvian legislation, the register only declares rights, it does not constitute them. However, third parties who do not have notice because the right is not registered are not bound by unregistered interests over property. Law No. 30313 establishes that the information to review in Sunarp is not only the entries of a property file (asientos registrales), but all the documents recorded by Sunarp on which the entries are based. Now with such statement, the legal discussion regarding this is over.

The only exception can be found in mortgage and security interests. Therefore, owners usually register any document creating or evidencing an interest in real estate. This includes the following:

- Transfers
- Mortgages
- Easements
- Restrictive covenants
- Leases
- Trusts
- Injunctions
- Seizures and lawsuits filed regarding the land
- Judicial decisions and arbitrators' awards
- Leases
- Agreements of reserve of property
- Co-ownership agreements
- Options to purchase

1.6 What documents can land owners use to prove ownership over real property?

Sunarp can issue the Certificate of Land Registry (Certificado Registral Inmobiliario), for which administrative officers perform a title search to determine ownership of the land. However, this document does not guarantee the applicant any right because of the possibility of errors given that it is only a secondary service provided by Sunarp. A title search by a separate law firm is always recommended.

1.7 Can a title search be conducted online?

Not all registered records are available to the public online. Sometimes, records need to be obtained physically at Sunarp offices.

Notwithstanding the aforementioned, in any case, searches are not free.

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

According to Article No. 71 of the current Peruvian Constitution, foreigners are treated the same as Peruvians with regard to property ownership, except that foreigners cannot directly or indirectly acquire or possess title, mines, land, forests, water, fuel or energy sources within 50 kilometers of the borders.

1.9 Can the government expropriate real property?

Pursuant to Article No. 70 of the current Peruvian Constitution, expropriation can be done in case it is required due to reasons of national security or public need that is declared by a law, and that there is compensation in cash paid to the owner. The paid amount can be questioned in Peruvian courts.

The Frame Law (Legislative Decree No. 1192) seeks to standardize = expropriation proceedings to make it easier and encourage infrastructure projects.

1.10 How can real estate be held?

Generally, an interest is held through any of the following means:

- Freehold
- Condominium/co-ownership
- Adverse possession (usucapio)

- Leasehold or any other title that grants the use

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

- Corporations
- Co-ownership or co-tenancy
- Partnership
- Trusts

1.12 How are real estate transactions usually funded?

Most real estate financing is arranged through institutional lenders such as banks, trust companies, pension funds, credit unions and insurance companies, as well as investment funds. Interest rates are generally fixed for a specified period of time or are variable, based on a "prime rate" set by the lending institution on a periodic basis. Financing institutions are exonerated from observing the maximum rate limit fixed by the Peruvian Reserve Central Bank (ie, this maximum rate is applicable to persons or entities outside financing system). Typically, it is the borrower's responsibility to pay for all of the lender's legal and other costs, such as commitment and processing fees, in arranging property financing. Interest rates are usually expressed as an annual rate.

Lending institutions typically take both primary and collateral security in real property and related assets. Typical primary security includes a mortgage or charge, a debenture containing a fixed charge on real property or, in some cases, where more than one lender is involved, a trust deed securing mortgage bonds or debentures and including a specific charge over real property. Collateral security often includes assignments of leases and rents, general security agreements for personal property and personal guarantees.

Recently some laws have been issued that seek to use the lease agreements as a mechanism (for lessees) who pay the rent on time to upgrade their eligibility for housing credits.

1.13 Who usually produces the documentation in real estate transactions?

Generally, the buyer's lawyer will prepare the initial draft of the purchase agreement.

1.14 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?

The main rule in law of torts in Peru is that whoever causes ¬damage is liable for it. However, there are some exceptions regarding unpaid sums: (i) for tax duties over lands, the current owner or occupier, depending on the tax nature, has to pay the unpaid amounts from previous owners/occupiers; and (ii) for unpaid public services, the current owner has to pay the unpaid amounts from previous owner(s).

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

The seller does not retain any liabilities aside from the general rule of law of torts (whoever incurs damage is liable for it independent of its title regarding the real estate).

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Due diligence report

  Usually, the first step in a transaction is due diligence on the real estate, which is requested by the buyer. This includes a title and zoning review and a review of any burdens and liens on the property. The buyer's lawyer will also provide a title opinion to the buyer.

- Purchase and sale agreement

  When the due diligence is satisfactory to the buyer, negotiations for the real estate acquisition starts, normally by execution of the purchase and sale agreement between the buyer and the seller.

  This agreement should contain all the necessary business terms for the transaction, including the description of the land, purchase price, deposit (if any), the closing date and any other special terms. These agreements also typically contain conditions for the benefit of the buyer as well as representations and warranties by the seller.

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

The recent trend is for sellers to give limited representations and warranties. So, after a contingency is detected at the due diligence, and if it cannot be removed before the purchase, the seller warrants to indemnify the buyer in case the contingency prejudices the buyer.

However, this mechanism is not that usual. What is expected is that once the land is sold, the seller does not assume any responsibility given that the buyer has performed due diligence (barring willful misconduct during negotiations).

There is a legal exception, though. The Peruvian Civil Code requires the seller to compensate the buyer in case the latter is deprived of the use and possession of the real estate by virtue of a judicial decision confirming that a third party obtained a right over the real estate before the sale.

2.3 When is the sale legally binding?

Parties are legally bound as soon as they execute the sale and purchase agreement, unless otherwise agreed.

2.4 When is title transferred?

Generally, title is transferred as soon as the buyer and seller execute the sale and purchase agreement, unless there is an agreement of "Reserve of Property" or unless otherwise agreed by the parties; for instance, the parties may agree that the title will be transferred at the registration of the sale.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- The buyer's own legal fees
- Due diligence costs for consultants who have prepared building condition reports, study of titles, valuation appraisals and real estate surveys
- Due diligence inquiries made to statutory and government bodies
- Notarial and registration fees
- Transfer taxes

The seller usually pays for the following:

- The seller's own legal fees
- Income tax on any profit made on the sale of the real estate

3. Leases

3.1 What are the usual forms of leases?

Current legislation does not differentiate leases for its purpose (use). In that sense, leases for either housing, office or commercial purposes are treated identically from the point of view of the Peruvian Civil Code. Thus,

the peculiarities applicable to different uses of a lease could be found in special rules to establish certain parameters for a particular activity.

However, one aspect that must be considered is that in Peru, a lease is only one of the different modes for giving the use of a certain property to a third person. Thereby, besides a lease agreement, a person might find other arrangements, such as financial leasing, loans, atypical use concessions or the establishment of rights in rem established by law (eg, usufruct, surface right, easement).

Notwithstanding the foregoing, the most common forms of leases in Peru are housing leases, leases for office and leases for commercial establishments.

Pursuant to Legislative Decree No. 1177 we have now a special lease to be executed through standard forms, that, among other features, provides tax exemptions and is intended to make easier for tenants to purchase properties through mortgage credits.

3.2 Are lease provisions regulated or freely negotiable?

Leases in Peru are regulated by the Peruvian Civil Code, the same regulation that establishes a model for a lease agreement. Nevertheless, in such regulation (model), mandatory rules (rules of forced compliance) and supplementary rules (applicable only if the parties do not agree otherwise) can be found. Note that the mandatory provisions are very few (eg, the maximum term of every lease, which is 10 years), so supplementary rules are the most abundant in the said regulation (eg, the use of leased property).

In that sense, the content and scope of the leases are mostly freely agreed by the contracting parties. However, the parties have to respect the mandatory provisions prescribed by law since the sections of the lease that contravene these rules are invalid.

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

As was mentioned in the preceding section, the Peruvian Civil Code sets a mandatory maximum lease term of 10 years. This period can not be extended by the parties. In that sense, an agreement designed to extend the term of a lease for more than 10 years would be considered invalid.

However, once the 10-year period ends, the parties may enter into a new lease for a new period. The term for the new lease, and the further that could be held, must respect the maximum term of 10 years.

3.4 What are the usual lease terms?

This depends solely on the agreement of the contracting parties.

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

No. However, when the agreed period (the same that can not exceed 10 years) is interrupted (ie, periods when for reasons attributable to the landlord, the tenant was unable to use the property), the tenant may claim in the courts (or in arbitration, if such dispute resolution method was agreed on) the recognition of such periods.

3.6 On what grounds may a lease be terminated?

A landlord can generally terminate the lease when the tenant breaches the terms of the lease, which usually includes non-payment of the rent agreed in the contract, the use of the property that was not allowed by the agreement and assigning or subletting the property without the consent of the landlord.

Similarly, the tenant may also terminate the contract in case of default by the landlord, such as in cases where the landlord is unable to provide the tenant with uninterrupted peaceful possession of the property or the leased property was delivered with damages that precluded its use.

On the other hand, to suit its respective interests, the parties may agree that any of them or both could have the right to unilaterally terminate the contract without cause and without the duty to indemnify the other party, having only to submit a notice to the other party with some term in advance.

Finally, parties can always (prior mutual agreement) terminate any agreement at any moment.

3.7 Must rent be paid in local currency?

The parties are free to set the rent in foreign currency.

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

This will depend on the agreement of the parties. Rent is usually paid monthly, at the beginning of the month.

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

There are no legally established limits to increase rent. The parties are free to set any increase mechanism they deem convenient.

In this sense, it must be noted that rent is usually fixed for the initial term. Rent for renewals or extensions, if agreed, may also be fixed or may be adjusted to reflect the market value at the time of renewal or extension.

Nevertheless, it is also common to find leases in which the rent is increased automatically at specified times based on the criteria stipulated by the parties in the agreement.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Grant the use of the property to the tenant and ensure that the tenant can maintain effective use of the property

- Repair and maintain the structure of the property
- Provide tenants with a valid notice of termination (in writing) if terminating the tenancy

The following is usually required of tenants:

- 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
- Return the property to the landlord promptly, upon expiration of the lease term

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

As a general rule, the tenant is forbidden from subletting the leased property to third parties. However, it is possible that the parties agree in the same contract the right of the tenant to sublet, or that the landlord grant permission later through an addendum to the contract.

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

In this regard, two possible scenarios can be analyzed:

- If the leased property is substantially damaged or destroyed by causes not attributable to either party (eg, act of God), the lease is often terminated
- If the leased property is damaged or destroyed due to causes attributable to one of the parties, then the lease is terminated and

such party may be liable and have to repair the damage caused to the other party

3.13 Who is usually responsible for insuring the leased premises?

The Peruvian Civil Code does not regulate the obligation of any party to insure the leased property. In case the property has to be insured by one of the parties, the obligation of that party so assigned is indicated in the agreement. Depending on the use of the property, the obligation is generally assumed by one of the parties. For example, if it is a lease for offices, it is usually the tenant who insures the leased area and the landlord insures the common areas of the building (if any).

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

Lease agreements survive and are binding upon the new owner only if the lease agreement has been registered in the Public Records (ie, the electronic entry of property in the Public Records). Otherwise, the new owner can choose between: (i) honoring the lease agreement; or (ii) terminating the lease agreement.

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

If a foreclosure is the result of a prior registered mortgage or lien over the property, the lease will not survive at the option of the beneficiary of the foreclosure.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

There are zoning regulations for each district in Peru. These rules are driven by certain environmental, cultural and social aspects, and seek to determine where certain structures may be built. If a new project is not zoned correctly, it is necessary to go through a local governmental process to request the rezoning of the area.

The regulation of land zoning rests in the provincial municipalities. In that sense, those entities are the ones that are authorized to approve the use of land within their jurisdiction. It must be noted that provincial municipalities typically control aspects of land development through official plans and by-laws.

In the same way, the district municipalities are responsible, within the limits of the zoning approved by the provincial municipalities, for approving building, demolition and operation permits. For example, it must be mentioned that construction of new projects requires building permits before construction is commenced.

Obtaining a building permit also requires that the building project meet the technical requirements established in the National Building Regulation, approved by Supreme Decree 011-2006-VIVIENDA and issued by the national government through its Ministry of Housing.

On the other hand, environmental regulation for building or structure (including the construction phase) and land use is dictated by the national government through the Ministry of Environment, the Ministry of Housing and the Ministry of Production (for shopping centers). Also, municipalities have some regulatory powers in environmental issues such as emissions and solid waste.

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

Environmental regulations depend on: (i) the purview of the relevant entities to regulate such matter; and (ii) the issues or impacts that any real estate project might have on the environment and its components.

For instance, the Environment Act, approved in 2005, establishes the legal framework that governs environmental affairs in Peru. This law regulates a series of well-known environmental principles and acknowledges environmental rights.

In accordance with the Environmental Impact Assessment Act and its regulations, any individual or legal entity that intends to develop an investment project that may generate environmental impact must obtain an Environmental Certification, which can be: (i) an Environmental Impact Declaration (DIA) for projects that entail small or insignificant environmental impact; (ii) a Semi-Detailed Environmental Impact Assessment (EIA-SD) for projects that entail considerable environmental impact; and (iii) an Environmental Impact Assessment (EIA or EIA-D) for projects that entail significant environmental impact. The activities subject to an Environmental Certification are listed in Appendix II of the abovementioned regulations.

The following projects conducted by any real estate company are subject to such Environmental Certification:

- Shopping centers that comprise areas larger than 2,500 square meters and a net average density of 1,500 inhabitants per hectare
- Certain kinds of land development
- Multifamily or residential sets in high density zoning equal to or greater than 2,250 inhabitants per hectare
- Parking buildings that have a building area greater than 3,000 square meters
- Projects involving demolition activities only relating to buildings subject to the Ministry of Housing
- Infrastructure of high density (schools, universities, prisons, arenas and stadiums, civic centers, museums, sports fields, etc.)

The Ministry of Production is in charge of granting the Environmental Certifications in case of the first type of abovementioned project, while the Ministry of Housing is in charge of the rest. Both ministries have

specific regulations applicable to the approval of such Environmental Certification.

On the other hand, certain municipalities (local authorities) may require an Environmental Certification prior the construction of residential and office buildings (not included in the abovementioned list). Finally, companies with operating construction and infrastructure projects may be required to adjust such projects to new environmental obligations in the future.

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

If the land is undeveloped (non-urban lands), a license to develop is required before even applying for the building permit. For such a case, the possibility to develop depends on whether the land has been approved as developable by the provincial municipality.

If this is the case, obtaining an urban development license to convert the developable rural area into an urban area must be requested. Conversion is achieved by developing accessibility routes and enabling water distribution, electricity and other infrastructure facilities.

Once the land is developed, construction projects are possible. However, new construction requires a building permit before the commencement of construction. If anything is to be demolished, it is also necessary to have a demolition license. Additionally, in some types of projects, an Environmental Certification is a requirement for obtaining the building permit.

Occupying real estate does not need a license. However, if the building is intended to be commercial (offices, malls, shops, factories, etc.), an operating license is required.

It should be noted that all aforementioned permits and licenses are issued by the district municipalities.

4.4 Can an environmental cleanup be required?

Generally, environmental cleanup may be required where authorities find environmental risks and seek to reduce or mitigate potential dangers to human health.

For instance, the Ministry of Environment has passed a Supreme Decree that regulates soil quality standards ("SQS") applicable to "any activity capable of polluting soils." Such SQS are applicable to real estate (construction) activities that can potentially generate soil pollution.

This Supreme Decree also establishes that: (i) the holders of new projects must determine, as part of the corresponding Environmental Certification, the concentration of the chemical substances that characterize their activities and that may impact soils that will constitute their baseline for complying with SQS; and (ii) companies with ongoing activities must update their Environmental Certification within 12 months (until March 2014) to comply with SQS.

Additionally, companies with ongoing activities must take samples of soils within their facilities and area of influence and must communicate the results to government agencies. If evidence of a "contaminated site" is found (ie, if the soil quality does not comply with the allowed thresholds), they must file a decontamination plan. This is the first time the government has required mandatory sampling of soils and decontamination plans. Given the novelty of these regulations, it is unclear how it will be implemented and interpreted by the government.

4.5 Are there minimum energy performance requirements for buildings?

As noted earlier, all new construction must comply with the technical guidelines established in the National Building Regulation. Also, for the granting of the construction license, the respective district municipality determines, through its technical team, whether the project has power

outlets and other technical aspects necessary for the viability of the project purpose.

It must be noted that to date, there are some voluntary standards for environmentally sustainable buildings (eg, green buildings).

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

It always depends on the rules governing building parameters. As mentioned, these rules are contemplated in the National Building Regulation, the same that is issued by the national government. Regarding environmental matters, two particular points must be highlighted:

- Solid waste for construction activities

  The environmental obligations regarding solid and hazardous waste management are set forth in: (i) the general Solid Waste Act and its regulations; and (ii) the regulations for solid waste management for construction works, approved by Supreme Decree 003-2013-VIVIENDA.

  As a general rule, the solid waste generator (both for hazardous and not hazardous waste) is responsible for its adequate management, treatment and disposal. Any solid waste generated in the construction, rehabilitation, restoration, renovation or demolition of buildings and infrastructure is considered "construction solid waste." Furthermore, any construction solid waste that qualifies as explosive, corrosive, reactive, toxic, radioactive, pathogenic or liable to spontaneous combustion is considered "hazardous" (such as asbestos waste, paint removers, aerosols, grease removers, paint and solvent containers, fluorescent tubes and PVC remains).

  The movement or transportation of hazardous and non-hazardous construction solid waste outside the limits of a construction complex shall be done exclusively through specialized companies (known as

"EPS-RS") registered before the Environmental Health General Bureau (DIGESA). Indeed, construction companies are free to contract with any registered EPS-RS to provide solid waste services such as transportation, transfer, treatment or disposal.

The construction company, as generator of the construction solid waste, is obligated to: (i) verify that the EPS-RS has all applicable authorizations; and (ii) submit, within the time limit, the Annual Sworn Statement of Solid Waste Management, the Solid Waste Management Plan and the applicable Hazardous Solid Waste Manifest.

According to Supreme Decree 003-2013-VIVIENDA the disposal of solid waste in public property (beaches, plazas, parks, roads and paths, etc.), archaeological sites, protected natural areas and their buffer zones and water sources (sea, lakes and rivers) is forbidden. Also, this regulation establishes: (i) certain technical specifications for the storage, movement, transportation and disposal of construction solid wastes with which the construction company and the EPS-RS must comply; and (ii) the form of treatment for particulate matter generated during excavation and construction activities.

- Archaeological Heritage

  Peru holds a vast archaeological heritage already identified and still undiscovered. The Peruvian Constitution and the Cultural Heritage Act protect all evidence of pre-Hispanic occupation, independent of their location (ground, underground or underwater) and whether or not they have already been discovered or identified. The government agency responsible for identifying, registering, researching, preserving and promoting archaeological evidence is the Ministry of Culture.

  During the design and development of activities that involve the removal of soil (such as the construction of shopping centers and residential and office buildings), there is a possibility of discovering archaeological sites or features. Thus, given the government's limited

resources for identifying all undiscovered archaeological sites located in Peru, the Ministry of Culture requires private companies to carry out archaeological surveys. Consequently, the project area must be free of any archaeological sites or features prior to the commencement of any activity that requires the removal of soil. For this purpose, the titleholder must obtain a Certificate of Non-Existence of Archaeological Remains (a "CIRA") prior to the start-up of activities. A CIRA is not required in areas with pre-existing infrastructure.

The CIRA will certify that on the surface of the evaluated area, no archaeological sites or features were discovered, or will identify their exact location and extension to implement precautionary measures. The CIRA is valid for an unlimited period, but will become void should any archaeological artifacts accidentally be discovered during the construction work or due to any natural cause. In those cases, the company must stop the construction work immediately and notify the Ministry of Culture. Failure to stop activities will generate applicable civil and criminal liabilities. Under certain exceptional circumstances, Peruvian legislation allows the removal of archaeological sites or features when the area is required for the development of projects that are of national interest.

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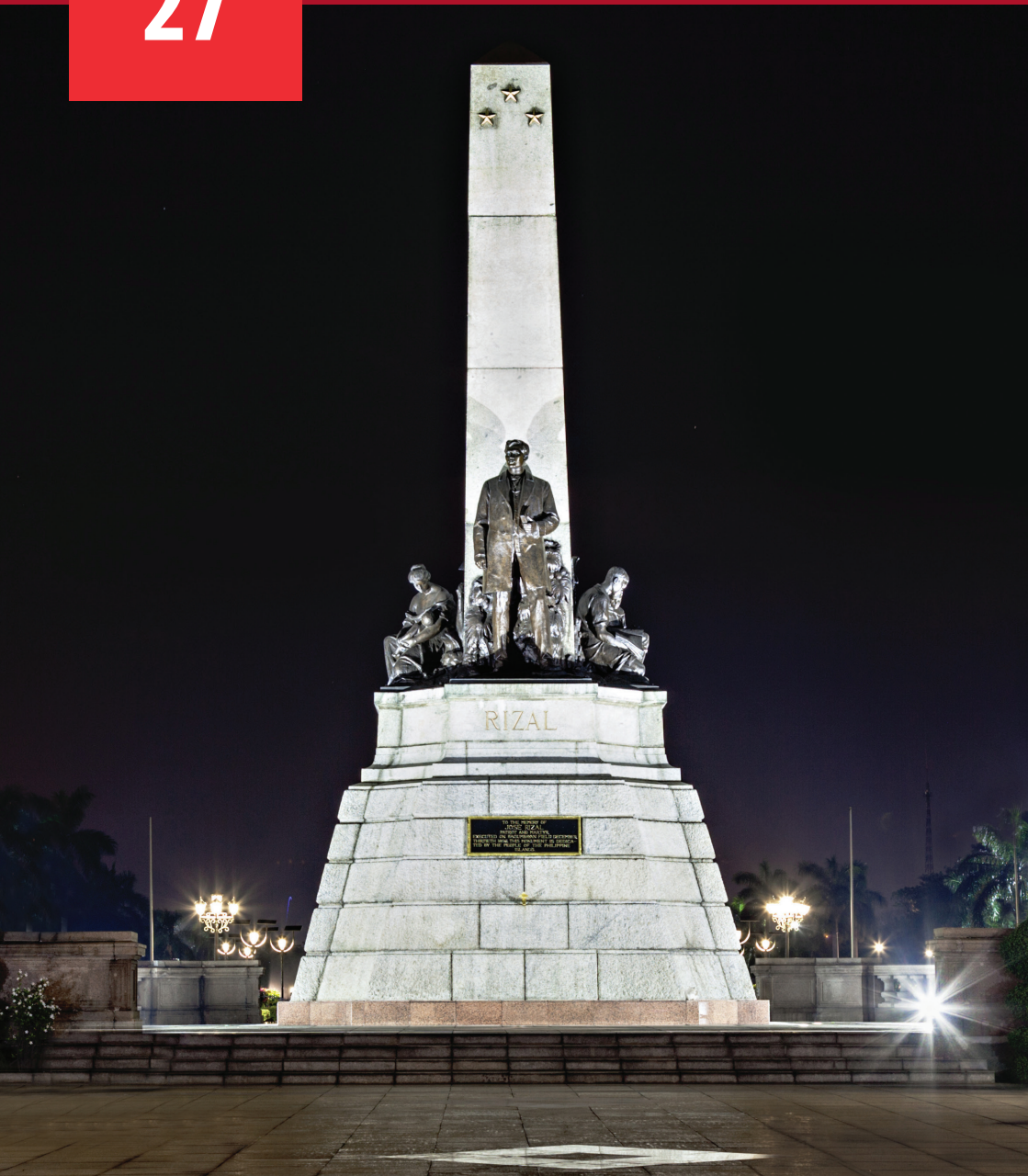

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" covers the following:

- Land, buildings, roads and constructions of all kinds adhered to the soil
- Trees, plants and growing fruits, while they are attached to the land or form an integral part of immovable property
- Everything attached to immovable property in a fixed manner, in such a way that it cannot be separated from said immovable without breaking the material or deterioration of the object
- Statues, reliefs, paintings or other objects for use or ornamentation, placed in buildings or on lands by the owner of the immovable property in such a manner that it reveals the intention to attach them permanently to the land or its structures
- Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works
- Animal houses, pigeon houses, beehives, fish ponds or breeding places of similar nature, in case their owner has placed them or preserves them with the intention to have them permanently attached to the land, and forming a permanent part of it (the animals in these places are included)
- Fertilizer used on a piece of land
- Mines, quarries and slag dumps, while the matter thereof forms part of the bed, and waters either running or stagnant

- Docks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, lake or coast
- Contracts for public works, and servitudes and other real rights over immovable property

1.2 What laws govern real estate transactions?

There are a number of laws that govern real estate transactions in the Philippines, including the following:

- Real estate transactions are generally governed by the Civil Code of the Philippines (the "Civil Code").
- Registration of title over private land, as well as registration of any interest in registered land that is less than ownership (such as mortgages and leases), are governed by Presidential Decree No. 1529, or the Property Registration Decree;
- Real estate transactions involving alienable or disposable land of the public domain are governed by various laws, including the Commonwealth Act No. 141 or the Public Land.
- The development of and ownership of units in condominium projects are governed by Republic Act No. 4726 or the Condominium Act.
- Lease of private land by foreign investors is governed by the Foreign Investors' Lease Act.

1.3 What is the land registration system?

The Philippines uses the Torrens system of land registration. Under this system, a Torrens title is conclusive against third parties, including the government. A holder of a Torrens title in good faith is guaranteed that his/her title is indefeasible, unassailable and imprescriptible. (For purposes of the discussion below, "registered land" refers to land that is registered under the Torrens system.)

To bring unregistered land into the Torrens system and obtain original registration of title to the land, the owner of the unregistered land must apply for registration with the proper court. If, after a hearing, the court finds that the applicant has title proper for registration, a decree of confirmation and registration is entered to bind the land and quiet the title to the land. The Land Registration Authority (LRA) will then issue the corresponding decree, which is subsequently transcribed by the relevant register of deeds as an "Original Certificate of Title."

When the registered land becomes the subject of a sale, mortgage, lease or other registrable transaction, the instrument evidencing the transaction is filed with the relevant register of deeds for registration. In case of a sale or any form of transfer of ownership, the original certificate of title is cancelled and a new one, a Transfer Certificate of Title, is issued. In case of a lease, mortgage or any other type of encumbrance, the transaction is merely annotated on the Original Certificate of Title.

There is no separate registration with respect to title to real property other than land. However, an owner of a building or other improvements standing on registered land (pursuant to a lease or some other right on the land) that is owned by another person may annotate his/her ownership of the building or other improvements on the certificate of title covering the land. Such annotation constitutes notice that the building or structure is owned by the person named in the annotation, and not by the landowner. Without such annotation, there is a rebuttable presumption that the landowner owns the buildings or improvements standing on his land.

1.4 Which authority manages the registration of titles?

The application for (original) registration of title to land under the Torrens system is made with the regional trial court having jurisdiction over the place where the land is located.

The LRA issues decrees of registration pursuant to final judgments of the courts in land registration proceedings and causes the issuance by the

registers of deeds of the corresponding certificate of title. It exercises supervision and control over all registers of deeds.

The office of the Register of Deeds constitutes a public repository of records and instruments affecting registered or unregistered lands in the province or city where such office is situated. It is the duty of the Register of Deeds to immediately register an instrument presented for registration dealing with real property which complies with all the requisites for registration.

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

Registration of unregistered land under the Torrens system is voluntary on the part of the landowner. However, to be able to enjoy the protection afforded by the Torrens system, landowners must register their title under this system. Registration of a transaction involving registered land (such as sale, mortgage or lease) is also not compulsory. However, as in the case of landowners opting to register their title under the Torrens system, persons dealing with registered land generally register their interests under the Torrens system. The registration of such interests with the relevant register of deeds constitutes constructive notice of such interests to all persons. Proof of the registration is the annotation of the interests on the certificate of title covering the land.

1.6 What documents can land owners use to prove ownership over real property?

Ownership of registered land is evidenced by either an original or transfer certificate of title issued by the relevant register of deeds.

Ownership of a condominium unit is evidenced by a condominium certificate of title.

As stated above, with respect to real property other than land and condominium units, there is no system that is equivalent to the Torrens

system for registration under which a document is issued to evidence the owner's title.

1.7 Can a title search be conducted online?

At present, there is no public online system for title search in the Philippines.

There is an ongoing process to centralize and computerize the records of all Registers of Deeds. Under that centralized records system, a certified true copy of a certificate of title covering a parcel of land located anywhere in the Philippines may be obtained from any Register of Deeds. Currently, there are still certain areas in the Philippines that are not yet part of the centralized records system. For those areas, title search is done by going to the Register of Deeds of the city or municipality where the land is located and applying for a certified true copy of the certificate of title.

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

- Ownership of land

  Foreigners cannot own land in the Philippines. Land may be owned only by a Philippine citizen, or a domestic partnership or association wholly owned by citizens of the Philippines, or a corporation organized under the laws of the Philippines at least 60% of whose capital stock outstanding and entitled to vote is owned and held by Philippine citizens.

- Ownership of condominium units

  The Condominium Act imposes restrictions on foreign ownership of units in a condominium project. "Condominium" is defined as an interest in real property consisting of a separate interest in a unit in a residential, industrial or commercial building and an undivided interest

in common, directly or indirectly, in the land on which it is located and in other common areas of the building. As the ownership of a condominium unit includes an undivided interest in common in the land on which the condominium project stands, the Condominium Act mirrors the foreign restriction on ownership of land in the Philippines. Thus, under the Condominium Act, there is also a 40% foreign equity restriction, computed as follows:

- If the common areas in the condominium project are to be owned by the owners of the separate units as co-owners, then units in the condominium project may be owned only by Philippine citizens or corporations at least 60% of the capital stock of which belongs to Philippine citizens
- On the other hand, if the common areas in a condominium project are to be held by a condominium corporation (in which owners of units automatically become members), then foreigners may own units in the condominium project, provided that such ownership will not cause the foreign shareholding in the condominium corporation to exceed 40%

- Ownership of other types of real property

  The foregoing restrictions on ownership of land and condominium units do not apply to ownership of other types of real property (eg, buildings or other improvements on land). Foreigners can own such other types of real property.

1.9 Can the government expropriate real property?

Yes, the Philippine government may expropriate private property (including real property) for public use, subject to the payment of just compensation.

1.10 How can real estate be held?

Usually, an interest in real property is held by any of the following means:

- Freehold
- Leasehold

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

The usual structure used in investing in real estate is a corporation.

1.12 How are real estate transactions usually funded?

Depending on the type and size, real estate transactions are usually funded through loans obtained from banks, shareholder loans and/or equity.

Banks typically require security arrangements on the real estate and related assets (eg, mortgage, pledge and assignments of leases and rents).

1.13 Who usually produces the documentation in real estate transactions?

Generally, the buyer's lawyer will prepare the initial draft of the purchase agreement.

1.14 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?

As a general rule, a registered owner receiving a certificate of title pursuant to a court-issued decree of registration, or a subsequent purchaser of registered land taking a certificate of title for value and in good faith, holds the title free from all encumbrances except those annotated on the certificate of title and any of the following encumbrances that may subsist:

- Liens, claims or rights arising or existing under the laws and the Constitution of the Philippines, which are not by law required to

appear of record in the Registry of Deeds to be valid against subsequent purchasers of encumbrancers of record

- Unpaid real estate taxes levied and assessed within two years immediately preceding the acquisition of any right over the land by an innocent purchaser for value, without prejudice to the right of the government to collect taxes payable before that period from the delinquent taxpayer alone

- Any public highway or private way established or recognized by law, or any government irrigation canal or lateral thereof, if the certificate of title does not state that the boundaries of such highway or irrigation canal or lateral thereof have been determined

- Any disposition of the property or limitation on the use thereof by virtue of, or pursuant to, any law on agrarian reform

1.15 Does a seller or occupier retain any liabilities relating to the real estate after he/she has disposed of it?

A seller can retain liabilities relating to the real estate even after he/she has disposed of it. For example, liability for any violation of environmental law or regulation attaches to the person indicated as the project owner in the applications for the relevant environment permits. It is therefore important that the relevant government agencies are notified of any transfer of ownership of the project to avoid liability arising from still being the owner of record of the project.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

The following are the usual documents in a real estate acquisition:

- Sale and purchase agreement

The sale and purchase agreement documents the parties' agreement for the sale and purchase of the real estate on a specified date, upon the occurrence/satisfaction of certain conditions. It contains, among others: (i) the description of the real estate subject of the sale and purchase; (ii) the commercial terms of the sale and purchase (eg, the purchase price, the schedule of payment of the purchase and which party shall bear what types of taxes); (iii) any pre-closing, closing and post-closing conditions/deliverables; and (iv) the representations and warranties of each party.

- Due diligence report

  Either before or after the signing of the sale and purchase agreement, the buyer and its advisors (legal, environment, technical) will have commenced due diligence on the real estate.

- Deed of sale

  The deed of sale is the document under which the seller transfers the real estate to the buyer. This document is fairly straightforward, sets out the basic terms of the transaction and cross-refers to the sale and purchase agreement for the other terms. This is the document that is submitted to the tax authorities when paying the applicable taxes, and in case of sale of land, to the Register of Deeds when applying for a transfer certificate of title to be issued to the buyer.

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

A seller usually gives the following representations and warranties:

- Land
  - The seller is the absolute, legal and beneficial owner of the land, possesses good and marketable title to the land, and has the absolute right, title and interest to sell, transfer and convey the land to the buyer

- The land is free and clear of all claims, charges, mortgages, liens, encumbrances, leases, tenancies, licenses or other rights of occupation, options, rights of preemption, rights of first refusal and other agreements affecting the same and the seller has exclusive and unfettered possession of the land
- All outstanding taxes, fees, charges and assessments in respect of the land have been paid
- Commencing on closing date, the buyer shall have valid and legal title and shall enjoy full and peaceful possession of the land
- There are no covenants, restrictions, burdens, stipulations, easements, grants, conditions, terms, overriding interests, rights or licenses affecting the land which are of an unusual or onerous nature or which adversely affect the use or intended use of the land, and there are no matters which adversely affect the value of the land
- None of the facilities necessary for the enjoyment and use of the land or any part of them are enjoyed on terms entitling any person to terminate or curtail the same
- The present use of the land is the permitted use under zoning and planning laws and regulations

- Environmental matters
  - The seller and any present occupier or user of the land have not engaged in or permitted any operations or activities upon the land involving the use, storage, handling, release, treatment, manufacture, processing, deposit, transportation or disposal of any hazardous substance, or any substance regulated by environmental law

- In relation to the land, there have not been nor are there any threatened or pending civil or criminal actions, notices of violations, investigations, administrative proceedings or written communications from any regulatory authority under any environmental laws against the seller, so far as the seller is aware, there are no facts or circumstances which may give rise to the same

- Litigation
  - The seller is not engaged whether as plaintiff or defendant or otherwise in any civil, criminal or arbitration proceedings or any proceedings before any tribunal in relation to the land, and there are no proceedings threatened or pending against the seller in relation to the land, and there are no facts which are likely to give rise to any such litigation or proceedings

- Taxation matters
  - The seller is not involved in any dispute with any tax authority concerning any matter likely to affect the land and no such dispute is likely
  - There is no unsatisfied liability for tax relating to, affecting, or for which a lien is created on, the land
  - The seller has not received notice that any examination or audit with respect to any tax on or affecting the land is in progress, nor any notice from any tax authority of its intention to commence such examination

2.3 When is the sale legally binding?

For land and other types of real property, the sale becomes legally binding on the parties on the date specified in the deed of sale. In most cases, the sale becomes binding on the parties upon the execution of the deed of

sale (ie, the parties sign the deed of sale only when all the conditions to closing have been complied with).

In the case of land, under the Torrens system, the sale will bind third parties only upon its registration with the Register of Deeds.

2.4 When is title transferred?

For sale of land and other types of real property, as between the parties, title is transferred from the buyer to the seller on the date specified in the deed of sale. In most cases, title is so transferred upon the execution of the deed of sale (ie, the parties sign the deed of sale only when all the conditions to closing have been complied with).

In the case of sale of land, under the Torrens system, from the perspective of third parties, title is transferred from the buyer to the seller only upon registration of the deed of sale with the Register of Deeds.

2.5 What are the costs usually shouldered by the parties?

The seller is the statutory taxpayer of the following types of taxes due in a real estate sale:

- Income tax
- Value-added tax (which, being an indirect tax, may be passed on by the buyer to the seller)
- Local transfer tax

The law does not designate which between the seller and the buyer is the statutory taxpayer for the documentary stamp tax.

In addition to the foregoing taxes, the other costs arising from a real estate sale are the registration fees assessed by the Register of Deeds and notarization fees.

In almost all sale transactions, the seller bears the income tax and the local transfer tax. With respect to the other taxes and costs, there is no uniform practice as to which party shoulders them.

3. Leases

3.1 What are the usual forms of leases?

- Private land leases
- Public land leases
- Office/retail space leases
- Residential leases

3.2 Are lease provisions regulated or freely negotiable?

Except for (i) leases of public land; and (ii) leases of land by foreign investors under the Investors' Lease Act, lease provisions are generally not regulated and are freely negotiable.

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

Lease of private land to Philippine citizens and corporations that are at least 60% owned by Philippine citizens, as well as lease of any other type of real property (except public land) to Philippine citizens, foreigners and foreign-owned corporations, can have a term of as long as 99 years.

As a rule, lease of private land to foreigners and foreign-owned corporations can have a maximum term of only 25 years, renewable for another 25 years upon mutual agreement of the lessor and lessee. However, a lease under the Investors' Lease Act may have a period of 50 years, extendible once for a period of not more than 25 years. A lease under this law must be registered with the Department of Trade and Industry's (DTI) Board of Investments and is subject to the following conditions:

- A stipulation as to the purpose of the investment for which the long-term lease agreement is being entered into
- A stipulation by the parties recognizing the unequivocal authority of the secretary of the DTI to terminate or cancel the long-term lease agreement:
    - if the investment project is not initiated within three years from the signing of the lease agreement;
    - in case of withdrawal of approved investment;
    - in case of use of the leased area for purposes other than that authorized by the DTI; or
    - in case of violation by the parties of any of the provisions of the Investors' Lease Act and its implementing rules and regulations.

3.4 What are the usual lease terms?

Except for (i) leases of public land; and (ii) leases of land by foreign investors under the Investors' Lease Act, lease provisions are generally not regulated and are freely negotiable. A lease agreement would typically include the following terms:

- Term/period of the lease
- Amount of the rent (and whether the same is inclusive or exclusive of value-added tax) and schedule for its payment
- Authorized use of the leased premises
- Which party shoulders the real property tax, association dues (if any) and documentary stamp tax

- Which party is responsible for the payment of water, electricity and other services and utilities used in or for the maintenance of the leased premises
- The respective obligations of the parties with respect to maintenance and repairs
- Whether the lessee is authorized to make changes and alterations to the leases premises
- Insurance
- What happens in the event of government expropriation, force majeure, etc.
- Grounds for termination of the lease agreement
- Representations and warranties of each party

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

No.

3.6 On what grounds may a lease be terminated?

Lease provisions (including the ground for termination) are generally not regulated and are freely negotiable. A lease agreement would typically provide the following grounds for the lessor's termination of the lease:

- Lessee's breach of the terms of the lease agreement
- Lessee's insolvency, bankruptcy, etc.
- Lessee's abandonment of the leased premises

3.7 Must rent be paid in local currency?

The parties may agree on the currency in which rent shall be paid. In the event that rent is paid in foreign currency, the parties will usually agree on the exchange rate to be used for purposes of computing the applicable taxes.

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

This will depend on the agreement of the parties. Depending on the type of property involved (land, or residential, commercial or office space, etc.), rent is usually paid monthly or quarterly, at the beginning of the month /quarter (as the case may be).

In addition, it is common for the lessor to require the payment of advance rent equivalent to three months' rent to be applied to the first three months of the lease term.

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

Rent is usually fixed for the initial term. Rent for renewals or extensions may also be fixed or may be adjusted to reflect the market value at the time of renewal or extension.

A maximum allowable annual percentage increase in rent is fixed for certain residential leases.

3.10 What are the basic obligations of landlords and tenants?

The following are usually required of landlords:

- Unless otherwise prevented by force majeure, maintain the tenant in peaceful possession of the leased premises for the entire lease term
- Repair and maintain the following in good order, condition and repair: (a) the foundations, exterior walls and roof of the building; (b) the electrical, mechanical, plumbing, heating and air conditioning systems,

facilities and components located in the building which are concealed and used in common by all lessees; and (c) the common areas

The following are usually required of tenants:

- Pay rent on time
- Use the leased premises only for the purpose/activity specified in the lease agreement
- Keep and maintain the leased premises (including all non-structural interior portions, systems and equipment; interior surfaces of exterior walls, interior moldings, partitions and ceilings; and interior electrical, lighting and plumbing fixtures) in as good order, condition and repair as they were on the start of the lease period — reasonable wear and tear and damage from fire and other casualties excepted
- Obtain lessor's consent before making any alterations, additions or improvements involving either the structural, mechanical, electrical, plumbing, fire/life safety, heating, ventilating or air conditioning systems of the leased premises
- Ensure that all alterations are constructed in a good and workman-like manner and in compliance with all applicable laws

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

Unless the lease agreement provides otherwise, the tenant must obtain the consent of the lessor before assigning his rights under the lease agreement to another person.

Unless the lease agreement contains a prohibition, the tenant may sublease the leased premises, in whole or in part, without prejudice to his/her responsibility for the performance of the lease agreement toward the lessor.

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

Unless the lease agreement provides otherwise, the following apply:

- If the lease premises is totally destroyed by a fortuitous event, the lease is terminated
- If the destruction is partial, the lessee may choose between proportional reduction of rent and a rescission of the lease

3.13 Who is usually responsible for insuring the leased premises?

The lessor is usually responsible for insuring the leased premises.

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

If the lease of land is registered (ie, annotated on the certificate of title covering the land) and the sale of the land occurs subsequent to such registration, then the lease will have to be respected by the buyer.

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

If the lease of land is registered and the mortgage of the land was annotated subsequent to the annotation of the lease, then the lease will have to be respected by the buyer in the foreclosure sale.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Presidential Decree No. 957, otherwise known as the Subdivision and Condominium Buyers' Protective Decree, as well as its Implementing Rules and Regulations, require every registered owner or developer of a parcel of land that wishes to convert the same into a subdivision project to obtain a certificate of registration from the Housing and Land Use Regulatory Board (HLURB). Additionally, the owner or the real estate dealer interested in the sale of lots or units in a subdivision project should obtain a license to sell

from the HLURB. "Subdivision project" is defined as "a tract or a parcel of land registered under Act No. 496 which is partitioned primarily for residential purposes into individual lots with or without improvements thereon, and offered to the public for sale, in cash or in installment terms. It shall include all residential, commercial, industrial and recreational areas, as well as open spaces and other community and public areas in the project."

For tourism development projects, the Department of Tourism (DOT) evaluates such projects for the issuance of permits and the grant of incentives by appropriate government agencies.

The Department of Environment and Natural Resources (DENR) is the lead agency in environmental protection and administration. The DENR is assisted in the formulation and implementation of environmental policies by the Environmental Management Bureau (EMB), the Laguna Lake Development Authority (LLDA), local government units and other governmental agencies and departments.

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

The use and occupation of real estate are subject to various Philippine laws and regulations that are promulgated for the protection of the environment.

Presidential Decree No. 1586 ("PD 1586") established the Philippine Environmental Impact Statement (EIS) System. An environmental impact assessment is part of project planning and is conducted to identify and evaluate important environmental consequences, including social factors that may occur if a project will be undertaken. Measures to eliminate or minimize these impacts are incorporated into project design and operations. PD 1586 requires proponents of environmentally critical projects (ECP) and projects within environmentally critical areas (ECA) to obtain an environmental compliance certificate (ECC) prior to the commencement of the project. An ECP is a project or program that has

high potential for significant negative environmental impact, while an ECA is an area delineated as environmentally sensitive such that significant environmental impact is expected if certain types of proposed projects or programs are located, developed or implemented in it.

The ECC is a document certifying that based on the representations of the proponent, the proposed project or undertaking will not cause significant negative environmental impact. The ECC also certifies that the proponent has complied with all the requirements of the EIS System and has committed to implementing its approved Environmental Management Plan. The ECC contains specific measures and conditions that the project proponent has to undertake.

The use and occupation of real estate are also subject to the provisions of the Philippine Clean Water Act of 2004 (the "Clean Water Act") and its implementing rules and regulations. Pursuant to the Clean Water Act, a project owner is required to secure a wastewater discharge permit, which authorizes it to discharge liquid waste and/or pollutants of specified concentration and volume from the property into any water or land resource for a specified period of time. The DENR is responsible for issuing discharge permits and monitoring and inspection of the facilities of the grantee of the permit.

The provisions of the Philippine Clean Air Act and its implementing rules and regulations are likewise applicable to the use and occupation of real estate. The Clean Air Act provides that before any business may be allowed to operate facilities and equipment which emit regulated air pollutants, the establishment must first obtain a Permit to Operate Air Pollution Source and Control Installations. The DENR issues permits to operate air pollution source and control installations, and it also monitors and inspects the facilities of the grantee of the permit.

The following regulatory environmental laws and regulations are also applicable: (i) the Water Code, which governs the appropriation and use by

any entity of water within the Philippines; and (ii) the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990 and its implementing rules and regulations, which requires waste generators to register with the DENR.

The costs of compliance with such environmental laws and regulations varies on a case-to-case basis, depending on the location of the project, the type of project and the extent of environmental impact as determined in the EIS.

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

In addition to the environment permits discussed above, building permits and related permits that are issued by the local government having jurisdiction over the area where the real estate is located, must be obtained for building and occupying real estate.

Furthermore, as discussed above, a registered owner or developer of a parcel of land that wishes to convert the land into a subdivision project must obtain a certificate of registration from the HLURB. Additionally, the owner or the real estate dealer interested in the sale of lots or units in a subdivision project should obtain a license to sell from the HLURB.

For tourism development projects, the DOT evaluates such projects for the issuance of permits and the grant of incentives by appropriate government agencies.

4.4 Can an environmental cleanup be required?

Yes, environmental cleanup may be required by authorities.

4.5 Are there minimum energy performance requirements for buildings?

Currently, there are no minimum energy performance requirements for buildings.

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

No.

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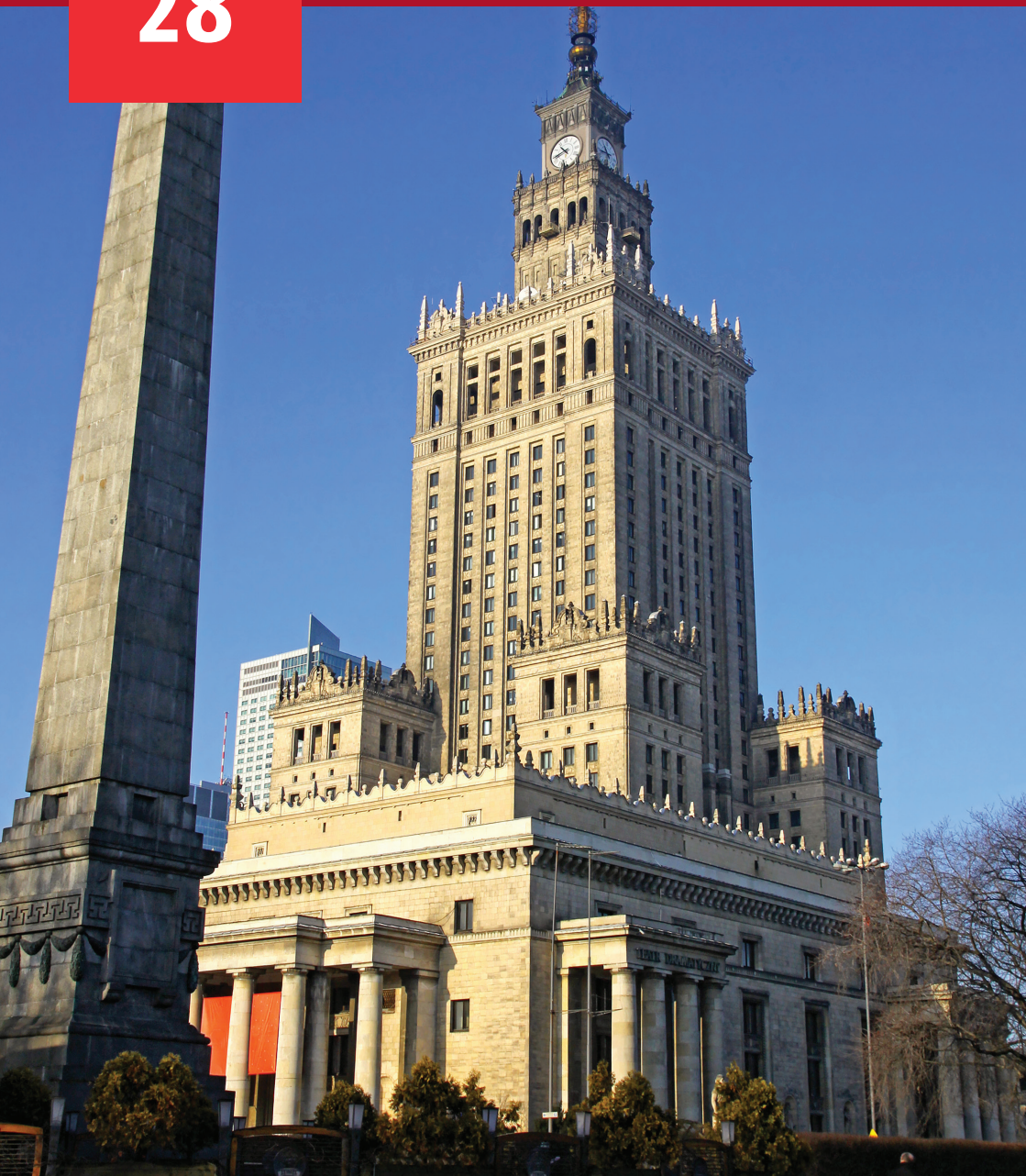

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Buildings permanently attached to the land and parts thereof (premises); these can be the object of ownership only if it is provided so in separate legal provisions (eg, condominium rights and the ownership of a building erected on land on which the right of perpetual usufruct was established)

As a consequence, if the law does not provide otherwise, all structures erected on the land (eg, a building) are always owned by the owner of the land and cannot be a separate object of ownership (superficies solo cedit).

1.2 What laws govern real estate transactions?

Property law is governed by the Civil Code. The management of property owned by the state or communes is also governed by the Property Management Law.

1.3 What is the land registration system?

Legal title to land can generally be assessed on the basis of entries made in land and mortgage registers maintained for each real property by the relevant district courts. The content of the registers is deemed conclusive as to the legal title held by an owner or a perpetual usufructuary.

The principle of reliability of land and mortgage registers protects those who acquire real property relying on good faith on the entries made in land and mortgage registers by courts. Those who acquire land free of charge cannot claim protection under the principle of reliability of the registers. A person acquiring land from an entity registered in a land and

mortgage register as the owner of the land would effectively become a new owner even in cases where the entry was erroneous, provided that other conditions for the operation of the principle of legal reliability of the registers are met.

Land and mortgage registers also contain entries relating to the area of the land and the structures existing thereon. However, such entries are not legally conclusive and need to be confirmed in the land and building registers held by each local commune.

1.4 Which authority manages the registration of titles?

Title registration is managed by the district courts which maintain land and mortgage registers for real property.

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

- Ownership
- Perpetual usufruct
- Usufruct
- Easements
- Mortgages

Legal interests of third parties, such as lease agreements, commitment to sell the real property or the right of first refusal, may also be evidenced in the land and mortgage registers, though it is not mandatory to register them. Once registered, such interests become binding on the third parties acquiring the real property, and no party can effectively claim lack of knowledge of such interests.

1.6 What documents can land owners use to prove ownership over real property?

Ownership of land may be proven by an extract from the land and the mortgage register issued by the district court. If a property is not registered in any land and mortgage register, a notarial deed documenting the agreement for the transfer of interest in the real property will be sufficient to prove ownership.

1.7 Can a title search be conducted online?

Yes. The land and mortgage registers maintained by the relevant district courts are available to the public online. Information about the ownership of real property can be searched for free.

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

Yes. Foreigners who are not citizens or companies of a member state of the EEA are required to obtain a permit from the Minister of the Interior to purchase land.

From 1 May 2016 residents of a member state of the EEA are not required to obtain a permit to purchase agricultural and forest real estate.

Note, however, that since 30 April 2016, the government decided to place restrictions on trade in agricultural property that are applicable to all entities operating on the Polish market, irrespective of whether they are considered foreigners and to suspend the sale of agricultural land owned by the state treasury which is managed by the Agricultural Property Agency in the period of five years from the date of entry into force of the new law. The general rule is that only individual farmers can acquire agricultural property. In all other cases, with few exemptions, the consent of the Agency for a transfer of ownership is required. Moreover, the new owner of agricultural property is under a statutory obligation to manage –

for at least 10 years following acquisition – the farm to which the new agricultural property was joined.

The Agency will have a preemptive right over the shares of commercial companies that own agricultural properties and a right to repurchase agricultural properties owned by a limited partnership when a partner of the partnership changes or a new partner joins the partnership.

The Agency will have a right to purchase agricultural properties in each case when ownership of the agricultural property changes, irrespective of the legal basis of the change, including mergers, divisions and transformations of companies.

Apartments can be purchased by any foreigner without obtaining any consent.

1.9 Can the government expropriate real property?

Yes. Real property can be expropriated by the government against appropriate compensation if it is necessary for public use.

1.10 How can real estate be held?

Generally, an interest is held by any of the following means:

- Ownership
- Perpetual usufruct
- Condominium rights

Ownership, as it is referred to in Poland, is a title to real property equivalent to the "freehold title" in the English system. Ownership conveys freedom of use including the collection of benefits and the transfer for an unlimited period of time.

The right of perpetual usufruct is a title to real property that is owned by the state or a commune. This right can be established for a specified term of 99 years. In exceptional cases, such period may be shorter, but it cannot be less than 40 years. The term of perpetual usufruct may be renewed. Perpetual usufruct is a transferable, alienable and mortgageable right of use.

Natural persons and legal entities can be granted the right of perpetual usufruct to land owned by the state or by a commune. Under Polish law, perpetual usufruct ranks second in the hierarchy of interests in real property.

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

The typical structure would assume use of a Polish Limited Liability Company (special purpose company) and the holding company located in the favorable jurisdiction (eg, the Netherlands or Cyprus). Such structure allows for tax-efficient distribution of dividends and exemption of capital gains upon exit.

1.12 How are real estate transactions usually funded?

Most real estate transactions are funded partially with internal financing and partly with bank loans. Part of the internal financing is usually provided in the form of intercompany loans. Internal financing is structured (via direct shareholder or via a group financing entity located in a favorable jurisdiction) to allow for the tax-efficient distribution of interest and deducibility of the interest in Poland.

1.13 Who usually produces the documentation in real estate transactions?

The seller usually prepares the letter of intent, which is the first document in any real estate transaction. The letter of intent specifies basic conditions of the transaction and the exclusivity period for due diligence and negotiations of the transaction.

Generally, the buyer prepares the initial draft of the preliminary purchase and sale agreement (optional) and the purchase and sale agreement. However, this is agreed upon on a case-by-case basis.

1.14 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?

Yes. If land contamination existed prior to 30 April 2007, the owner of the land may be obligated to clean up the contamination. If contamination took place after 30 April 2007, the polluter will be liable.

If the agreement establishing the perpetual usufruct right or the decision granting such right imposes an obligation to develop the real property (within a specified term), then such obligations are inherited by the future perpetual usufructuary.

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

Yes. The owner is liable on the basis of statutory warranty for defects in land title and in the building. The warranty may be excluded by agreement.

The owner or occupier may be liable for contamination if the owner contaminated the land after 30 April 2007.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Letter of intent

  The first document in any real estate transaction is a letter of intent, specifying the basic conditions of the transaction and the exclusivity period for the due diligence and negotiations of the transaction.

- Due diligence report

Once the letter of intent is signed, it is the responsibility of the buyer, usually through the buyer's lawyer, to conduct due diligence with respect to the real property to be acquired. This includes title and zoning searches and a review of any leases and surveys of the property. An independent environmental assessment is often recommended and an independent engineering review of the property, particularly in the case of property with older buildings, is common.

- Preliminary purchase and sale agreement (optional)

  The parties may also conclude a preliminary purchase and sale agreement on the basis of which the parties undertake to conclude the final purchase and sale agreement in the future.

  Such preliminary agreement must include the essential elements of the final agreement, such as a description of the property, the purchase price, the advance payment and any other special terms. It is recommendable for the preliminary agreement to specify the closing date. If the closing date (ie, a deadline to conclude the final sale agreement) is not specified within a year of the date of concluding the preliminary agreement, any of the parties may not demand the conclusion of the final agreement. Such agreements typically contain conditions to the benefit of the buyer, and the representations and warranties of the seller. If one party to the preliminary agreement fails to conclude the final agreement, the other party will be entitled to claim compensation for the damage it sustained because it expected to conclude the final agreement. The scope of the compensation may be extended or limited in the preliminary agreement (eg, the parties may agree on contractual penalties). The preliminary agreement may be concluded in any form. However, if the parties conclude the preliminary agreement in the form required by law (notarial deed for real estate), then in case of one party's withdrawal, the other party will be entitled to claim the conclusion of the final agreement in court.

In such situation, the court's ruling will substitute the other party's declaration of will and the definite agreement will be concluded.

- Purchase and sale agreement

  This agreement unconditionally transfers the title (ownership or perpetual usufruct) to the real estate. The agreement should contain all necessary business terms for the transaction, including the description of the land, the purchase price and any other special terms, as well as the representations and warranties of the seller.

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

A seller usually gives the following warranties:

- The legal title is free from legal defects, is not encumbered and has been acquired in good faith
- There are no financial liabilities encumbering the property
- There is no pending litigation impacting the value of the property
- There is no contamination of the property
- There are no tax arrears

2.3 When is the sale legally binding?

The sale becomes binding at the moment of the execution of the purchase and sale agreement.

2.4 When is title transferred?

In the case of ownership, the title is transferred at the moment of the execution of the purchase and sale agreement.

In the case of perpetual usufruct right, the title is transferred at the moment when the right is registered in the land and mortgage register by

the district court with a retroactive effect as of the date of submitting an application for registration with the district court.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- Buyer's agent's fees
- Buyer's legal costs
- Due diligence costs for consultants who have prepared the building condition reports, environmental assessments, valuation appraisals and real estate surveys
- Due diligence inquiries made to statutory and government bodies
- Notary fees
- Court registration fees
- Transfer tax, if the sale is not subject to VAT

The seller usually pays for the following:

- Listing agent's fees
- Seller's legal costs
- Income tax on any profit made on the sale of the real estate

3. Leases

3.1 What are the usual forms of leases?

- Ground leases

  One form of leasing arrangements is a long-term ground lease, under which a tenant leases vacant land and develops it. Once the

development is completed, the ground tenant will sublet space to retail, office or industrial tenants, depending on the type of the development. As the ground leasehold interests cannot be bought and sold in a manner similar to freehold property interests, this structure is rarely used.

- Commercial leases

  Most commercial office and retail space, and some standard industrial space, is available only through a commercial lease. Most commercial lease transactions commence with an offer to lease, which contains the business terms agreed upon by the parties, including the space, term, rent and any tenant inducements. Commercial leases are typically on a net/net rental basis, which requires a tenant to pay basic rent plus service charges (additional rent) comprising a proportionate share of realty taxes, insurance, utility and common area maintenance charges. In a retail lease, a tenant may also be required to pay rent based on a percentage of its annual sales.

- Residential leases

  Residential leases are regulated in more detail by the special Tenant Protection Law, which overrides any contrary terms of the lease contract, regardless of the intention of the parties. This law imposes limits on the rent increase, as well as restrictions on the possibilities of terminating the lease.

3.2 Are lease provisions regulated or freely negotiable?

Lease provisions are regulated in the Civil Code. However, to a large extent, they are freely negotiable. The Civil Code provisions on leases have a semi-imperative character, which means that the legal provisions can be changed but only in favor of the tenant. However, residential leases are fully regulated and can only be negotiated to a very limited extent.

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

The maximum term for a lease with an individual is 10 years. The maximum term for a lease with a company or for a ground lease is 30 years. The maximum term of the leases cannot be extended for a specified period of time. A new lease needs to be concluded after the expiration of the maximum term of the lease.

3.4 What are the usual lease terms?

The usual terms of the lease are three, five or 10 years. These terms can be extended up to the maximum term of the lease under Polish law.

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

The tenants may request an extension of the lease only if they have a right to do so under the lease agreement.

3.6 On what grounds may a lease be terminated?

A landlord can generally terminate the lease when the tenant breaches the terms of the lease, ie, if the tenant is late with the payment of rent for more than two rent periods, uses the premises in a manner that is contrary to the agreed use, assigns or sublets the property without consent of the landlord, or becomes insolvent (subject to statutory restrictions).

3.7 Must rent be paid in local currency?

No. Rent can be paid in a foreign currency, however it is typical for rent to be denominated in euro and paid as the equivalent in the local currency.

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

Typically, rent is paid in advance on a monthly basis. However, this will depend on the agreement of the parties.

3.9 How is rent reviewed? Are there limits on the increase in rent?

Rent is usually fixed for an initial term and subject to yearly indexation. Rent for renewals or extensions may also be fixed or may be adjusted to reflect the market value at the time of such renewal or extension.

The Tenant Protection Law sets an allowable annual percentage increase in rent for residential leases.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Repair and maintain the structure of the property
- Provide standard services relating to the functioning of the property
- Insure the property

The following is usually required of tenants:

- 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) to the property for inspections and landlord's work

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

The tenant is required to obtain the landlord's consent to assign and sublet the premises.

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

If the premises are substantially damaged or destroyed by vis major, the lease will expire. Rent generally abates according to the extent of the damage or destruction.

If the premises are damaged or destroyed due to causes attributed to the tenant, the tenant may be liable for repairs or replacement.

3.13 Who is usually responsible for insuring the leased premises?

The landlord is responsible for insuring the leased premises and the tenant is responsible for insuring its property brought into the premises.

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

Yes. However, the new owner may terminate the lease. The former owner will be liable to the tenant for damage caused by an earlier termination.

The new owners will not be able to terminate the lease if the lease is concluded for a fixed time with an authenticated date (eg, signed in front of a public notary) and the premises are taken over by the tenant.

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

Yes. However, the new owner may terminate the lease unless the lease is concluded for a fixed time with an authenticated date (eg, signed in front of a public notary) and the premises are taken over by the tenant.

Moreover, if the lease agreement was concluded after the commencement of enforcement proceedings concerning the real property, it will not survive.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

The local authorities of the relevant communes has authority over land development and environmental regulation.

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

The Environmental Protection Law governs the use and occupation of real estate.

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

- Zoning plan or site permit, if there is no zoning plan for the area being developed
- Building permit
- Occupancy permit

4.4 Can an environmental cleanup be required?

Yes. Generally, environmental cleanup may be required if the activities of the owner or occupier have a negative impact on the environment.

4.5 Are there minimum energy performance requirements for buildings?

Yes. The Building Law and the Technical Conditions for Buildings Law provide the parameters for energy performance of new buildings as well as buildings that are being renovated.

Currently, under the Building Law, all new as well as old buildings that are being subject to a sale transaction must have an energy performance certificate.

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

No. However, if an old building is being restored, the building design needs to comply with the energy performance requirements of the buildings.

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1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land plots
- Parts of subsoil
- Any facility closely connected with land (which cannot be removed without damage) including buildings, structures and uncompleted construction facilities, residential and non-residential premises as well as parts of buildings and structures intended for parking vehicles (car park spaces)

Land plots and the buildings that occupy them are treated as separate pieces of real estate. Hence, there may be separate titles to a land plot and to a building located on it. Unless the context provides otherwise, our comments in this summary on rights (titles) to real estate or land apply both to land and structures (buildings, liner facilities, etc.) that qualify as real estate under Russian law.

1.2 What laws govern real estate transactions?

Both the Constitution of the Russian Federation and the Civil Code of the Russian Federation uphold the right to own private property. The core legislative act governing land relations is the Land Code, which establishes fundamental terms and procedures for the acquisition of titles to land and for land use. The Civil Code and the Land Code are further supplemented by other federal and regional laws and regulations regulating property issues.

1.3 What is the land registration system?

In accordance with the Civil Code, title (among other rights) to real estate arises after its state registration. Federal Law No. 218-FZ "On State Registration of Real Estate" (the "Registration Law") sets out the mechanics of state registration. At the request of a legitimate acquirer of title (eg, a buyer under a sale purchase agreement), the authority in charge of state registration of rights to real estate must state register the title and issue an extract from the Unified State Real Estate Register (the "Property Register") evidencing the registration of title.

For all owners of real estate, the ownership right has to be state-registered in the Property Register in accordance with the procedure provided by Registration Law. The exceptions to this rule relate to rights to real estate acquired prior to the adoption of the Registration Law or certain transactions expressly carved out by the law (eg, transfer of property in the course of reorganization of a legal entity to its legal successor). The owner of such real estate is not obligated to state register its rights unless it wishes to enter into a transaction involving its real estate (eg, lease, mortgage or sale).

State registration of the ownership right to real estate is a fairly straightforward process, as long as an applicant seeking to register the title can clearly demonstrate that the real estate in question was acquired or built in accordance with the procedures established by law. As a general rule, before the ownership right to real estate is state registered, such real estate must undergo cadastral recording in the Property Register. As a result, information on the basic characteristics of real property including its type (land plot, buildings, structures, premises and uncompleted construction facilities), cadastral number, address, location and boundaries, total area, cadastral value and permitted (designated) use will be recorded in the Property Register. Starting from 1 January 2017, cadastral recording of real estate and state registration of ownership rights with the Property Register are designed as a single (one-window) process.

1.4 Which authority manages the registration of titles?

Title registration is managed by territorial departments of the Federal Service of Registration, Cadastre and Cartography.

1.5 What rights (encumbrances) over real property are required to be registered?

- Right of ownership
- Right of economic management
- Right of operational control
- Right of lifelong inheritable possession
- The right of perpetual (indefinite) use
- Leasehold (if the lease term is one year or longer)
- Mortgage
- Easement (servitude)
- Trust management

1.6 What documents can land owners use to prove ownership over real property?

Land ownership may be proven by a certificate of state registration of right, issued by the registration authority upon registration of the title transfer (if completed before 15 July 2016) or by a relevant extract from the Property Register confirming title transfer (if completed after 15 July 2016). To check the up-to-date status of one's title to a piece of real estate, the interested party may apply for an extract (hard or electronic copy) from the Property Register, which will show the current owner of the real property, existing encumbrances, arrests and assertions of rights. This information is open to the public and is provided within five working days for a small fee.

1.7 Can a title search be conducted online?

Yes. The Federal Service of Registration, Cadastre and Cartography maintains an online real property database where any person may check for free whether the real property has been state-registered with the Property Register. After obtaining access to the database for a small fee, one may submit an online request and obtain an electronic extract from the Property Register showing the full scope of information regarding the real property (the current owner, existing encumbrances, arrests and assertions of right). Usually such electronic extract becomes available in the database within a few hours after the corresponding request has been submitted, though sometimes the process may take up to one full day.

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

The Land Code clearly allows foreigners to own real property, except in cases where such ownership is specifically prohibited. In particular, foreigners have the right to acquire leasehold or ownership of vacant land plots (for construction purposes) or land plots under existing buildings, subject to the following restrictions set out in the Land Code:

- Foreigners are specifically prohibited from owning land plots (i) in border areas, a list of which is approved by the President of the Russian Federation; and (ii) in other particular territories of the Russian Federation pursuant to other federal laws
- Foreigners are prohibited from owning agricultural land. Foreign nationals and foreign legal entities (and stateless persons) may only lease agricultural land plots. This restriction on foreign legal entities also extends to Russian legal entities in which the equity participation of foreign nationals, foreign legal entities, and/or stateless persons exceeds 50%

- Foreigners are prohibited from owning land plots located within the boundaries of sea ports
- There are no special restrictions on foreigners owning buildings (as opposed to land plots)

1.9 Can the government expropriate real property?

According to the Land Code, a land plot can be seized for state or municipal needs in exceptional cases relating to performance under the international treaties of the Russian Federation or to development of certain projects of state or municipal significance (eg, atomic energy facilities, defense and security facilities, etc.) in the absence of other alternatives. Compulsory seizure of a land plot for state or municipal needs may be accomplished only on the condition of preliminary and equivalent compensation for the value of the land plot under a court decision.

1.10 How can real estate be held?

Generally, an interest is held by any of the following means:

- Ownership (freehold)
- Leasehold
- Common ownership

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

- Co-investing in new construction
- Preliminary sale and purchase agreements
- Joint venture agreements

1.12 How are real estate transactions usually funded?

Real estate transactions are usually funded either through equity or bank debt.

1.13 Who usually produces the documentation in real estate transactions?

Generally, the buyer's lawyer will prepare the initial draft of the sale and purchase agreement.

For lease transactions, the initial draft lease would be prepared by the landlord's lawyer.

1.14 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?

For real estate, the issue of historic liability usually relates to environmental contamination. For properties held under the right of ownership, governmental authorities can suspend a company's operations or impose administrative fines on a company or its officials even if the environmental contamination occurred during the previous owner's possession, unless the current owner proves that the contamination was caused by the previous owner or a third party. The same also applies to an unauthorized renovation, reconstruction or other alteration.

An occupier is usually not liable for any damages caused to real property prior to its occupation.

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

A seller retains no liabilities relating to the real estate after disposal of the same, except for environmental damage.

A tenant is usually not liable for any of the previous tenant's obligations.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Due diligence report

  This is not obligatory but it is highly recommended for real estate transactions. This is normally done by the lawyers of the potential buyer, and helps to identify the risks connected with the acquisition of real property.

- Sale and purchase agreement

  This is the main document in real estate transactions and contains the main terms and conditions, as well as the obligations of the parties and other specific provisions. Once the sale and purchase agreement is signed, it should be submitted to the registration authority for registration of the title transfer.

For acquisition of real property from a public (state or municipal) owner, the main procedure is a public auction, which requires additional documents to be prepared and executed (all of them in the form envisaged by the law), including the following:

- resolution of the competent authority on holding an auction
- independent appraiser's report on the starting price for the real property, "auction step," amount of the deposit
- auction announcement made by the auction organizer
- resolution of the auction organizer that the potential buyer has been admitted as a participant in the auction
- minutes of the auction results
- publication of the auction results

2.2 What are the representations given by a seller to a buyer?

Starting from 8 March 2015, when the Russian Civil Code introduced the concept of representations, buyers started to request from sellers various representations with respect to title flaws, the rights of third parties (or their absence). While representations have not become common for transactions in the residential market, they are widely used in commercial real estate transactions.

2.3 When is the sale legally binding?

The sale is legally binding from the moment the sale and purchase agreement is executed.

2.4 When is title transferred?

The title transfer must be state-registered in the Property Register (subject to few exceptions expressly stated in the law). The title is transferred from the moment of such registration.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- Their legal costs
- Due diligence cost for the consultants
- Due diligence enquiries made to governmental bodies
- Registration fees
- VAT (does not apply to the sale of land)

The seller usually pays for the following:

- Their legal costs

- Income tax on any profit made from the sale of the real estate

3. Leases

3.1 What are the usual forms of leases?

- Land leases
- Commercial leases (office, industrial or retail)
- Residential leases

3.2 Are lease provisions regulated or freely negotiable?

In accordance with the principle of "freedom of contract," lease provisions are freely negotiable within the civil law regulations except for several essential conditions set out in the law on which the parties should agree expressly and unambiguously; otherwise, a real estate transaction would be deemed unconcluded. Also, the Russian courts have held that the principle of "freedom of contract" cannot be used by a more powerful party to abuse their rights and legal position. On this basis, Russian courts have discretion to limit the broad contractual rights if in a particular case it is established that such rights abuse the other party's position.

However, provisions of leases of state- or municipality-owned land plots and other real property are subject to prescriptive regulations and requirements of the competition legislation and are usually based on a standard local form, require a public auction and are unlikely to be negotiated.

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

Commercial or residential leases of buildings and other facilities may be concluded for any term.

Although neither the Civil Code nor the Land Code stipulates a statutory maximum length of a land lease, the lease term in most cases does not exceed 49 years.

For leases of state- or municipal-owned land plots concluded after 1 March 2015, the maximum term established by the Land Code varies from three to 49 years depending on the purpose for which the lease is granted (for construction, this term is generally 10 years). The term of such lease may not be extended and, to renew a lease the tenant whose lease has expired has to participate in a public auction.

3.4 What are the usual lease terms?

Leases for one year or longer must be state-registered. While such leases become effective for its parties upon execution, for third parties they are deemed concluded upon state registration. Leases for less than a year (less than a 365-day period) do not require state registration and become effective when signed. To avoid state registration, which can be a time-consuming process, leases are often concluded for less than a year and renewed on a regular basis.

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

A tenant that properly fulfills its obligations under a lease has a pre-emptive right to renew the lease (ie, enter into a new lease for the same premises, but not necessarily on the terms of the preceding lease) unless this right is expressly excluded by the lease contract. Unless the lease excludes this mechanism, the willful and actual retention of control of the leased property by a tenant following the expiry of the lease, if the landlord raises no objection, results in the automatic renewal of the lease for an indefinite term.

The preemptive right described above does not apply to leases of state- and municipally-owned land plots.

3.6 On what grounds may a lease be terminated?

The landlord and the tenant may terminate the lease in the following circumstances:

- By mutual agreement
- Unilaterally in circumstances stipulated in the lease
- By a court decision under the circumstances provided by the Civil Code or in the lease

By law, the lease agreement may be terminated early by a court at the request of the landlord under any of the following circumstances:

- The tenant substantially or repeatedly violates the terms and conditions of the agreement
- The tenant causes substantial deterioration of the property
- The tenant fails to pay rent more than two times in succession upon expiry of the payment date fixed by the agreement
- The tenant fails to carry out major repairs of the property within the time limits set out in the lease agreement; in the absence of such limits in the agreement, within reasonable periods, in cases where, in conformity with the law, other legal acts or the agreement, major repairs are the duty of the tenant

By law, the lease agreement may be terminated early by a court at the request of the tenant under any of the following circumstances:

- The landlord fails to grant the property for use by the tenant or creates impediments to the use of the property in keeping with the terms and conditions of the agreement or the purpose of the property

- The property transferred to the tenant has defects that prevent its use and have not been specified by the landlord when the agreement was concluded were not known to the tenant in advance, and could not have been discovered by the tenant during the inspection of the property or the verification of its serviceability when the agreement was concluded
- The landlord does not carry out the duty of effecting major repairs of the property within the time limits set out in the lease agreement, or in the absence of fixed time limits, within a reasonable period of time
- The property proves to be in a faulty condition in view of circumstances beyond the control of the tenant

3.7 Must rent be paid in local currency?

According to the Federal Law on Currency Regulation and Currency Control, the payment of rent in a foreign currency is generally forbidden if both landlord and tenant are Russian residents. However, it is not obligatory to pay rent in local currency if either the landlord or tenant is a non-resident, eg, an entity incorporated in a foreign country or a branch or representative office of such entity.

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

According to the Civil Code procedure, conditions and terms of making rental payments shall be determined by the lease agreement. Therefore, it is not required by law for rent to be paid on a monthly basis or in advance.

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

Unless otherwise provided in the agreement, the rent rate may be reviewed upon mutual agreement of the parties in the terms provided in the lease agreement, but not more than once a year. As clarified by the Supreme Court, such law provision should be deemed as optional and the parties are free to review the rent rate more often than once a year,

including the cases when possibility of such review is not envisaged in the agreement. However, if in accordance with the law or the provisions of the agreement, the landlord has the right to unilaterally review the rent rate, then such change may be effected not more often than once a year. There are no legal limits on rent increases.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Lease the property according to the terms and conditions stipulated in the lease agreement
- Make capital repairs of the real property, if needed
- Provide management services in the building and procure the supply of utilities to the tenant

The following is usually required of tenants:

- Pay rent on time
- Use the leased property in accordance with the conditions of the lease agreement
- Keep the property in good order
- Make day-to-day repairs
- Pay the operating expenses and utilities

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

Unless otherwise stipulated by law or other legal acts, the tenant is entitled to transfer the rights and obligations under the lease agreement to a third party or to sublet the leased property subject to the landlord's

consent. The term of a sublease agreement may not exceed the term of the main lease.

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

If the property is substantially damaged or destroyed, the lease is usually terminated.

3.13 Who is usually responsible for insuring the leased premises?

There is no obligatory requirement to insure the leased property. However, the landlord usually insures the building. The tenant usually insures its fit-out, fixtures and fittings in the premises, and its third party liability.

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

Yes. The general rule established by the Civil Code is that the transfer of title to the leased property to another person shall not be a ground for the alteration or dissolution of the lease agreement.

However, if a lease for one year or longer is not state-registered (where it should be state registered), the new owner will generally not be bound by the lease agreement and may demand that the tenant vacate the leased premises.

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

Yes. The general rule established by the Civil Code is that the transfer of title to the leased property to another person shall not be a ground for the alteration or dissolution of the lease agreement. However, if a lease for one year or longer is not state-registered (where it should be state registered), the new owner will generally not be bound by the lease agreement and may demand that the tenant vacate the leased premises.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Land development is heavily regulated by federal laws and municipal legal acts.

Russian environmental law provides for a "pay-to-pollute" regime administered by federal and regional authorities.

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

- Federal Law on Protection of the Environment
- Federal Law on Production and Consumption Waste
- Federal Law on Industrial Safety of Hazardous Industrial Facilities

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

Various types of construction activities, including reconstruction, can be carried out in Russia only on the basis of a construction permit, which is a document proving the compliance of the project (design) documentation with the requirements of the town-planning map of the land plot, and entitling the developer to carry out specified construction or reconstruction of real property (structures, buildings) on a certain land plot.

For most of the buildings or facilities, prior to obtaining a construction permit, the developer should submit the project (design) documentation to a governmental or non-governmental expert examination to seek independent confirmation that the design conforms to various technical regulations.

To start using a new building or facility, a commissioning permit is required, which is a document proving that the newly developed building or facility conforms to the approved design.

As for occupancy, no special permits or licenses are required.

4.4 Can an environmental cleanup be required?

Effectively, yes. The governmental authority in charge of environmental protection may require a perpetrator held liable for contamination to carry out a cleanup.

4.5 Are there minimum energy performance requirements for buildings?

There are special construction codes and rules that should be complied with during the design and construction of buildings. Those include energy performance requirements.

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

There are special construction codes and rules that should be complied with during design and construction of the buildings. There is also legislation on energy efficiency.

30 Saudi Arabia

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- The land and the rights in respect thereof
- Any buildings, structures, or improvements on, under and above the land

1.2 What laws govern real estate transactions?

In all provinces of Saudi Arabia, property law is primarily governed by Islamic Shariah law, a comprehensive and complete system of laws that governs, among other things, all aspects of commerce, trade and contract.

In certain circumstances, specific legislation exists, to the extent that it does not contradict Islamic Shariah law, for matters such as:

- Off-Plan Sales: Under Off-Plan Sales Law, developers who want to market or sell real estate units in a real estate development project on an off-plan basis need to first obtain a license from the Wafi Center. Among a number of other requirements (ie, details of the project, prior experience, credit worthiness), a key requirement is setting up of an escrow account with a Saudi bank (along with an escrow agreement between the developer and the escrow bank).
- Real Estate Brokers: real estate brokerage is regulated by two laws – the Regulations of Real Estate Offices and Executive Regulations of Real Estate Offices.

  There are four key rules under the Regulations of Real Estate Offices:

  - The real estate office must be wholly owned by a Saudi national or a Saudi company that is wholly owned by Saudis and the manager in charge must be of Saudi nationality.

- A real estate office is not allowed to sell or broker in the sale of any property unless it is in possession of copies of the title deeds.
- A real estate office is not allowed to receive over 2.5% commission of the value of the sold property nor may it receive over 2.5% as a leasing commission of a year's rent, even if the contract duration, is longer or renewable.
- Violating real estate offices may be punished by a fine not exceeding SAR 25,000, closure of the office for a certain period not exceeding one year or the permanent revocation of the license of the office.

- Real Estate Mortgage: for a mortgage to be valid, its creation must be in exchange for a debt, which may include a contingent, future or prospective debt. The benefit of the property may be mortgaged separately from the property itself.

  The mortgage over a property includes all things ancillary to that property, including any improvements made to the property after the date on which the mortgage is created. A single property may be mortgaged to a number of mortgagees so long as their priorities fall in a particular order, determined by the date of the notation of the mortgage on the title deed or the date of the registration of the mortgage.

  A mortgage is terminated upon the occurrence of any of the following events:

  - The termination of the debt. Should the debt, having been terminated, be reinstated for whatever reason, the mortgage in respect of that debt shall be reinstated as well. Such reinstatement will be without prejudice to the rights of any bona fide third party who acquires rights over the mortgaged property

in the time between the termination of the mortgage and its reinstatement.

- The rights and obligations of the mortgagor and mortgagee merge in a single person. However, if the consolidation of debt is reversed, the mortgage is reinstated.
- By an authenticated waiver by the creditor
- Upon the total destruction of the mortgaged property

While the Registered Real Estate Mortgage Law has now started to be enforced, its enforcement is not widespread and depends on the particular notary public.

1.3 What is the land registration system?

Saudi law recognizes both freehold title to land and a leasehold interest in land.

In April 2002, new laws and regulations were issued for the establishment of a formal system of land registration in Saudi Arabia. These new laws and regulations contemplated registration and indefeasibility of freehold title to land as well as the registration of leasehold interests in land.

These laws have only been applied to one small town called Huraymala, in the central province of Saudi Arabia following a decision issued by the former minister of justice in August 2008. As such, the procedures set out in these laws dealing with registration of title have no effect at this time except in the town of Huraymala.

Until such time as these laws are implemented and a centralized land registry is formed:

- title to real estate may be transferred without formal registration

- recording of a transfer of freehold title to land can only be made at the office of the notary public for the district in which the land in question is located. For example, the office of the notary public in Jeddah is responsible for recording transfers of land in Jeddah.

At present, evidence of ownership of the freehold title to land is generally recorded in a document known as a deed title, which is issued by the office of the notary public. Deed titles describe the land by words alone and do not include a map or diagram depicting the boundaries and location of the land in the context of its surrounds. The local municipalities do, however, keep official survey maps (korooki) identifying all plots of land within their district. A korooki is often used to verify whether the land described in the deed title matches the physical land identified in the official survey map.

In the absence of a centralized land registry in Saudi Arabia, there is no certainty or indefeasibility of title. Instead, there is only evidence of title, the best evidence of which is the deed title issued by the notary public. However, as title to real estate may be transferred under Saudi law without the need for formal registration, only a court judgment issued in respect of ownership of title offers conclusive evidence as to ownership and only as at the time such judgment is issued.

1.4 Which authority manages the registration of titles?

The office of the notary public for the district in which the land in question is located.

1.5 Who are the authorities that govern real estate law? and what are their roles?

- The notary public office

  The notary public office is tasked with documenting contracts and legal declarations and issuing the deeds related to such documents. The second duty imposed on the notary is to verify the identity and

eligibility of any party to a contract, assignor, acknowledger and witness.

In highly populated cities like Mecca, Riyadh and Jeddah, notaries were divided into two separate offices, each with specific responsibilities. First notary offices are concerned with all that relates to real estate including transfers and registrations of real properties, assignments of real properties, mortgages and issuing title deeds.

Second notary offices are concerned with company articles, agencies and the termination of agencies and assignments of monies or property other than real property.

- The Itmam center (the Real Estate Developers Service Center)

  Established to administer the off-plan sales license, home owners' association certificate of registration and land subdivision plans, Municipality license and completion certificate.

  The Itmam Center is a "one-stop shop" containing a group of government offices inside one center to simplify the process of obtaining the required license (including the Ministry of Justice, Ministry of Municipal and Rural Affairs and Ministry of Housing). Other authorities include:

  - Ejar Rental Services that regulate the relationship between the parties of the rental process (tenant, landlord and real estate broker)
  - Wafi: the off-plan sales and off-plan lease regulator
  - Idle Lands: the white land tax regulator

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

Until such time as a centralized land registry is formed, there is no requirement that any right over real property be registered for it to be enforceable. However, the office of the notary public will record on the deed title the following rights, as and when requested to do so:

- Positive covenants with respect to strata title property
- Easements
- Negative covenants
- Permission to build granted pursuant to a building permit from the municipality
- Beneficial interests
- Mortgages (in limited circumstances)[10]

1.7 What documents can land owners use to prove ownership over real property?

Evidence of ownership of the freehold title to land is generally recorded in a document known as a deed title, which is issued by the office of the notary public.

1.8 Can a title search be conducted online?

No.

[10] Note that on 29 November 2012, the Registered Real Estate Mortgage Law came into force and expressly allows the registration of mortgages on title to real estate, including mortgages issued by banks. However, enforcement of this law is still not widespread in the Kingdom and has only occurred in a limited number of situations to the best of our knowledge

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

The law now recognizes two distinct group of foreign nationals:

- Citizens of the Gulf Cooperation Counsel or companies domiciled in a GCC member country and wholly owned by citizens of the GCC
- Foreigners of any other nationality, companies domiciled outside the GCC and companies owned by foreigners of any other nationality

Citizens of the Gulf Cooperative Counsel

Citizens of the GCC (ie, Oman, UAE, Kuwait, Bahrain and Qatar) and companies in the GCC that are wholly owned by citizens of the GCC may now, pursuant to Royal Decree No. 22 dated 3/4/1432H (8 March 2011) (the "1432 Royal Decree"), own and lease real estate in Saudi Arabia on the same basis and with the same rights as citizens of Saudi Arabia, subject to the following limitations:

- Land must be developed or made use of within four years of the date of registration of the real estate in the name of the buyer (four year period is capable of extension).
- Land must not be disposed of for a period of four years from the date of registration in the name of the buyer or until the land is used, developed, or built upon; whichever is the earlier (authority can be granted to dispose of land earlier).

Note that built property such as villas, apartments and offices can be disposed of at any time.

- Ownership of real estate in Makkah and Medinah is still restricted to Saudi nationals only.

The 1432 Royal Decree gives effect to the GCC Economic Agreement, in respect of land ownership, and was to come into effect three months after approval by the Higher Counsel (majlis al a'ala). Following enquiries at the offices of the Notary Public in Riyadh, we were informed that the Royal Decree has now come into effect and is being applied by the offices of the Notary Public in the Kingdom of Saudi Arabia.

The 1432 Royal Decree supersedes previous laws on the issue and clarifies the status of GCC citizens and their ability to purchase real estate in Saudi Arabia.

Foreigners

There are significant restrictions in Saudi Arabia on the ownership of freehold title to land by foreigners. There are no limitations on the leasing of land, by foreigners, except in Makkah and Medinah.

Only in the following limited circumstances can foreign companies and individuals own or develop land in the Kingdom of Saudi Arabia:

- Foreign individuals who are residents of Saudi Arabia may own property solely for the purpose of their own residence. This is subject to the issuance of a permit from the Ministry of Interior
- Foreign companies with licenses to carry out business in Saudi Arabia may own real estate as part of their business as well as to accommodate employees of their business
- Foreign companies may invest in and develop real estate, so long as they first obtain a license to do so, if the development value exceeds SAR 30 million and the development is completed within five years of acquiring the land on which the development will be built
- Subject to reciprocity, foreign diplomatic missions may own land for their official premises and employee housing

- The Ministry of Foreign Affairs will approve land ownership by certain unspecified international and regional organizations

Additional restrictions apply to the holy cities of Makkah and Medina, as follows:

- Only Saudi nationals may own freehold title to real estate
- Other than through inheritance, non-Saudis are prohibited from obtaining freehold title to easement or use of real estate
- Muslim non-Saudis may lease property for a period of two years (such leases can be renewed for similar periods)

1.10 Can the government expropriate real property?

Property can be expropriated by government and quasi-government authorities, but appropriate compensation must be paid.

1.11 How can real estate be held?

Generally, an interest is held by the following:

- Freehold
- Leasehold
- Ownership of estate units (ie, strata title)
- Usufruct

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

- Joint stock company
- Limited liability company
- Real estate funds

1.13 How are real estate transactions usually funded?

Saudi Arabia has a number of the region's largest banks, many of whom actively offer financing to the real estate sector, both on a conventional and Islamic basis, using all manner of financing techniques.

Non-recourse, limited-recourse and full-recourse financing, as well as secured and unsecured financings have been used in different transactions in the past, although in the wake of the global financial crisis, over-collateralized security and full-recourse financing are becoming more common. Borrowers are able to borrow less now than before the global financial crisis due to lower loan-to-value ratios.

Equity is playing a greater role in the financing of real estate transactions, particularly through Islamic funds and Islamic bond (sukuk) issuances.

Saudi Arabia has a nascent mortgage finance market and strict consumer lending practices despite the strong demand for housing, although this is expected to grow significantly once the Registered Real Estate Mortgage Law is properly implemented and applied by the relevant authorities in Saudi Arabia.

1.14 Who usually produces the documentation in real estate transactions?

Generally, the seller's lawyer will prepare the initial draft of the purchase agreement.

1.15 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?

There is no specific legislation in place to address the remediation of contaminated land where contamination was caused by someone other than the current land owner.

Nevertheless, we sometimes see new owners and occupiers seeking indemnities in respect of environmental liability and in respect of any damage arising from contamination on the land.

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

Yes, but only to the extent that the seller or occupier caused the liability, such as environmental pollution, during its occupation and use of real estate.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Sale and purchase agreement
- Due diligence report
- Assignment or renewal of lease

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

Sellers are usually very reluctant to give representations and warranties. In the event they do, they are generally very limited in nature. Therefore, the obligation is on the buyer to undertake comprehensive due diligence, although sellers are often reluctant to disclose a great deal of information that one would usually expect to see during the sale process.

2.3 When is the sale legally binding?

Parties are legally bound as soon as they execute the sale and purchase agreement, unless the contract is conditional on, for instance, financing.

2.4 When is title transferred?

Legal title is transferred upon the execution of the sale and purchase agreement and the payment of consideration.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- Buyer's agent's fees
- Legal costs
- Due diligence costs for consultants who have prepared building condition reports, valuation appraisals and real estate surveys

On the other hand, the seller usually pays for the following:

- Listing agent's fees
- Legal costs
- Income tax on any profit made (zakat) on proceeds from the sale of the real estate, depending on the nationality of the seller

3. Leases

3.1 What are the usual forms of leases?

- Industrial leases
- Commercial office leases
- Retail leases
- Residential leases
- Development leases/ground leases

3.2 Are lease provisions regulated or freely negotiable?

Other than in respect of government leases or leases with government entities, leases of industrial land in Jubail and Yanbu and industrial land

administered by MODON, lease provisions are freely negotiable so long as the provisions agreed by the parties do not violate Islamic Shariah laws.

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

Leases entered into by landlords with government departments or agencies are limited to an initial term of no less than one year and no more than three years. The lease can be renewed. However, the initial term and any renewed term or terms cannot exceed nine years in total.

There is no maximum term or limitations on renewal for non-government leases in Saudi Arabia.

3.4 What are the usual lease terms?

With the exception of development leases or ground leases, and industrial leases that are usually for terms of between 15 and 25 years, most leases are for terms of one year, renewable for further one-year terms and subject to upward rent review.

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

No.

3.6 On what grounds may a lease be terminated?

In general, a landlord can only terminate a lease pursuant to the termination provisions contained therein, where for example the tenant is in breach of its obligations under the lease.

A tenant may not terminate a lease without cause, unless there are specific provisions in the lease allowing so.

3.7 Must rent be paid in local currency?

The parties to a lease are free to set the rent in currencies other than Saudi riyals. However, arrangements for payment of rent in foreign currency are not typical.

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

Rent is typically paid annually in advance.

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

There are no laws that set a cap on rent reviews or that seek to control renewals.

Rent is usually reviewed upwards upon the renewal of the term, either at market rates or by a fixed increment of 5–10%. There are no limits on the extent to which a landlord can increase rent, so long as the increase takes place at the time of renewal or at dates/intervals agreed by the parties.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Repair and maintain the structure of the property
- Insure the property
- Provide tenants with a valid notice of termination if terminating the tenancy

The following is usually required of tenants:

- 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 for inspections and landlord work

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

Other than industrial and government leases, tenants and landlords are free to agree on the extent to which a tenant can alienate his/her interest in the lease. Typically, tenants are prohibited from assigning or subletting whole or part of the leased premises without the landlord's prior written consent.

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

If the tenant caused the destruction of the leased premises, he or she will be liable not only for the remaining rent due for the balance of the term but also for the costs arising from that destruction, including the cost of reinstatement.

If the landlord caused the destruction of the leased premises, the lease ends and the tenant can claim damages from the landlord for his/her direct losses. The tenant will be entitled to receive a refund on that portion of the rent paid in advance prior to the date of termination.

3.13 Who is usually responsible for insuring the leased premises?

Neither party is obligated by law to insure against the risks arising in respect of the leased premises.

However, it is not uncommon for leases to contain insurance provisions, pursuant to which:

- The landlord takes out all-risk property insurance and third-party/public liability insurance

- The tenant takes out insurance in respect of its fixtures, fittings and belongings within the leased premises

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

Yes, as the lease runs with the land and binds subsequent owners.

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

Yes, as the lease runs with the land and binds subsequent owners.

3.16 Who has jurisdiction over tenancy disputes?

Currently, summary courts have jurisdiction to adjudicate cases concerning lease contract wherein the rent does not exceed SAR 1,000 a month, provided that the claim does not exceed SAR 20,000.

General courts have jurisdiction over all cases beyond the jurisdiction of the summary courts and are particularly responsible for considering cases involving real estate.

The Ministry of Housing plans to establish the "Center for Real Estate Dispute Redressal;" a center to resolve all disputes between tenants and landlords.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

The Presidency of Meteorology and Environmental Protection is responsible for the application and administration of environmental laws in Saudi Arabia.

Land development and planning is controlled by high commissions for development in various provinces, such as the High Commission for the Development of Riyadh and The High Commission for the Development of

the Makkah Province. These commissions are commonly referred to as "Amana."

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

The Public Environmental Law, enacted by Royal Decree No. M/34 dated 28/7/1422H (corresponding to 16 October 2001 and published in Official Gazette No. 3868 dated 24/8/1422H (corresponding to 9 November 2001) operates as a general regulatory framework for the development and enforcement of domestic environmental rules and regulations.

In Saudi Arabia, companies can be held liable for environmental contamination and resultant damages through the application of environmental law and its implementing regulations, and through tort-like claims that are based on the application of Islamic Shariah law.

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

- Building permit
- Permission to sell off-plan
- Environmental license, depending on the extent of the environmental impact arising from construction and the proposed use of the planned development

4.4 Can an environmental cleanup be required?

The Presidency of Meteorology and Environmental Protection, together with any other relevant government agency, for example, the local municipality, has the power to order the rectification and cleanup of any environmental damage caused in violation of environmental laws.

4.5 Are there minimum energy performance requirements for buildings?

The Saudi Building Code Energy Conservation Requirements (SBC 601) establishes minimum prescriptive and performance-related regulations for the design of energy-efficient buildings and structures. It also has regulations for portions that provide facilities or shelter for public assembly, educational, business, mercantile, institutional, storage and residential occupancies, as well as those portions of factory and industrial occupancies designed primarily for human occupancy. These requirements address the design of energy-efficient building envelopes, and the selection and installation of energy-efficient mechanical, service, water-heating, electrical distribution and illumination systems, and equipment for the effective use of energy in buildings and structures.

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

Riyadh has implemented a metropolitan development strategy known as Medstar, which deals with regulatory measures aimed at improving the sustainability of the built environment, among other things.

31 Singapore

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Any buildings upon the land
- All substances under the land
- A column of airspace above the land as is reasonably necessary for the owner's use and enjoyment
- Clearly delineated airspace (enabling the ownership of flats)
- Subterranean space

1.2 What laws govern real estate transactions?

Property law in Singapore is governed by both common law and statutes. Depending on the nature of the transaction and the type of property, these include the following:

- The Land Titles Act (relating to the registration of titles to land)
- The Conveyancing and Law of Property Act (relating to conveyance of property)
- The Residential Property Act (relating to the restriction of ownership of residential property by foreign persons)
- The Sale of Commercial Properties Act (relating to the sale of non-residential properties)
- The Land Titles (Strata) Act (relating to strata titles)
- The Building Control Act (relating to building works)

- The Housing Developers (Control and Licensing) Act (relating to the licensing and control of housing developers)
- The Building Maintenance and Strata Management Act (Chapter 30C)

1.3 What is the land registration system?

There are currently two land registration systems in Singapore – the older common law deeds registration system and the more relevant land titles system.

Under the deeds registration system, interest in land only passes when a deed is signed, sealed and delivered. Registration of deeds under this system is not mandatory, although there are benefits of registration.

In contrast, under the land titles system, registration is mandatory to effect the transfer of an estate or an interest in land. All registration documents must be lodged manually and/or electronically. As of 31 December 2002, almost all land in Singapore is registered under or has been converted to the land titles system. The central feature of the land titles system is the principle that the registered proprietor has "indefeasible title". This means that any person who becomes the proprietor of registered land will hold that land free from all encumbrances, liens, estates and interests whatsoever except such as may be registered or notified in the land register. This is subject to certain limited exceptions such as fraud or forgery to which the proprietor or his/her agent was a party. Upon registration, the land register (duly authenticated under the hand and seal of the registrar of titles) shall be regarded as conclusive evidence that the person named the proprietor therein is at the relevant time entitled to the estate or interest in the land therein specified and described (Section 36 of the Land Titles Act). Only recognized interests in land may be registered. These include transfers of freehold land, leases, mortgages and charges, easements and writs of execution against a registered proprietor's land. It should also be noted that interests appearing in the land register shall have priority according to

the order of their registration or notification, irrespective of the dates of the instruments by which those interests were created or are evidenced (Section 48 of the Land Titles Act).

1.4 Which authority manages the registration of titles?

Title registration is managed by both the Registry of Deeds under the common law deeds registration and the Land Titles Registry in the land titles system. Both registries are under the purview of the Singapore Land Authority.

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

Under the Land Titles Act, any transfer of interests and interests recognized by the Act can only be effected by registration.

Interests that may be registered under the Act include:

- Transfers of land, mortgages and charges
- Leases exceeding seven years
- Easements
- Restrictive covenants
- Caveats

1.6 What documents can land owners use to prove ownership over real property?

Ownership over real property in Singapore can be proven by title documents issued by the Singapore Land Authority. Title is usually issued within seven working days from the date of registration.

Records of ownership of all properties in Singapore are also maintained in the land register, which may be accessed by anyone upon the payment of a prescribed fee.

1.7 Can a title search be conducted online?

Yes. The Integrated Land Information Service (the "INLIS") offered by the Singapore Land Authority provides a variety of online information relating to the property, including ownership details and encumbrances. It is available upon payment of a prescribed fee.

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

Since 1973, the Singapore government has been imposing restrictions on foreign ownership of private residential property in Singapore. Foreigners may not acquire or purchase restricted residential property without obtaining approval from the Minister for Law. Under the Residential Property Act (the "RPA"), a foreign person means any person who is not:

- A Singapore citizen
- A Singapore company (defined under the RPA as a company incorporated in Singapore and all its director and members being citizens of Singapore)
- A Singapore limited liability partnership
- A Singapore society

The following comprises restricted residential property:

- Vacant residential land
- Landed houses with land titles (eg, a detached house, semi-detached house, terrace house, etc.)
- Landed houses with strata titles in a non-condominium development (eg, strata terrace houses)

- Shop houses that are not strata subdivided and are erected on land other than land that has been declared as non-residential property pursuant to the Residential Property Notification

Foreign individuals and entities may acquire non-restricted residential property (eg, an apartment within a building or a unit in an approved condominium development) without the approval of the Minister for Law. In addition, there are no restrictions on the following:

- Any land (whether vacant or not), house, building or other premises which is zoned or permitted to be used for industrial or commercial purposes or both such purposes
- Any hotel registered under the Hotels Act (Cap. 127)
- Such other land or building as the Minister may, by notification in the Gazette, declare to be industrial, commercial or non- residential property

There are also no restrictions on the sale of commercial property in Singapore to foreigners.

1.9 Can the government expropriate real property?

The Land Acquisition Act confers extensive powers on the government for the compulsory acquisition of land in exchange for compensation. The amount of compensation depends on numerous factors, including the market value of the property.[11]

In circumstances where land is leased from the government, the contractual terms for re-entry or termination of the lease will apply.

[11] For guidelines on determining the amount, refer also to ss 33 to 36 of the Land Acquisition Act.

1.10 How can real estate be held?

Land in Singapore is owned by either:

- The state, or held through its statutory agencies (ie, the Singapore Land Authority, the Urban Redevelopment Authority, Jurong Town Corporation and the Housing Development Board)
- Private individuals or entities

Interest in land may be:

- Estates in fee simple
- Estates in perpetuity
- Leasehold estates
- Temporary occupation licenses
- Tenancies

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

There are numerous structures available, depending on the purpose and form of the real estate investment.

Generally, the following can invest in real estate:

- Corporations
- Local and offshore entities
- Joint venture companies
- Single-purpose vehicles
- Co-ownership (joint tenancy or tenancy in common)

- Partnership
- Private equity funds
- Trusts, including Real Estate Investment Trusts (REITs)

1.12 How are real estate transactions usually funded?

Most real estate transactions are financed via institutional lenders such as banks and finance companies. In exchange for funds, lending institutions may take primary and collateral security in real property and related assets.

In a bid to prevent the overheating of the Singapore property market, the Monetary Authority of Singapore laid down several guidelines pertaining to loan regulations, including:

- Imposing a loan-to-value (LTV) limit for housing loans to individuals with one outstanding housing loan of 50% and to individuals with two or more outstanding housing loans of 40%. Loans with longer tenure face even tighter LTV limits. The LTV limit for housing loans to non-individuals is 20%
- Imposing minimum cash payment to 25% of the valuation limit for buyers who have one or more outstanding housing loans at the time of applying for a housing loan for the new property purchase
- In addition, a total debt servicing ratio (TDSR) of 60% is imposed on property loans extended by institutional lenders. The method for computing the TDSR is standardized and institutional lenders are required to:
    - Take into account the monthly repayment for the property loan for which the borrower is applying plus the monthly repayments on all other outstanding property and non-property debt obligations of the borrower

- Apply a specified medium-term interest rate or the prevailing market interest rate, whichever is higher, to the property loan for which the borrower is applying when calculating the TDSR
- Apply a haircut of at least 30% to all variable income (eg, bonuses) and rental income
- Apply haircuts to and amortize the value of any eligible financial assets taken into consideration in assessing the borrower's debt servicing ability to convert them into "income streams" in computing the TDSR

- There are certain exemptions to the TDSR rules:
  - In the case of residential properties, if a borrower was granted an option to purchase before 29 June 2013, he/she will be exempted from the TDSR threshold as long as he/she occupies the residential property that is being refinanced
  - In the case of investment property loans, the TDSR threshold of 60% will apply – this is to encourage borrowers to right-size their loans and thereby reduce their vulnerability to adverse economic conditions or changes in interest rates. However, a transitional period until 30 June 2017 is granted during which a borrower may refinance his/her investment property loans above the 60% threshold if he/she meets certain criteria
  - MAS will monitor and review the 60% threshold over time, with a view to further encouraging financial prudence

1.13 Who usually produces the documentation in real estate transactions?

Generally, the seller's lawyer will prepare the initial draft of the purchase agreement.

1.14 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?

Depending on the type of liability in question, the general rule is caveat emptor unless the contract otherwise provides. The contract may apportion the risk between the parties or require the vendor to disclose any inherent liabilities.

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

This would depend on the liability in question such as contractual liability in respect of an obligation that has not been performed.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Option to purchase

  The option to purchase from the vendor on the payment of a stipulated sum enables the potential purchaser time to determine if he/she wishes to proceed with the purchase of the property and/or determine if financing is available for the purchase. During this period of consideration, the vendor is prevented from selling the property to another party. Upon exercise of the option by the purchaser, the parties become bound to the sale and purchase of the property on the terms set out in the option agreement.

- Sale and purchase agreement

  Unlike an option to purchase, the sale and purchase agreement will bind the parties to the sale and purchase of the property on the terms of the agreement upon the execution of the sale and purchase agreement.

- Other ancillary documents

  This includes the assignment or novation of leases, builders' warranties, etc.

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

Unless the sale and purchase agreement otherwise states, the general rule is caveat emptor. This is especially true in respect of the physical condition of the property. The seller is generally not expected to give warranties beyond the fact that he/she possesses good title to the property, and need not make any warranties as to the condition of the premises. However, the seller has a duty to disclose all latent defects in the title of the property.

2.3 When is the sale legally binding?

The sale is legally binding once the sale and purchase agreement has been executed by the parties, or when the option to purchase has been exercised by the purchaser.

2.4 When is title transferred?

The purchaser does not obtain legal title to the land until the transaction is completed by a formal conveyance from the vendor or a registered transfer under the Land Titles Act. However, the purchaser may be said to possess an equitable title in the land if there is a valid and enforceable contract and if specific performance would be granted by the court.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for:

- Legal costs
- Due diligence in relation to the property
- Property valuation costs

- Registration fees and stamp duty
- Costs relating to buyer's financing requirements

The seller usually pays for:

- Property agent's fees
- Legal costs
- Stamp duty fees (certain cases)
- Costs relating to the discharge of any encumbrance

3. Leases

3.1 What are the usual forms of leases?

The forms of leases include:

- Fixed-term lease
- Periodic lease
- Tenancy at will
- Tenancy at sufferance
- Reversionary leases
- Tenancy by estoppel

The fixed-term lease, which is the most common form of lease, is where the maximum duration of the tenancy is fixed from the commencement of the lease and ends automatically upon expiration of the term, unless renewed in accordance with the lease agreement.

In addition to leases, licenses are commonly granted to allow for certain rights of occupation (eg, licenses for signage).

3.2 Are lease provisions regulated or freely negotiable?

Generally, lease provisions are not regulated and the parties may freely set out the terms that should govern the lease. However, in the absence of any express terms, both parties may be subject to certain "implied terms" and "usual covenants."

The Land Titles Act also provides for certain implied terms in favor of the landlord in every registered lease, unless the contrary has been agreed upon by both parties.

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

There is no maximum term for leases, so presumably there could be a lease for life for a rent amount.

3.4 What are the usual lease terms?

The duration of each lease varies depending on factors such as the purpose of the lease and the type of property.

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

Generally, tenants may not demand an extension of the lease unless there is an "option to renew" clause within the lease agreement for a further term and the tenant has properly exercised that option or the parties have agreed to an extension.

3.6 On what grounds may a lease be terminated?

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

- The agreed-upon term of the lease has expired
- Appropriate notice has been given by him/her (for periodic leases)
- There is frustration of the lease agreement

- The tenant commits a repudiatory breach of the lease agreement
- He/she has the contractual right to termination

3.7 Must rent be paid in local currency?

The contract will provide for the payment of rent in a stipulated currency, but rent can be paid in any currency as long as both parties mutually agree upon the mode of payment.

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

Rent is usually paid on a monthly basis in advance.

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

Rent is usually fixed for the initial term and reviews may also be fixed periodically or adjusted to reflect the market value at the time of renewal or extension. The arrangement depends on the terms found in the lease agreement, as are the limits, if any, to the increase in rent (usually by way of a rent review clause).

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Provide the tenant with the "quiet enjoyment" of the premises
- Keep common property in reasonable state of repair
- Insure the building

The following is usually required of tenants:

- Pay the rent and other monies due under the lease on time
- Keep the premises in a "tenantable condition"

- Inform the landlord if repairs are needed and give the landlord access to view the state of repairs and carry out the repairs
- Reinstate the premises
- Comply with all relevant rules and regulations

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

A lease may be assigned or transferred provided that the lease agreement contains no express term not to. Typically, leases will contain a provision prohibiting or restricting an assignment/subletting.

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

Generally, the lease agreement should contain a provision allowing the tenant an abatement of rent for the duration that the tenant is unable to occupy the premises. However, where the damage is so extensive that it (i) takes too long to repair; or (ii) cannot be repaired, the landlord usually reserves a right to terminate the lease.

In certain exceptional instances, physical catastrophes and other supervening events not contemplated by both parties could serve to frustrate the lease agreement so that rent is no longer payable.

3.13 Who is usually responsible for insuring the leased premises?

The tenant is usually responsible for insuring the leased premises, in the joint names of the landlord and the tenant.

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

If the lease is a registered lease, the terms will be binding on the new owner.[12] In other cases, leases will have to be assigned or novated.

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

In relation to unregistered leases, the official assignee may disclaim any land burdened with onerous covenants that is part of a bankrupt's estate and a liquidator may do the same for any land that is part of the property of a company being wound up.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Land development in Singapore is governed by the Ministry of National Development and the Ministry of Law via their respective agencies (the Urban Redevelopment Authority of Singapore, the Building and Construction Authority and the Singapore Land Authority). The Ministry of Environment and Water Resources enforces environmental regulations primarily via its agency, the National Environment Agency.

Together, these three ministries and their respective agencies work together to develop land in Singapore in a fashion that is compliant with environmental regulations.

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

There are numerous laws, including:

- The National Environment Agency Act

[12] Leases for a term exceeding seven years are registrable interests, which may be registered in the prescribed form to become fully effective under the Land Titles Act. Once registered, the new buyer would have notice of the interest and will be bound to take the property with the lease, if he/she so chooses.

- The Environmental Protection and Management Act
- The Environmental Public Health Act
- The Urban Redevelopment Authority Act
- The Planning Act

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

The main permits and licenses include:

- General builder license and specialist builder license
- Permit to commence structural works
- Temporary occupation permit
- Certificate of statutory completion

Additionally, plans relating to building and design in general have to be submitted to the Building and Construction Authority for approval before the actual work commences.

4.4 Can an environmental cleanup be required?

Generally, an environmental cleanup may be required where authorities seek to reduce or mitigate potential dangers to human health.

Certain authorities also require companies in some industries to conduct environmental baseline studies (EBS) to assess the level of contamination of the leased premises. If a site is found to be contaminated, the responsible parties involved would be required to remediate the property to meet the prevailing Dutch Standards or the first EBS level at the commencement of the original lease term.

4.5 Are there minimum energy performance requirements for buildings?

Yes. New buildings in Singapore are required to adhere to the minimum environmental sustainability standard set by the BCA Green Mark Certified Level, while projects developed on land sold under the Government Land Sales Programme sites in certain strategic areas of Singapore will be subject to higher Green Mark standards. There is further a new "Green Mark Pearl Award" to recognise collaborations between developers, building owners and tenants that successfully increase green tenanted gross floor area to between 50 and 70% for each building.

The government has set aside SGD 100 million under the Green Mark Incentive Scheme for Existing Buildings that provides cash incentives for current building owners to undertake the necessary retrofits to upgrade their buildings to achieve the minimum Green Mark Certified Level. Additionally, the government launched a new scheme in September 2014 and has set aside SGD 50 million to provide cash incentives for building owners, occupants and tenants to undertake and adopt energy efficiency improvements and measures within their buildings and premises.

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

There are various regulatory measures and incentives including:

- Mandatory submission of periodic energy audits, building information and energy consumption data under the Building Control Act
- Mandatory energy management system under the Energy Conservation Act
- Regulation of the district cooling systems under the District Cooling Act

5. Taxation

5.1 Goods and Services Tax

The sale or lease of property will be subject to GST at the standard rate of 7% if:

- the property that is the subject of the sale or lease agreement is zoned for non-residential use
- the vendor or lessor is a GST-registered entity

All other supplies of interests in land are exempt from GST. If the property in question is mixed property (ie, it has been zoned for residential as well as non-residential use), only the sale or lease of the non-residential portion will be chargeable with GST. Where the property in question is chargeable with GST, it is the responsibility of the vendor or lessor to ensure that the correct amount of GST is collected from the purchaser or lessee and to account for it to the Comptroller of GST. The seller or lessor is liable to account to the Comptroller of GST for the amount of GST collected from the purchaser or lessee.

5.2 Transfer taxes

The sale and purchase of real estate is subject to stamp duty, as follows:

- Buyer's stamp duty (BSD)

  Buyer's stamp duty is computed based on the purchase price or open market value of the property, whichever is higher.

Purchase price or market value of the property	BSD rates
First $180,000	1%
Next $180,000	2%
Remaining Amount	3%

- Additional buyer's stamp duty for residential properties in Singapore (ABSD)

Profile of buyer	ABSD rates (from 12 Jan 2013)
Singapore citizen buying a first residential property	Not applicable
Singapore citizen buying a second residential property	7%
Singapore citizen buying a third and subsequent residential property	10%
Singapore permanent resident buying a first residential property	5%
Singapore permanent resident buying a second and subsequent residential property	10%
Foreigners and entities buying any residential property	15%

- Seller's stamp duty (SSD)

  Seller's stamp duty on residential property is computed based on the requisite SSD rate on the selling price or the open market value of the property, whichever is the higher.

Date of purchase or date of change of zoning/ use	Holding period	SSD rate (on the actual price or market value, whichever is higher)
Between 20 Feb 2010 and 29 Aug 2010 (all inclusive)	Up to 1 year	1% on first $180,000 2% on next $180,000 3% on remainder
	More than 1 year	No SSD payable
Between 30 Aug 2010 and 13 Jan 2011 (all inclusive)	Up to 1 year	1% on first $180,000 2% on next $180,000 3% on remainder
	More than 1 year and up to 2 years	0.67% on first $180,000 1.33% on next $180,000 2% on remainder
	More than 2 years and up to 3 years	0.33% on first $180,000 0.67% on next $180,000 1% on remainder
	More than 3 years	No SSD payable
Between 14 Jan 2011 and 10 Mar 2017 (all inclusive)	Up to 1 year	16%
	More than 1 year and up to 2 years	12%
	More than 2 years and up to 3 years	8%

Date of purchase or date of change of zoning/ use	Holding period	SSD rate (on the actual price or market value, whichever is higher)
	More than 3 years and up to 4 years	4%
	More than 4 years	No SSD payable
On and after 11 Mar 2017	Up to 1 year	12%
	More than 1 year and up to 2 years	8%
	More than 2 years and up to 3 years	4%
	More than 3 years	No SSD payable

Seller's stamp duty on industrial property is computed based on the requisite SSD rate on the selling price or the open market value of the property, whichever is the higher.

Date of purchase/acquisition or date of change of zoning/use	Holding period	SSD rate (on the actual price or market value, whichever is higher)
On or after 12 Jan 2013	Up to 1 year	15%
	More than 1 year and up to 2 years	10%
	More than 2 years and up to 3 years	5%
	More than 3 years	No SSD payable

- Additional conveyance duties (ACD)

  Additional Conveyance Duties (ACD) apply when buying or selling shares or units ("equity interests") in property-holding entities (PHEs) that own primarily residential properties in Singapore. The ACD provision applies to the purchase or sale of equity interests by persons or entities who are significant owners of the PHE or who become one after the purchase.

In addition to existing stamp duty on shares (calculated at 0.2% of the consideration or open market value of the company, whichever is higher), the ACD that will apply on qualifying transfer of equity interests in PHEs are:

- ACD for buyers
  - Existing buyer's stamp duty at 1% to 3%
  - Additional buyer's stamp duty at 15% (flat rate)
- ACD for sellers
  - Seller's stamp duty at 12% (flat rate)

5.3 Stamp duty on leases

Stamp duty is generally required to be paid on leases, at a rate of 0.4% of (i) if the lease is for a term of four years or less, the total rent and other considerations payable for the lease term; or (ii) if the lease is for a term exceeding four years, four times the average annual rent and other considerations payable for the lease term.

5.4 Property tax

The owner is the person liable for property tax.

Property tax rates on owner-occupied and non-owner occupied residential properties are applied on a progressive scale.

Tax rates for owner-occupied residential properties

Annual value	Effective 1 Jan 2015	Property tax payable per annum
First $8,000 Next $47,000	0% 4%	$0 $1,880
First $55,000 Next $15,000	- 6%	$1,880 $900
First $70,000 Next $15,000	- 8%	$2,780 $1,200
First $85,000 Next $15,000	- 10%	$3,980 $1,500
First $100,000 Next $15,000	- 12%	$5,480 $1,800
First $115,000 Next $15,000	- 14%	$7,280 $2,100
First $130,000 Above $130,000	- 16%	$9,380

Tax rates for non-owner-occupied residential properties

Annual value	Effective 1 Jan 2015	Property tax payable per annum
First $30,000 Next $15,000	10% 12%	$3,000 $1,800
First $45,000 Next	-	$4,800

$15,000	14%	$2,100
First $60,000 Next $15,000	- 16%	$6,900 $2,400
First $75,000 Next $15,000	- 18%	$9,300 $2,700
First $90,000 Above $90,000	- 20%	$12,000

The annual value is the estimated gross annual rent of the property if it were to be rented out, excluding furniture, furnishings and maintenance fees. The Inland Revenue Authority of Singapore reviews the annual value of properties yearly and adjusts to reflect the changes in market values of comparable property.

- Tax rates for other properties

Other non-residential properties (such as commercial and industrial buildings and land) are taxed at the rate of 10% of the annual value of the property per annum.

5.5 Financing the Investment

- Thin capitalization rules

  Singapore does not have any thin capitalization rules. If interest payments are made on the borrowing that is used to finance a capital asset and this asset is employed in acquiring taxable income, such interest payments are tax-deductible against the corresponding taxable income.

- Withholding tax on interest

  If interest is paid by a Singapore tax resident to a non-Singapore tax resident, the Singapore tax resident will have to deduct withholding tax at the rate of 15% under Singapore domestic tax law.

  This rate of tax may be reduced by the application of a relevant double tax treaty. Singapore has concluded comprehensive double tax treaties with 84 countries to date.

  With effect from 21 February 2014, interest payments made to Singapore branches of non-resident entities are not subject to withholding tax.

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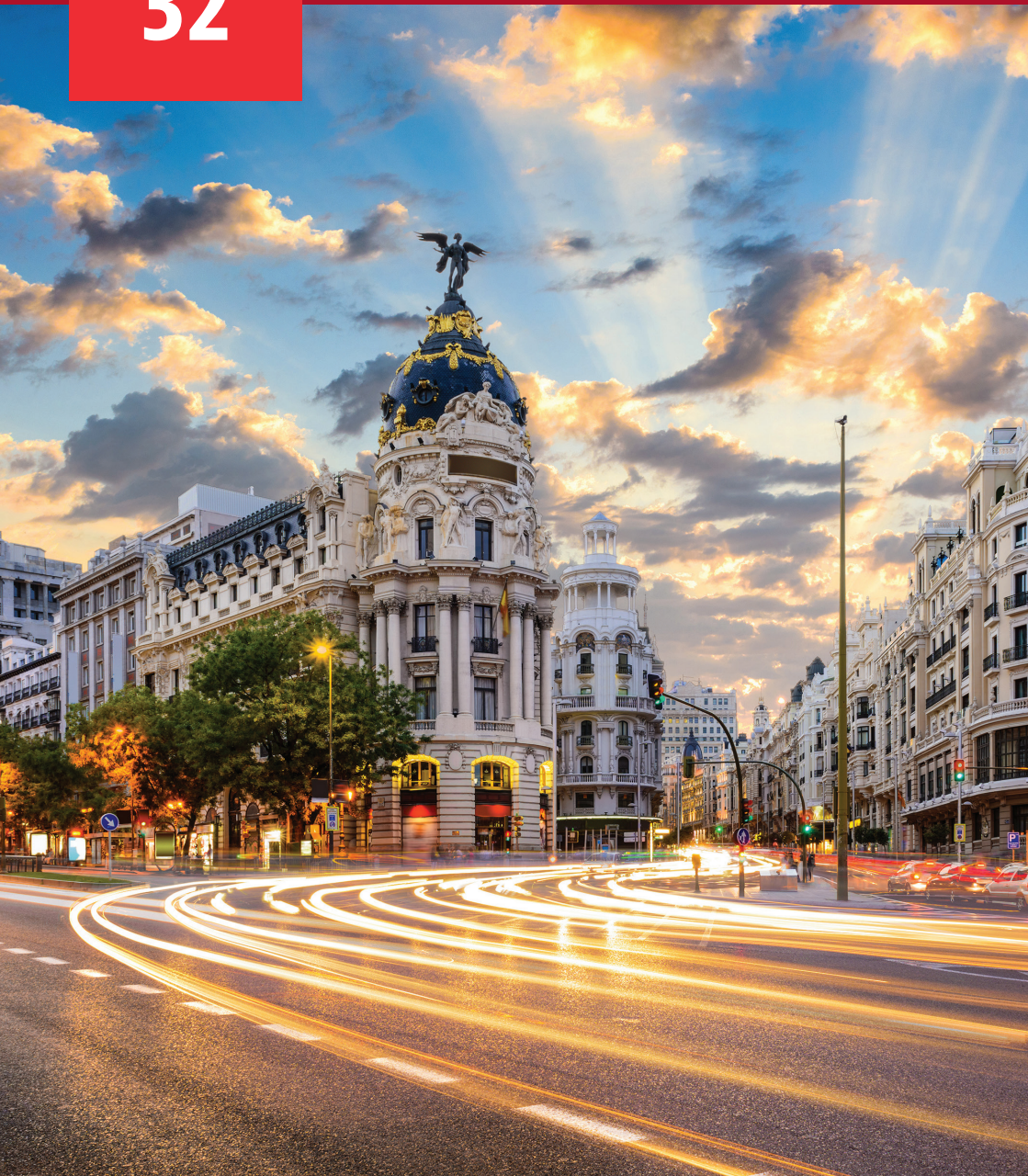

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Any buildings or structures on the land

1.2 What laws govern real estate transactions?

Real estate transactions are governed in general terms by Spanish common law contained in the Civil Code and in some supplementary legislation such as mortgage law. However, some specific regulations approved by the different autonomous communities may also be applicable.

1.3 What is the land registration system?

In all provinces, there are property registries keeping record of ownership and rights regarding real estate assets filed with the relevant property registry. The information contained in each property registry is open to the public and can be checked by any interested party. At the same time, it is enforceable vis-à-vis any third party so that a potential purchaser or beneficiary of a right over a registered property cannot allege ignorance of the contents of property registry information.

1.4 Which authority manages the registration of titles?

Title registration is managed by each property registry, covering a specific area of the relevant province. An administrative body is in charge of governing and coordinating the activity of the Spanish Property Registries.

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

In general terms, real estate rights are not required to be registered to be effective, but in practice, any transfer of real estate assets is registered to

benefit from the publicity (as described above) provided by the property registry. However, some specific real estate rights need to be registered to be effective, such as mortgages or rights to build (derecho de superficie).

1.6 What documents can land owners use to prove ownership over real property?

The official document showing ownership over real estate property is the notarized deed of transfer.

Some other documents commonly used to evidence registration of title are the certificate issued by the relevant property registry and the property registry's excerpt (the latter is only for general information purposes and has no value as proof).

1.7 Can a title search be conducted online?

Yes. All Spanish property registries can be checked online. The relevant excerpt containing information on title and charges for the registered property is issued within 24 hours.

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

In line with the principle of freedom of capital movement provided for under current EC law, current Spanish law has adapted its foreign investment rules to a system of general liberalization, without distinguishing between EU residents and non-EU residents.

Depending on the specific investment carried out, a number of administrative requirements must be met, generally after an investment (or liquidation of an investment) is made, with the Spanish Foreign Investment Registry.

1.9 Can the government expropriate real property?

Yes. Real estate property can be expropriated by administrative authorities. However, expropriation is always subject to justified cause and must be executed through a specific procedure. One of the purposes of such procedure is to determine the fair value of the expropriated property and pay appropriate compensation.

1.10 How can real estate be held?

Generally, an interest is held by any of the following:

- Freehold or other rights in rem, either securing an obligation (mortgage) or granting a limited right over the property (usufruct or right to build)
- Leasehold (which in turn can also be registered with the property registry)

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

- Companies or special purpose vehicles (SPVs)
- Funds
- Other tax-efficient structures

1.12 How are real estate transactions usually funded?

Most real estate transactions are funded by banks and institutional lenders securing repayment by means of mortgages and some other complementary collaterals, like pledges over incoming rents (in case the purchased property is leased).

Due to the recent credit restrictions, some entities, like family-owned businesses, which are not so dependent on external financing, are becoming active players in the real estate investment market in Spain.

1.13 Who usually produces the documentation in real estate transactions?

Generally, the purchaser's lawyers prepare the initial draft of the purchase agreement. Such agreement, when final, is inserted in a public deed authorized by a notary public.

1.14 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?

The usual contractual regime excludes this possibility.

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

It is usually agreed that the seller retains liability for events that may have an impact on the purchaser or occupier after the transfer or occupation takes place (tax or environmental matters, for instance), normally subject to a time limit.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Due diligence report

  This usually includes title search, charges, third-party rights, administrative licenses, permits and planning. Depending on the specific asset, a technical or environmental report is also usually requested by the purchaser.

- Purchase agreement

  The purchase agreement contains the main terms of the transaction (transfer of ownership over the property takes place with the granting of the transfer deed, which is usually subject to the fulfillment of certain conditions or events). The purchase agreement is sometimes replaced by an option to purchase, granting the beneficiary the right

to proceed with the purchase of the property within an agreed period of time.

- Transfer deed to be executed before a notary public.

2.2 What are the warranties given by a seller to a buyer? A seller usually gives the following warranties:

- Title and charges
- Third-party rights
- Full payment of taxes and expenses regarding the property
- Administrative licenses and permits (works, first occupation, etc.)
- Planning and (if applicable) environmental condition of the property

2.3 When is the sale legally binding?

The parties are legally bound to purchase and sale, respectively, with the execution of the sale and purchase agreement (or, if the agreement is subject to conditions, upon the fulfillment of the conditions).

2.4 When is title transferred?

As described above, title is transferred when the transfer deed is granted.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- Transfer Tax or VAT, and stamp duty
- Notary and registry fees
- Agent's fees
- Due diligence costs

The seller usually pays for the following:

- Taxes accruing on the sale of the asset
- The seller's due diligence costs (if applicable)

3. Leases

3.1 What are the usual forms of leases?

- Residential lease

  A residential lease is a lease of real estate with the purpose of establishing the lessee's permanent residence.

- Non-residential lease

  Specifically, seasonal leases, second residences and leases for industrial, commercial, professional, recreational, assistance or cultural activities, regardless of the person who holds them, are considered non-residential leases. Plot leases, industrial leases and other similar leases are also excluded from the category of residential leases.

- Lease work and lease service

  Both types of lease are similar in that one party agrees to perform a specific job or provide a specific service and the other party pays a certain price.

3.2 Are lease provisions regulated or freely negotiable?

Residential leases and non-residential leases are regulated by the Urban Leases Act (LAU) of 1994, as amended recently by Law 4/2013 of 4 June 2013 on the facilitation and promotion of the residential lease market.

For residential leases, some sections of the LAU are compulsory but the parties can also reach some agreements based on their will, as indicated in

the framework of Section II (which mainly regulates residential leases). However, for those aspects not contained in the act, the parties may decide the terms and conditions to apply. The non-residential lease is in principle governed by the will of the parties and failing that, by the provisions of the LAU. Additionally, the Civil Code is supplementary in both cases.

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

There is no maximum term. However, the law establishes a minimum term for residential leases.

The residential lease term is freely agreed upon between the parties. However, the LAU establishes a compulsory minimum term of three years. In case the lease has been agreed for a term of less than three years, the lease shall be deemed extended for additional periods of one year until the third anniversary.

The following are some exceptions to this minimum three-year term rule:

- The tenant may give 30 days' notice of his or her wish not to extend the lease
- The landlord may recover possession of the property before the expiry of the three-year minimum term if he or she can duly justify the need to occupy the property as his or her permanent residence (or for the permanent residence of his or her close relatives, or his or her spouse in case of divorce)

After the three-year minimum term, the lease term may be extended as agreed by the parties. However, if none of the parties have notified the other party (with at least 30 days' notice) that he or she will not renew or extend the lease, the lease agreement shall be necessarily extended for an additional year.

The non-residential lease term is freely agreed between the parties but in case it is not agreed or determined, the provisions of the Civil Code will apply. As a general rule, if the term of the lease is not specifically indicated, it will be the same as the rent payment term. Thus, if the rent payment term is established on an annual basis, the lease term shall be deemed to be annual. The same shall apply for terms of months or days. In such cases, the lease terms will be automatically renewed for such periods upon the conclusion of the previous terms if the parties have not served each other notice of their wish not to renew.

3.4 What are the usual lease terms?

Generally, terms are three to five years for residential leases and three to 10 years for non-residential leases.

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

There are none in a residential lease but in the non-residential lease, it depends on the agreement between the parties.

3.6 On what grounds may a lease be terminated?

Typical causes of termination in residential leases are as follows:

- Loss of the property
- When the property is declared in ruin by the competent administrative authority
- Expiry of the lease term
- Death of the tenant, if there is no right of subrogation in the lease by the tenant's family
- Breach of rent payment obligations by the tenant
- Tenant's execution of unauthorized works in the property

- Unauthorized assignment or subletting by the tenant
- Annoying, dangerous, unhealthy or illegal activities by the tenant
- Breach by the tenant of the building's internal regulations

The following, on the other hand, are typical causes of termination in non-residential leases:

- Failure to pay rent or similar obligations
- Failure to pay the security deposit
- Failure to provide, to renew or to complement (in case of enforcement) the first demand bank guarantee, when agreed at the contract
- Annoying, dangerous, unhealthy or illegal activities
- Unauthorized assignment or sublet by the tenant
- Any other breach of essential obligations by the tenant

The tenant is also entitled to terminate the lease agreement early when the landlord fails to fulfill any of his/her obligations under the law or the lease agreement to guarantee peaceful possession of the leased property by the tenant.

3.7 Must rent be paid in local currency?

No, but it is usually paid in euros.

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

- Residential leases

  Rent is paid as agreed between the parties, but in the absence of agreement, it shall be paid on a monthly basis. Payment must be made

within the first seven days of the month. In any event, the landlord may request prepayment of more than one monthly rent payment.

- Non-residential leases

  Rent is paid as agreed between the parties.

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

Rent is reviewed through the system agreed upon by the parties. The most typical systems to carry out such review are the following:

- The review to adapt the rent to the current market value, which could be through appraisal by a real estate expert
- The review to adapt the rent to the Consumer Price Index
- Establishment of a scale of rent increases through the rent term

3.10 What are the basic obligations of landlords and tenants?

The basic obligation of the landlord is to guarantee that the tenant enjoys peaceful possession of the property through the lease term and can use it for the purposes established in the lease agreement. This means that the landlord shall undertake, at his or her own cost, all necessary works to keep the property in the agreed conditions to be enjoyed by the tenant. In some cases, such works may entitle the landlord to increase the rent.

In turn, the tenant's essential obligations consist of keeping the property in said conditions through appropriate maintenance, undertaking the necessary repairs, using it for the purpose indicated in the lease agreement and paying the rent and other related amounts in due course.

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

The right to sublet may be agreed between the landlord and the tenant, and so established in the lease agreement. Exercise of such right by the tenant may include certain requirements and guarantees to be provided by the tenant.

In residential leases, if something is not specifically provided for in the lease agreement, the tenant may not sublet without the prior written consent of the landlord.

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

It is a cause for termination of the lease.

3.13 Who is usually responsible for insuring the leased premises?

The landlord is the party that takes out insurance on the leased property and recovers the cost from the tenant. However, the tenant is liable for any material damage caused to the property by its occupation under the lease, and at times the lease imposes the obligation for the tenant to take out relevant insurance to the landlord's benefit.

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

In residential leases, if the owner sells the leased property and the lease agreement was not recorded in the land registry, the lease may not survive if the purchaser does not want to continue with the lease (unless otherwise agreed on or with some exceptions regulated in the Spanish Mortgage Act). In such cases, the tenant is entitled to request to continue the lease for three additional months as from the date of notice (to be served by reliable means) if the purchaser communicates his or her will not to continue with the lease.

In non-residential leases, it will depend on what has been agreed between the parties in the lease. If nothing has been agreed on, the purchaser will be subrogated in the rights and obligations of the landlord (the lease will survive), except that the requirements of Article 34 of the Mortgage Act apply (good faith and appearance in the land registry that the owner is entitled to transfer the property, except that the purchaser was aware that the information provided for in the land registry was inaccurate or incorrect).

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

In residential leases: if the foreclosure takes place during the first five years of the contract, the lessee will have the right to keep the lease contract until the fifth year of its term. In contracts with an agreed term of more than five years, if the foreclosure takes place after the first five years of the lease, the lease contract will be considered extinguished. However, if the contract with an agreed term of more than five years has been registered in the property registry before the mortgage is, the lease contract will be in force until the end of the period agreed in the same.

The above is applicable to lease agreements entered into before 6 June 2013. For those lease agreements entered into on or after 6 June 2013, the lessee will only have right to continue with the contract in force until the end of the agreed period if it has been registered in the land registry before the enforcement of the mortgage. Otherwise, the lease agreement will be extinguished. In such case, the lessee would have the right to continue occupying the premises for three additional months and to seek compensation from the landlord.

In non-residential leases, the terms will be as agreed between the parties. If nothing is agreed between the parties in this regard, the contract will survive until the end of the period agreed in the same, unless under the following circumstances:

- The new owner, in accordance with good faith principles, did not know about the lease
- The lease contract is not registered in the property registry

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

National regulations establish the basic rules of land development, but the autonomous communities and municipalities have the powers to legislate and regulate the specific matters of land development for their territories.

Regulations on specific environmental matters at national level are approved by the competent ministry, the Ministry of the Environment (Ministerio de Agricultura, Alimentación y Medio Ambiente).

Autonomous community governments normally have a department of environment in addition to environmental agencies devoted to water and waste management issues. City halls also have a department devoted to environmental matters, although in large cities, this is an area that has been decentralized to city districts.

Municipalities are entitled to promote and approve the zoning plans of their territory. These plans must follow the guidelines of the master plan approved by the governments of the respective autonomous communities. The zoning plans establish the detailed regulation applicable to construction and real estate development, uses of the land, dedication of land to infrastructures, public services, etc. Zoning plans of specific areas may also be promoted by private party developers with the approval of the municipality. In large cities, the zoning plan is normally promoted by the municipality and approved by the zoning department of the autonomous community government.

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

At the national level, the most important zoning and environmental norms are the following:

- The Soil Act, enacted by Legislative Royal Decree 7/2015, of 30 October
- The Administrative Regulation on Management of Zoning Provisions, enacted by Decree 3288/1978, of 25 August, and the Urban Disciplinary Regulations, enacted by Decree 2187/1978, of 23 June, which still remain partially applicable
- The Integrated Prevention and Control Pollution Act, enacted by Legislative Royal Decree 1/2016, of 16 December
- The Environmental Impact Assessment Act, enacted by Law 21/2013, of 9 December
- The Right to Access Environmental Information Act, enacted by Law 27/2006, of 18 July
- The Waste and Contaminated Land Act, enacted by Law 22/2011, of 28 July
- Royal Decree 9/2005, of 14 January, related to land contamination
- The Environmental Liability Act, enacted by Law 26/2007, of October 23, complemented by Royal Decree 2090/2008, of 22 December

As previously noted, each autonomous community has its own legislation, which must be taken into account in its own territory.

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

- Work license

It is to be granted or assessed by the municipality. It approves the work project submitted by the applicant upon review of its compliance with zoning and construction regulations.

- Environmental license

  It is to be granted or assessed by the municipality or, in some cases of significant environmental impact, by the relevant body of the autonomous community. The environmental license approves the technical project submitted by the applicant, describing the activity to be engaged in the building. When so required, it will be necessary to obtain an environmental impact assessment.

- First occupation license

  It is to be granted by the city hall after verifying that the construction has been completed in accordance with the work project for which the work license was granted.

- Start-up authorization

  This is only necessary in buildings in which activities with environmental impact are engaged in. It is granted or assessed by the city hall after the application by the applicant and prior to the relevant technical inspection to verify that the activity meets the technical requirements for start-up.

4.4 Can an environmental cleanup be required?

Yes. Article 54.1 of the Waste and Contaminated Land Act establishes that polluters are obligated to restore the land to the condition in which it was in before the polluting activity occurred. Any activity involving pollution is considered an administrative infraction.

Cleanup procedures are imposed on the liable party as follows: (i) the party that caused the contamination; (ii) in the event of various parties being

involved, all of them jointly and severally; (iii) subsidiarily, liability shall be imposed on the owner of the land; and (iv) further subsidiarily, on the current possessors of the contaminated land.

In addition, when land is classified as "contaminated," cleanup procedures must be carried out, applying the best available techniques. The scope of the recuperation activities must also guarantee acceptable risk levels for the remaining contamination. Furthermore, the administrative resolution declaring land contaminated must be registered in the Property Registry for the protection of potential third-party purchases. The fact that land has been used for an especially contaminating activity listed by the authorities must be included in any deed of purchase for said piece of land.

Land will be declared decontaminated when cleanup activities guarantee that the remaining concentrations do not represent an unacceptable risk for human health or the environment, and has been so declared in an administrative resolution. This resolution will also be registered in the Property Registry to cancel the previous note warning about land contamination.

4.5 Are there minimum energy performance requirements for buildings?

Yes. The Technical Building Code, enacted by the Royal Decree 314/2006, of 17 March, establishes minimum energy performance requirements for newly constructed or refurbished buildings. These requirements are focused on lighting fixtures and thermal installations.

In addition, there is also a basic procedure to certify the building's energy efficiency, approved by Royal Decree 235/2013, of 5 April. This certificate is compulsory for all new buildings and for all buildings or parts being sold or rented.

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

Spain has implemented Directive 2010/31/EU of 19 May on energy performance for buildings by means of the: (i) mentioned Royal Decree 235/2013 of 5 April; and (ii) Royal Decree 238/2013 of 5 April on the modification of certain thermic installation requirements for buildings. These royal decrees basically refer to renovating the buildings and applying high energy performance standards to newly constructed buildings.

In addition, Law 8/2013, of 26 June, on urban rehabilitation, renewal and regeneration regulates the basic conditions which ensure a sustainable, competitive and efficient urban development.

Finally, it should be noted that each autonomous community may have a specific set of requirements and regulations in the field of developing energy efficiency.

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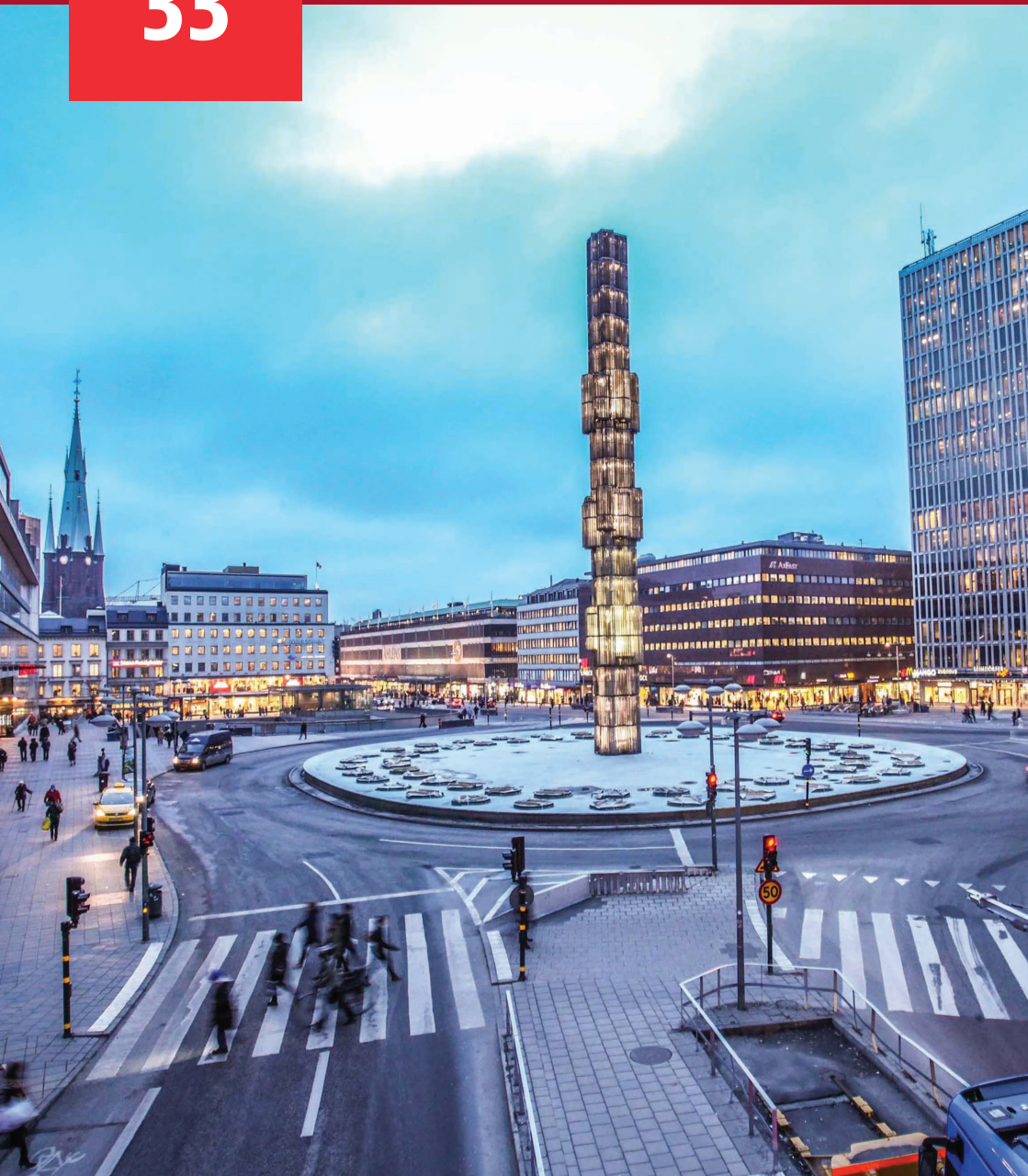

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Water area
- Buildings and structures

1.2 What laws govern real estate transactions?

Real estate transactions are mainly governed by the Swedish Land Code. In addition, a number of acts, such as the Property Formation Act and the Environmental Code, may be applicable depending on the circumstances of every transaction. In case of indirect real estate transactions, ie, when the target is a company owning the real property, additional legislation such as the Swedish Company Act and the Swedish Sale of Goods Act are also applicable.

1.3 What is the land registration system?

All land in Sweden is divided into properties and each property has a specific designation within the municipality. All properties are defined by boundaries marked in an official record kept by the Swedish Mapping, Cadastral and Land Registration Authority (Lantmäteriet). Lantmäteriet is divided into several local offices, each responsible for the properties located within their respective geographically defined area.

1.4 Which authority manages the registration of titles?

Lantmäteriet is responsible for all official registrations of changes in ownership, mortgages and other rights relating to real estate. The registrations are made in the land register. In total, Lantmäteriet's records

include 3.2 million items and provides various information on Swedish properties including tax assessments and land title, etc.

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

Most of the rights over real property require registration, including the rights listed below. However, residential or commercial leases are exempted as well as certain other general usufructs. Fees are charged for handling land registration and stamp duty is charged when the ownership of the property changes.

- Ownership is formally registered when a property is acquired
- A mortgage is registered when taken out on a property
- Easements are often registered. If the easement has been created through an official process at Lantmäteriet, it is always registered. Easements that are created through agreements between landowners may also be registered, but such registration is not mandatory. This is why property records are not always exhaustive.
- Site leaseholds are registered when the municipality or the state grants a site leasehold instead of selling the property

1.6 What documents can land owners use to prove ownership over real property?

Land ownership may be proven by a registration of title to land (Lagfart). In Sweden, the purchase agreement between a buyer and a seller does not constitute sufficient protection from potential third-party claims on ownership. As a general principle, a buyer should always secure that a registration of title to land is obtained.

A title of registration to land is obtained through a formal application at Lantmäteriet. Such application is made by the buyer.

1.7 Can a title search be conducted online?

All registered records are available to the public and information about the ownership of real property can be sought for a fee. Transcripts of the land register, containing the most vital information, such as titles, mortgages and encumbrances, are available online. All underlying documents are not, however, available online and the process of obtaining physical copies may often be time-consuming.

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

There are no restrictions on foreigners owning real property in Sweden.

1.9 Can the government expropriate real property?

Under certain circumstances, it is possible for the government to expropriate real property to serve certain public and other interests. The object for such expropriation may either be the title to a real property, or a specific right relating to real property.

The possibilities for expropriation are limited and strictly regulated in the Constitution and other specific real estate legislations, such as the Expropriation Act, the Planning and Zoning Act and the Property Formation Act.

The expropriated party is always entitled to compensation. The principles for calculating such compensation are complex and set out in the Expropriation Act.

1.10 How can real estate be held?

Generally, an interest in Swedish real estate can be held by the following:

- Ownership
- Partial ownership

- Condominium
- Site leasehold

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

Any person or entity with a separate legal identity can be registered as a proprietor of registered land. Common investment structures are as follows:

- Limited liability companies
- Partnerships
- Limited partnerships

1.12 How are real estate transactions usually funded?

Most real estate financing is performed via institutional lenders such as banks, trust companies, pension funds, credit unions and insurance companies.

Interest rates are generally fixed for a specified period of time, or are variables dependent on an underlying base rate.

Typically, it is the borrower's responsibility to pay all of the lender's legal costs and other costs, such as commitment and processing fees, caused by arranging property financing.

To fill the gap between the funding obtainable through banks and equity capital, it has become increasingly common to finance parts of transactions related to commercial real properties through alternative financing, such as bonds. However, bonds still stand for a small percentage of the total capital on the transaction market.

1.13 Who usually produces the documentation in real estate transactions?

The seller will usually prepare the initial draft of the purchase agreement and the related documents. The draft agreement is then reviewed and commented by the buyer and sent back to the seller. This process continues until a final agreement is reached.

1.14 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?

Yes. Various encumbrances, such as tenancies, easements and other usufructs can be inherited by the new owner of the property. The rules are somewhat complex and depends on the kind of encumbrance involved.

Moreover, government authorities may, under certain circumstances, require the current owner of real estate to clean up contamination even if the owner did not cause it. Many of the potential risks relating to previous owners of the real property are normally handled through warranties in the purchase agreement.

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

Yes. A seller can retain liabilities relating to the real estate even after it has been disposed of. All contractual agreements with third parties entered into by the previous owner are generally not transferred to the buyer, unless agreed upon by the relevant parties. Such agreements may include facility management agreements, maintenance agreements, supplier agreements, etc.

Responsibilities under various encumbrances are, as a rule, transferred to the buyer when the ownership changes, but clauses stating that the seller shall indemnify the buyer for historic lease liabilities are common in purchase agreements.

The seller may also, under certain circumstances, be liable for contaminations/pollutions caused before or during his/her ownership.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

A purchase of real property is concluded through a deed of purchase (Köpebrev) signed by the seller and buyer. The deed shall contain a statement of the purchase price and a declaration by the seller that the property is transferred to the buyer to be valid.

Generally, double sales documents are used in real estate transactions. The first document (purchase agreement) typically contains the main part of the agreement between the parties, whereas the second document (deed of purchase) merely contains minimal information about the purchase, ie, the price and the transfer declaration. The main reason for using double sales documents is that it allows the transaction to be registered while disclosing only a minimum of the conditions of the transaction.

If there are other properties besides the real property being purchased for a combined purchase price, it is sufficient for the document of purchase to contain a statement of the combined purchase price.

Separate agreements on price, eg, agreements stating another price than the price stated in the deed of purchase, are invalid. Thus, the prevailing price is the price stated in the deed of purchase. This price may be adjusted if, taking into account the content of the sales documents and other relevant circumstances in connection with the transaction, it would be unreasonable for the price stated in the deed of purchase to be binding.

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

The buyer is generally responsible for conducting extensive due diligence with respect to the real property to be acquired. However, the seller can give warranties and these are naturally negotiated between the parties.

The scope of the warranties provided varies greatly depending on the individual circumstances of the transaction.

If the transaction is structured as a sale of the shares in a property-owning entity, additional warranties may be needed to regulate the corporate liabilities of the company that are not related to real estate.

2.3 When is the sale legally binding?

When the purchase agreement of the real property is signed by the seller and the buyer, the sale is legally binding between those parties. A registration of title to land must be obtained to protect the buyer from claims of ownership from a third party.

2.4 When is title transferred?

Title transfer occurs when the transaction has been formally registered and the buyer has received a registration of title to land.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- The buyer's own legal costs
- Due diligence costs for consultants who have prepared building condition reports, environmental assessments, valuation appraisals and real estate surveys
- Registration fees
- Stamp duty

The seller usually pays for the following:

- The seller's own legal costs
- Agent's fees

- Discharge costs for the release of securities
- Taxes resulting from potential profits being made on sale

3. Leases

3.1 What are the usual forms of leases?

- Commercial leases

  Commercial leases refer to the leasing of premises for business or other non-residential activities.

- Residential leases

  Residential leases refer to the leasing of residential areas, typically apartments or houses. Residential leases are subject to a stricter mandatory regulation than commercial leases.

3.2 Are lease provisions regulated or freely negotiable?

The regulations on both commercial and residential leases are found in the Swedish Land Code.

Residential leases are subject to a strict safety regulation beneficial to tenants. The provisions of the lease agreement are only freely negotiable to the extent that they are as good as or more beneficial to the tenant than mandatory law. Provisions that are less beneficial for the tenant than the provisions stipulated by law are void.

In general, compulsory provisions include regulation on rent, lease termination, notice periods and the tenant's rights to prolongation.

It should be especially noted that rent is not freely negotiable between the parties. Sweden does not allow market rent for residential leases and the landlord may be liable for damages should the rent be too high in comparison with similar apartments. Usually, the rent is negotiated

collectively between a tenant's association and the landlord or an association of property owners.

Commercial leases are also subject to mandatory regulation, but less so than residential leases. For example, the parties may freely regulate the responsibilities for maintenance and repairs and the landlord may charge a market rent. However, there are a number of mandatory provisions regarding notice periods, indirect security of tenure, etc., which must be complied with in the lease.

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

There is a maximum term of 50 years on leases with a specified lease term. Commercial leases typically have specified lease terms and residential leases are normally entered into until further notice.

3.4 What are the usual lease terms?

Residential leases typically have an indefinite lease period, meaning the lease continues until either party gives termination notice. If a fixed lease period supersedes nine months, it has to be terminated in order to cease, otherwise it is prolonged automatically. The normal notice period is three months.

The tenant has a strong protection against the termination of the lease. The landlord may only terminate or choose not to prolong a residential lease under certain circumstances provided by law.

For commercial leases, the most common lease periods are between three to five years, but may be longer depending on the character of the business performed in the premises. If the landlord has made substantial investments in the premises, this may also result in a longer lease period. The notice period is normally nine to 12 months, depending on the scope of the lease period. If the lease is not terminated, it will typically be automatically prolonged for another three to five years.

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

Under residential leases, the tenant has a so-called direct security of tenure (Direkt besittningsskydd). If the lease is terminated, the rent tribunal may, if the grounds for termination or refusal to prolong do not meet the statutory requirements, decide that the lease shall be extended.

Under commercial leases, the lease term is usually prolonged automatically, unless terminated by either party. The tenant has a so-called indirect security of tenure (Indirekt besittningsskydd). This means that the tenant may not force an extension of the lease. The landlord may be liable to pay compensation of not less than one year's rent, if the reasons for termination or refusal to prolong are not in correspondence with statutory requirements.

3.6 On what grounds may a lease be terminated?

As regards residential leases, the grounds for termination include the tenant's refusal to pay rent, serious disturbances in the property or if the tenant damages the apartment or house. If the circumstances are serious, the lease may be forfeited and terminated to expire immediately. The tenant may terminate the lease whenever, as long as the notice period is respected.

The above examples of grounds for the landlord's termination also applies to commercial leases. However, material breaches of the contract from either party may also constitute grounds for termination.

The various circumstances under which a lease may be terminated are numerous. However, as a general principle, if the tenant's misconduct is of minor importance, the lease may not be terminated.

3.7 Must rent be paid in local currency?

The parties are free to agree that rent shall be paid in any currency.

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

Rent is normally paid in advance on a monthly basis or every calendar quarter. These matters are freely negotiable between the landlord and the tenant.

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

Rent is usually fixed for the lease period. Rent for commercial premises may be subject to annual indexation, generally in accordance with the Consumer Price Index. The rent is normally adjusted in connection with the lease being prolonged.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Hand over the leased space in the agreed condition
- Repair and maintain the exterior part of the building

The following is usually required of tenants:

- Pay the rent on time
- Maintain and repair the premises

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

The tenant may typically not transfer or sublet the lease without the landlord's consent.

Disputes regarding lease transfer or subletting may be settled with a rent tribunal.

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

Normally, the tenant is only responsible for damage occurring as a consequence of the tenant's negligence. If the premises are destroyed, the lease agreement will be terminated.

3.13 Who is usually responsible for insuring the leased premises?

The tenant is usually responsible for insuring the leased premises and the landlord is responsible for insuring the building.

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

Lease agreements survive and are binding in relation to the new real property owner.

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

The tenancy will survive even if the premises were to be foreclosed.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

The local municipality and the county administrative board typically control land use and the density of the development through zoning and development plans. Construction of new projects is also subject to municipal authority. Building codes set specific standards for the construction of buildings, and municipalities require building permits before the commencement of construction. Building codes also regulate the maintenance of existing structures.

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

The Environmental Code affects most aspects of the use and occupation of real estate. There are also more specific laws regarding nuclear safety, certain fuels and chemicals, etc.

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

Generally, a building permit is required to construct, renovate, or to change the use of real properties. Building permits are applied at the municipality and are normally granted if they are in line with the local regulation on land use, or specific decrees on the use of certain houses.

Demolishing real property also requires permits. Demolishing permits, in the same way as building permits, are issued by the local municipality.

Some activities may also require additional environmental permits, especially businesses that handle chemicals, toxic waste or similar substances. Furthermore, governmental authorities may require that premises are constructed in certain ways in order to assure health and safety, etc.

4.4 Can an environmental cleanup be required?

Generally, environmental cleanup may be required where authorities seek to reduce or mitigate potential dangers to human health.

4.5 Are there minimum energy performance requirements for buildings?

Building codes provide minimum energy efficiency requirements for new buildings. Old buildings are usually not covered by these requirements. Moreover, there are a number of voluntary standards for environmentally sustainable buildings.

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

The past years have brought a constantly increasing focus on various environmental issues, such as energy-efficiency, recycling and sustainability throughout Swedish society. This trend also has had an effect on the commercial real estate industry – environmentally-certified

buildings and "green leases" have become more common on the market. Such certifications and leases are currently still performed on a voluntary basis.

An energy declaration is mandatory for most new buildings, as well as for buildings that are sold or leased out. The owner of the real property is responsible for the declaration, which is valid for 10 years. Some buildings are exempted from the requirements of energy declaration, eg, temporary buildings intended to be used for a maximum of two years, industrial buildings and workshops.

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1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Any buildings or structures on it

1.2 What laws govern real estate transactions?

Real estate transactions are governed by the Swiss Civil Code and the Swiss Code of Obligations (which are federal laws).

1.3 What is the land registration system?

All cantons maintain a public land titles registration system – land registry – where ownership can be verified and through which interests in land are registered.

1.4 Which authority manages the registration of titles?

Title registration is managed by the Land Registry Office (cantonal offices).

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

The following rights have to be registered to be valid:

- Transfers
- Mortgages
- Easements
- Real estate charges

The following rights can be registered to have an effect propter rem against a third party:

- Lease
- Rights of first refusal
- Option to purchase
- Right of repurchase

1.6 What documents can land owners use to prove ownership over real property?

Land registries in Switzerland issue an official land registry extract once registration is completed.

1.7 Can a title search be conducted online?

Registered records are available to the public online but not in every canton. The financial information (price of acquisition, mortgages, etc.) are, in particular, not publicly available and are subject to an interest.

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

The acquisition of Swiss real estate by foreigners is governed by the Federal Law on the Acquisition of Real Estate by Persons Abroad of 16 December 1983 ("FL"), better known as the "Lex Koller".

The FL restricts the acquisition of real estate in Switzerland by persons abroad. To acquire real estate for which prior authorization is required, permission has to be obtained from the appropriate cantonal authority. Whether or not a legal transaction is subject to authorization depends on three cumulative conditions:

- The person acquiring the real estate is a person abroad within the meaning of the FL. Foreign citizens who do not hold a valid Swiss residence permit (the so-called B or C permit) are regarded as a "person abroad" and thus are required to obtain an authorization before acquiring any private real estate property located in Switzerland. EU or EFTA citizens domiciled in Switzerland are not subject to any restriction and thus have exactly the same rights as Swiss nationals regarding any acquisition of real estate in Switzerland.

- The object of the transaction is real estate for which authorization is required. The acquisition of real estate for business purposes is generally allowed (there are, however, some restrictions specially in case of unbuilt land) whereas foreigners are restricted from acquiring residential properties. There are some exemptions (such as main residence) or permissions that can be obtained specially for holiday homes in specific areas (the number of authorizations being limited by quotas).

- The transaction is an "acquisition" within the meaning of the FL. The notion of "acquisition" encompasses not only entries of real estate ownership at the land registry but also any transaction that grants to a non-resident actual control over Swiss real estate for which prior authorization is required.

A transaction concerning real estate for which authorization is required can be entered in the land registry only if the buyer has obtained permission.

Even if these three conditions are met, there are certain exemptions that allow, in principle, an acquisition of real estate without authorization (for legal heirs, notably close relatives, co-owners, condominium exchanges, secondary residences for cross-border commuters).

1.9 Can the government expropriate real property?

Property can be expropriated by government, but full compensation must be paid.

1.10 How can real estate be held?

Generally, an interest is held by the following:

- Ownership (sole ownership, co-ownership, condominium ownership, joint ownership)
- Leasehold
- Usufruct
- Right of residence

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

- Corporations and partnerships (including the limited partnership société en commandite de placements collectifs or SCPC)
- Real estate funds
- Public-private partnership

1.12 How are real estate transactions usually funded?

Most real estate financing is arranged through institutional lenders such as banks, pension funds and insurance companies. Interest rates are generally fixed for a specified period of time or are variable. Loans with variable interest rates are the most common form of loans secured by mortgages. The mortgage interest rate is determined by the leading Swiss banks. There is no requirement of full amortization of loan granted for the acquisition of residential properties.

Typically, it is the borrower's responsibility to pay for all of the lender's legal and other costs, such as commitment and processing fees, in arranging property financing.

Lending institutions typically take both primary and collateral security in real property and sometimes related assets. Typical primary security includes a mortgage or charge and, in some cases where the buyer is a corporation, the pledge and assignment of the shares. Collateral security often includes assignments of leases and rent and personal guarantees.

Banks and other lending companies are regulated under federal legislation with special provisions applying to foreign financial institutions.

1.13 Who usually produces the documentation in real estate transactions?

In share deals, generally the seller's lawyer will prepare the initial draft of the share purchase agreement. In asset deals, the buyer's notary usually prepares the purchase agreement, which is reviewed by lawyers.

1.14 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?

For properties held in freehold, authorities can require the owner to clean up contamination even if the owner did not cause it or pay certain outstanding taxes.

For properties held in leasehold, tenants are not held liable for environmental damages caused by a previous tenant.

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

A seller can retain liabilities relating to the real estate even after it has disposed of it. The seller may be liable for any contamination he or she caused during his/her ownership and for any indebtedness (for instance,

taxes unpaid by the previous owner) secured by a mortgage placed on the real estate.

For properties held in leasehold, the tenant is not held liable for a previous tenant's obligations.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Due diligence report

  Before signing a sale and purchase agreement, it is generally the responsibility of the buyer, usually through the buyer's lawyer, to conduct due diligence with respect to the property to be acquired. This includes title and zoning searches and a review of any leases and surveys of the property as well as insurance coverage. An independent environmental assessment is often recommended.

- Sale and purchase agreement

  The first document in any real estate acquisition is normally the sale and purchase agreement between the buyer and the seller. This agreement should contain all necessary business terms for the transaction, including the description of the land, purchase price, deposit (if any), the transfer date and any other special terms. This agreement also typically contains conditions for the benefit of the buyer, and representations and warranties by the seller.

- In case of acquisition by a foreigner, a Lex Koller ruling may be required in certain cases.

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

The warranties usually relate to tax, capital expenditure, lease agreements and environmental issues. However, the seller usually gives limited

representations and warranties. A buyer is therefore generally responsible for conducting extensive due diligence with respect to the property to be acquired. However, in case of a new building, the seller will give additional warranties, in particular construction warranties.

2.3 When is the sale legally binding?

Parties are legally bound as soon as they execute the sale and purchase agreement before a public notary (in case of asset deals).

2.4 When is title transferred?

The title is transferred at the date of registration of the sale and purchase deed in the land registry.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- Buyer's agent's fees
- Legal costs, including notarial costs
- Due diligence costs for consultants who have prepared building condition reports, environmental assessments, valuation appraisals and real estate surveys
- Registration fees
- Transfer taxes

The seller usually pays for the following:

- The seller's agent's fees
- Costs of the seller's legal advisers
- Income tax on any profit made on the sale of the real estate

3. Leases

3.1 What are the usual forms of leases?

- Commercial/residential leases

  The majority of Swiss residents are tenants. As a consequence, there is a wide range of legal precedents regarding rental law. The regulations applicable to leases for residential premises partly differ from those for commercial premises.

  Under a lease agreement, the landlord leases the rented space to the tenant in return for rent payment. In residential leases, quite often standard form contracts are used to conclude rental agreements. The parties determine key issues (such as the object of the agreement, term, rent, ancillary costs) and agree that statutory provisions otherwise apply.

- Ground leases

  A ground lease represents an easement that gives a person the right to erect or retain possession of a building on a parcel of land that he or she does not own. The ground lease is, unless otherwise agreed, transferable and may be inherited and can, as long as it is defined as an independent and permanent right (at least 30 years) be recorded as property in the land register. The advantage of such independent ground lease is that it can be individually mortgaged. An independent ground lease right can be set up for a maximum period of 100 years. As a rule, payment of ground lease interest is agreed and the grantor receives a lien to the ground lease to secure his or her claim.

3.2 Are lease provisions regulated or freely negotiable?

Generally, lease provisions are not regulated and are freely negotiable. However, rental law contains a number of compulsory provisions protecting the tenant (eg, abusive rent, minimal notice periods).

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

Rental agreements may be agreed for a definite (fixed) or an indefinite period of time. For residential purposes, the latter is more common. For commercial purposes, fixed-term leases with extension options are more common.

There is no exact maximum term for leases. If the lease agreement for business purposes has been concluded for a definite period of time, quite often it has a fixed term of 5–20 years. Fixed terms below five years are rare as the rent cannot be proportional to the development of the Swiss consumer price index.

Quite often, rental agreements with a fixed term include an option in favor of the tenant to extend the lease once or twice, often each time for a period of five years. Depending on the agreement, the extension option is a "true option" or a "false option." In the first case, the tenant is entirely free to exercise the option and no further negotiations are required. In the second case, the parties only agree that, prior to the expiry date, they will negotiate the terms of a new lease agreement.

3.4 What are the usual lease terms?

If the lease agreement for commercial purposes has been concluded for a definite period of time, quite often it has a fixed term of 5–20 years with an option in favor of the tenant to extend the lease twice, each time for a period of five years. There is current trend of shorter terms, except in sale and lease-back transactions where longer term leases are still common.

Rental agreements for residential purposes are typically entered into for an indefinite period of time. In this case, each party can terminate the lease with three to six months' prior notice.

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

A residential or commercial premises tenant may request an extension even in case of a fixed term rental relationship if the termination would result in hardship for the tenant unjustified by the interests of the landlord. The court will take into account the circumstances of the conclusion of the agreement, the duration of the rental relationship, the personal, family and economic condition of the parties and their behavior, the possible need for personal use by the landlord as well as the urgency of such needs and the conditions of the local market for residential and business space. A lease agreement may be extended for a maximum duration of four years with regard to residential space and for a maximum duration of six years with regard to business space.

3.6 On what grounds may a lease be terminated?

If a lease agreement has been entered into for an indefinite period of time, both parties may generally terminate the lease agreement at any time by serving a notice with the statutory notice period with effect as of the statutory termination dates. The statutory notice period for residential leases is three months, and for commercial leases, six months. Longer notice periods can be agreed.

Furthermore, a landlord can terminate the lease under the following circumstances (even in case of a fixed term lease):

- The tenant falls behind with the payment of the rent or ancillary costs and the landlord has already granted the tenant a grace period for the payment and has threatened to terminate the lease agreement after the expiration of such grace period. If the tenant does not pay within the grace period, the landlord may give notice of termination of the lease agreement effective after a period of another 30 days and at the end of a calendar month; or

- If the tenant repeatedly violates the duties of care and consideration to other occupants and neighbors of the rented premises, the landlord may give notice of termination of the lease agreement effective after a period of at least 30 days, as per the end of a calendar month, provided that the landlord has previously warned the tenant in writing that the continuation of the rental relationships is endangered due to the behavior of the tenant. The notice has immediate effect if the landlord can prove that the tenant intentionally caused serious damage to the leased premises.

Finally, a tenant can terminate the lease when the landlord is aware of a defect and does not remedy it within an adequate time period. The tenant may give notice of termination with immediate effect if the defect prevents or significantly impairs the predetermined use of the leased premises. This termination right applied irrespective of whether a fixed term lease or an indefinite term lease has been agreed.

3.7 Must rent be paid in local currency?

The parties are free to set the rent in other currencies. But arrangements for payment of rent in a foreign currency are not common.

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

This will depend on the agreement of the parties. Rent for residential properties is usually paid monthly in advance. Rent for commercial properties is often paid monthly or quarterly in advance.

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

If the parties have not agreed on any rent review mechanism, the rent may be reviewed in case the landlord's costs increase (or decrease) or the leased object has been improved. The landlord may increase rent with effect as of the next possible date of termination of the rental agreement. Such an increase must be formally notified and justified. It is typically justified if the increase of the rent is the result of an increase in the applicable

benchmark interest rate issued by the Swiss government. The same adjustment mechanism also allows the tenant to request a rent review. The tenant may further request a rent review if the landlord achieves an excessive yield.

On the other hand, the parties may agree, under certain conditions, on different forms of reviewing the rent, such as indexed rent, staggered rent or a turnover rent.

In case of indexed rent, the rent may only be increased based on increases of the Swiss consumer price index. Indexed rent is only enforceable if the lease agreement is concluded for a fixed term of at least five years.

Staggered rent is only enforceable under the following circumstances:

- The lease agreement has been concluded for a fixed term of at least three years
- The time period between each increase amounts to at least one year
- The amount of the increase is fixed in advance

Staggered rents and indexed rent cannot be combined for the same period of time. Therefore, commercial lease agreements sometimes provide for a staggered rent at the start of the lease agreement (eg, to support the tenant in the setting up of his/her business) and subsequently for an indexed rent.

3.10 What are the basic obligations of landlords and tenants?

The following, among other obligations, is required of landlords:

- Transfer the object of the lease at the agreed time in a suitable condition for the predetermined use and maintain it in such condition. In addition, a landlord is, in certain cases and at the request of a prospective tenant, obliged to inform the prospective tenant of the

rent of the preceding tenant and provide him/her with the report of return

- Remedy all defects of the leased object, except where these defects are only of a small value

The following, among other obligations, is required of tenants:

- Pay the rental fee on time
- Pay ancillary costs
- Inform the landlord if repairs are needed and give the landlord access to the property to carry out repairs
- Use the leased object carefully, ie, tenants must give due consideration to other occupants and neighbors of the rented premises

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

Both residential and commercial leases can be transferred provided all three parties (old tenant, new tenant and landlord) agree on the terms in a transfer agreement. In case of a commercial lease, however, the landlord may only refuse its consent for valid reasons. At the same time, the old tenant remains jointly liable with the new tenant until the next termination date.

Given the consent of the landlord, the tenant may sublet the leased premises fully or partially. The landlord may refuse such consent only if the tenant refuses to inform the landlord of the terms of the sublease, if the terms of the sublease are abusive compared to the terms of the principal lease agreement or if the sublease triggers significant disadvantages for the landlord.

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

As a principle, the tenant can claim rent reduction if the leased premises are destroyed or damaged. If the damage or destruction has been caused by the tenant, the landlord has a direct claim against the tenant.

If the premises are substantially damaged or destroyed by an act of God and if the continuation of the lease is therefore not possible anymore, the lease is terminated by operation of law. Neither the landlord nor the tenant owes the other for damages. The tenant can claim back rent paid in advance and security services.

3.13 Who is usually responsible for insuring the leased premises?

The landlord is responsible for insuring the leased premises. However, it is suggested that tenants have their own private liability insurance to cover any damages caused to the property. Often lease agreements contain an obligation on the tenant to take out certain property-related insurance as well.

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

If the landlord sells or otherwise transfers the leased premises to a third party, the rental relationship is transferred to the buyer of the leased object by operation of law. However, the buyer may terminate the rental relationship with the statutory notice period (ie, three months for residential premises and six months for business premises) effective as from the statutory termination date. Yet, this right can be exercised only if the new owner and landlord can assert an urgent need of the leased premises for him/her, close relatives or in-laws. In case a fixed term lease is broken by the new owner based on the above mentioned principles, the tenant can claim damages from the previous landlord (ie, the seller).

To protect him/herself from such termination by the new landlord, the tenant may register his/her lease agreement with the land registry. In this case, the buyer of the lease premises will have to accept the lease

agreement as is and he or she cannot break the lease despite an urgent need to use the leased premises.

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

In principle, the same applies as above in point 3.14. At a foreclosure sale, a rental lease is generally transferred to the transferee. But if mortgage creditors come to loss and their mortgage instruments have age-priority over the lease agreement, they may request a second auction (double call) without binding the lease to the buyer. The double call is possible both for rental relationships marked in the land register as well as for unregistered long-term leases. After the double call, the buyer is allowed to terminate the rental relationship in compliance with the statutory notice period effective as from the statutory termination date.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

The Swiss Federal Constitution and federal law include the guidelines regarding property development. Details are regulated by each canton, primarily by the municipal law. Municipalities typically control land use and the density of the development through official plans and zoning laws. Construction of new projects is also subject to cantonal and municipal legislation. Building codes set specific standards for the construction of buildings. However, municipalities require building permits before the commencement of construction. At the same time, building codes regulate the maintenance of existing structures.

The Swiss legislator has devoted an entire chapter in the Federal Constitution to the topic of environment and environmental protection. Based on these provisions, a number of federal laws and ordinances have been adopted governed by a set of principles (ie, the principle of sustainability, the precautionary principle, the principle of the integral approach). Cantons are responsible for the enforcement of these laws.

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

- The Swiss Federal Constitution, federal laws and regulations provide guidelines
- Cantonal and municipal laws and regulations govern the details

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

- Building permit
- Major work that may also require a planning procedure

4.4 Can an environmental cleanup be required?

If contamination is detected, the land owner is in principle under a cleanup obligation. However, if the level of contamination does not exceed certain thresholds, action must only be taken when a new construction project is launched or the usage of the parcel is changed.

The transfer or parceling of real estate property, which is registered in the register of polluted sites, requires prior approval by the competent cantonal authority. This approval can be made conditional upon the provision of sufficient financial security for the risk assessment, surveillance and cleanup cost.

4.5 Are there minimum energy performance requirements for buildings?

Many cantons in Switzerland require that new buildings meet certain energy performance requirements. There is, however, no generally applicable mandatory minimum energy efficiency standards in Switzerland. Therefore, the requirements of the individual canton have to be checked on a case-by-case basis.

Energy performance is increasingly becoming a political topic. As a result, it cannot be excluded that new legislation will be passed on energy performance.

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

Since 2009, the Swiss government has provided funding for energy-efficient renovation of premises.

Energy-efficient construction is also supported by the majority of cantons, directly or indirectly, while the federal government is responsible for the coordination of the funding efforts of the cantons.

35 Taiwan

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Structures and/or fixtures that are constantly or permanently affixed or appurtenant to land, such as buildings

1.2 What laws govern real estate transactions?

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

- The Civil Code
- The Land Act
- The Land Tax Act
- The Income Tax Act
- The Deed Tax Act
- The Stamp Duty Act
- The Regulation of the Land Registration
- The Equalization of Land Rights Act
- The Consumer Protection Act
- The Fair Trade Act

1.3 What is the land registration system?

Under the Civil Code, the types of right to, or interest in, real estate are limited to those provided by statutory law or customary practice and no

new type may be created. In addition, 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, registration made in accordance with the Land Act shall have an absolute effect.

1.4 Which authority manages the registration of titles?

The Ministry of the Interior is the highest regulatory authority for land registration. All county/city governments have their land administration unit. In practice, however, land registration work is the responsibility of the land office under the county/city government.

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

- Ownership
- Superficies
- Long-lasting tenant rights before 3 August 2010
- Real estate easements
- Right of Dian ("Dian" 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)
- Mortgage
- Right to farming
- Agricultural right
- Rights in rem created according to customary practice

1.6 What documents can land owners use to prove ownership over real property?

Details of land registration may be found in the land register and building register. Land owners may request a transcript of the land/building register to prove their ownership. Also, land/building owners hold a land 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.

1.7 Can a title search be conducted online?

All registered records are available to the public and information about the ownership of real property can be searched for a fee.

Land/building transcript applications can also be done online.

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

Foreigners may acquire or create rights to land in the Republic of China 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 citizens of the Republic of China (ie, citizens of the Republic of China are entitled to the same rights as the foreigners in their country according to a treaty or the law of their country)
- 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

1.9 Can the government expropriate real property?

Property can be expropriated by the government but appropriate compensation must be paid.

1.10 How can real estate be held?

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

- Perpetual right to occupy the real estate held by the owner
- Lease
- Borrowing
- Contract under which superficies, long-lasting tenant rights, the right of Dian, right to farming or agricultural rights may be created

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

- Natural person
- Legal entities
- Trust
- Registration of property under another's name

1.12 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.

1.13 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, the lawyer for the buyer prepares the real estate purchase agreement.

1.14 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, in case of a lease with a term of less than five years or that is notarized, even if an owner purchases or inherits the subject matter, subsequently, it shall assume the lease as the lessor to the lease.

1.15 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.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- 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 in prescribed forms to be submitted to the competent authority

2.2 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 (ie, 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

2.3 When is the sale legally binding?

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

2.4 When is title transferred?

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

2.5 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
- 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, if any
- House tax, land value tax and utility fee prior to transfer of title
- Income tax upon selling of buildings that meet the following criteria: (i) buildings bought before 1 January 2014; or (ii) buildings bought between 2 January 2014 and 31 December 2015, held for more than two years and sold after 1 January 2016
- Income tax upon selling all properties (including buildings and lands) purchased after 1 January 2016 (subject to certain exemptions)
- Part of the commission payable to the broker, if any

3. Leases

3.1 What are the usual forms of leases?

- Land lease

- Office lease
- House lease
- Plant/factory lease
- Farm land lease

3.2 Are lease provisions regulated or freely negotiable?

Based on the principle of freedom to contract, the terms and conditions of a lease agreement may generally be freely negotiated and determined. There are laws that provide protection for the lessee including a newly implemented Regulation Governing the Development and Management of the Domestic Tenancy Market, such as the total rent deposit shall not exceed two months' rent. However, restrictions including the one on the rent deposit generally do not apply to building leases for business purposes.

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

A lease may not exceed 20 years unless it is a lease of land for construction of buildings; it will be shortened to 20 years if in excess of 20 years although the parties may renew it.

3.4 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.

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

No, unless the parties agree beforehand that the tenant has the right to request an extension of the lease.

3.6 On what grounds may a lease be terminated?

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

- The premises are used in violation of law, including where hazardous articles are stored, threatening public safety
- The premises are subject to provisional seizure or provisional injunction, proving that the tenant is experiencing financial difficulties and thus unable to perform its obligations under the lease agreement
- The rent has been overdue for at least two months and so the lease can be terminated on rent default grounds

3.7 Must rent be paid in local currency?

There is no special regulation on this.

3.8 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.

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

No.

3.10 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

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

No transfer is allowed without the landlord's permission. The premises may be sublet in part according to law, but usually the tenant is required to notify or seek permission from the landlord in advance.

3.12 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.

3.13 Who is usually responsible for insuring the leased premises?

The lessor is responsible for insuring the leased premises.

3.14 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.

3.15 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.

4. Planning and Environmental Issues

4.1 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. However, it is worth noting that the Spatial Planning Act that was promulgated in 2016 and the Ministry of the Interior is working on the national spatial plan accordingly, which is expected to be announced by May 2018 and may affect land use and related environmental regulations in relevant local areas.

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

- The Soil and Water Conservation Act
- The Environmental Impact Assessment Act

- The Soil and Groundwater Pollution Remediation Act

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

- Building permit
- Occupancy permit

4.4 Can an environmental cleanup be required?

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

4.5 Are there minimum energy performance requirements for buildings?

The Building Technical Regulations were revised in mid-2012 to include requirements for "green building," which will apply to new buildings.

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

Following the said revision of the Building Technical Regulations, some city 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.

36 Thailand

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Things fixed permanently to land, such as buildings, perennial plants and bridges
- Things formed with land, such as soil, sand and stone
- Real rights connected with land or things fixed to or forming a part of the land

1.2 What laws govern real estate transactions?

Mostly, real estate transactions are governed by the Civil and Commercial Code and the Land Code.

1.3 What is the land registration system?

All provinces maintain a public land titles registration system where ownership can be verified and through which interests in land are registered.

1.4 Which authority manages the registration of titles?

Title registration is usually managed by the Department of Lands, Ministry of the Interior.

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

- Transfers
- Mortgages
- Easements (servitudes)

- Lease with a duration of more than three years or for the lifetime of the landlord or the tenant
- Right of habitation
- Right of superficies
- Right of usufruct
- Charge on real property

1.6 What documents can land owners use to prove ownership over real property?

Land ownership may be proven using land title deeds.

1.7 Can a title search be conducted online?

Electronic title searches are not available.

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

Generally, foreign individuals and legal entities deemed as being foreign are prohibited from owning land. However, the Land Code provides an exception in cases where the provisions of a treaty give foreigners the right to own real property.

There is no prohibition for foreigners from owning buildings. However, for condominium buildings, several foreigners holding ownership in condominium units altogether must not exceed 49% of the total area of the condominium units in the said condominium building.

1.9 Can the government expropriate real property?

Real property can be expropriated by the government, but appropriate compensation must be paid.

1.10 How can real estate be held?

Generally, an interest is held by any of the following means:

- Freehold
- Leasehold

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

A corporation is the usual structure used in investing in real estate.

1.12 How are real estate transactions usually funded?

Most real estate financing is arranged through banks. Interest rates can be fixed or variable but usually does not exceed 15% per year. Real estate is usually required to be mortgaged with the bank.

1.13 Who usually produces the documentation in real estate transactions?

Generally, real estate transactions require official forms to be filled out at the land registry office. For preparation of the relevant documentation, it shall depend upon what the parties mutually agree.

1.14 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?

If the property is a point source of pollution, causing or is the source of leaks or contamination that cause death, bodily harm or health injury to any person, or has caused damage in any manner to the property of any private person or of the state, the owner or the occupier of the property is strictly liable to pay compensation or damages, regardless of whether such leakage or contamination is the result of a willful or negligent act of the owner or occupier thereof.

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

A seller and occupier can retain liabilities relating to the real estate even after they have disposed of it. Any contamination caused by the seller or occupier shall result in liabilities for such persons.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Agreement to sale and purchase, containing all necessary business terms for the transaction, including the description of the land, purchase price, deposit (if any), the closing date and any other special terms (conditions for the benefit of the buyer and representations and warranties by the seller are usually contained therein.)
- Sale and purchase agreement, which is required to be executed in an official form and registered with the competent registry land office
- Due diligence report usually conducted by the buyer, through the buyer's lawyer with respect to the property being acquired

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

A seller usually gives warranties that he or she is the owner and is entitled to sell the property. Other warranties shall depend on negotiations.

2.3 When is the sale legally binding?

A sale of real property is legally binding only when it is made in writing and registered by a competent official. An agreement that is not executed in the prescribed form shall be invalid.

2.4 When is title transferred?

The land title will be transferred at the time of registration with the competent official.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays:

- Legal costs
- Due diligence costs for consultants who have prepared building condition reports, environmental assessments, valuation appraisals and real estate surveys
- Half of the transfer registration fees

The seller usually pays for:

- Legal costs
- Withholding income tax on any profit made in the sale of the real estate
- Half of the transfer registration fees
- Specific business tax or stamp tax

3. Leases

3.1 What are the usual forms of leases?

- General lease

  The lease of real property must have some written evidence signed by the party liable, otherwise it is not enforceable by action. A lease that is for more than three years or for the lifetime of the landlord or tenant shall be made in writing and registered at the competent land

registry office, otherwise it is enforceable only for three years. The duration of the lease cannot exceed 30 years. If it is made for a longer period, it shall be reduced to 30 years. The lease may be renewed, but its duration must not exceed 30 years from the time of renewal.

- Lease of real property for commerce and industry

  The duration of such lease is for more than 30 years but must not exceed 50 years. The lease shall be made in writing and registered by the competent land registry office. The lease may be renewed upon expiration, but its duration must not exceed 50 years from the agreement date. This form of lease is available only to the land categorized by the city planning law as commercial and industrial zones.

- Lease of land for agriculture

  This form of lease is enforceable by action even without written evidence signed by the party liable. The lease period shall not be less than six years. If the lease is for an indefinite period or for less than six years, it shall be extended to six years. The rent of such lease can be paid with an agricultural product. Moreover, the lease does not terminate on the ground of the tenant's death. The successor or the heir of the tenant may, within 60 days, demand continuity of the lease.

3.2 Are lease provisions regulated or freely negotiable?

Lease provisions are freely negotiable. However, the lease of real estate is not enforceable by action unless there is some written evidence signed by the party liable. If such lease is for more than three years or for the lifetime of the landlord or tenant, it is enforceable only for three years unless it is made in writing and registered at the competent land registry office.

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

The duration of a lease of real property cannot exceed 30 years. If it is made for a longer period, the period shall be reduced to 30 years. The lease may be renewed, but its duration must not exceed 30 years from the time of renewal. Nevertheless, a lease agreement can be made for the duration of the lifetime of the landlord or the tenant.

However, the law permits a lease agreement of real property for commercial and industrial purposes to be made for a period over 30 years, but not exceeding 50 years. The lease may be renewed for a duration not exceeding 50 years from the time of renewal. Such duration is applicable only to land located in the areas zoned by city planning law as commercial and industrial zones.

3.4 What are the usual lease terms?

This depends on the purpose of the lease.

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

No.

3.6 On what grounds may a lease be terminated?

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

- The tenant breaches the terms of the lease, including non-payment of rent
- The tenant sublets or transfers his/her rights of the property, in whole or in part, to a third person without the consent of the landlord
- The tenant uses the property for purposes other than those that are ordinary and usual, or that have been provided in the agreement, provided that warning must be given before termination.

- The tenant fails to generally take care of or fails to normally maintain or conduct petty repairs to the property, provided that warning is given before termination

3.7 Must rent be paid in local currency?

The parties may agree to pay rent in other currencies.

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

This will depend on the agreement of the parties.

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

No.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Deliver the property to the tenant in a good condition
- Repair and maintain the structure of the property
- Pay half of the agreement registration fees
- Reimburse to the tenant any necessary and reasonable expense incurred by the tenant for the maintenance of the property, except those for ordinary maintenance and petty repairs

The following is usually required of tenants:

- Pay rent and half of the agreement registration fees
- Generally take care of and ensure ordinary maintenance and petty repairs of the property

- Inform the landlord if the structure needs to be repaired, if a preventive measure is required to avoid danger or if an unauthorized person trespasses on the property
- Allow the landlord to access the property (often by appointment) for inspections and landlord's work
- Return the property in good condition upon termination or end of the agreement.

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

A tenant shall not sublet the leased premises or transfer his/her rights to a third person, in whole or in part, unless consent of the landlord is granted. If the tenant sublets the premises or transfers the lease without the landlord's consent, the landlord shall have a right to terminate the agreement.

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

If the leased premises is wholly destroyed, the lease agreement shall be concluded, regardless of whether the destruction is due to the fault of any contracting party or an act of God.

3.13 Who is usually responsible for insuring the leased premises?

The landlord is responsible for insuring the leased premises. Moreover, for certain types of buildings, the landlord, occupier or operator of the building is required to arrange for liability insurance against the life, body and property of third persons.

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

Lease agreements survive and are binding upon the new owner.

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

Lease agreements survive and are binding upon the new owner.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

The Office of Environmental Policy and Planning has the nationwide authority over environmental regulation, while the authority on the development of land is under the jurisdiction of local authorities.

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

The Enhancement and Conservation of Natural Environmental Quality Act is a primary law regulating the environmental aspects in the use and occupation of real estate. Additional rules and regulations have been enacted to control the use and occupation for each specific area.

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

- Construction permit
- Building use permit, required for a building categorized as a controlled-use building, such as a building used in commercial business and as an assembly hall or office
- The approval of the relevant environmental reports, as follows:
- Health Impact Assessment Report, required for certain industries that may cause serious impact to the community, such as mining, petrochemical and power plants
- Environmental Impact Assessment Report
- Initial Environmental Examination Report, required for land in certain sensitive areas such as Phuket, Pattaya and Hua Hin

4.4 Can an environmental cleanup be required?

If the property is a point source of pollution that shall be controlled in regard to the discharge of waste water, waste and/or the emission of polluted air into the environment, the owner or occupier of the property shall be required to construct, install or bring into operation an onsite facility for waste water treatment, waste disposal and/or air pollution control as determined by a competent official.

4.5 Are there minimum energy performance requirements for buildings?

For factories and buildings categorized as controlled, the owner shall prepare an energy conservation policy that must be posted at a noticeable place in the controlled factory or building, or by another suitable method so that the personnel of the said factory or building may learn of and comply with the policy.

Additionally, the owner of the controlled factory or controlled building shall arrange for an inspection and a certification of energy management from an inspector and certifier. Reports of inspection and certification must be submitted to the authority every year.

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

Certain types of buildings must arrange for engineering and architectural inspections. Inspections must be conducted annually. A major inspection must be conducted every five years to examine the stability of infrastructure, equipment and security management, among other things.

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25 The Netherlands

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Real properties such as the soil, unmined minerals, plants attached to the soil and buildings and works attached to the soil, either directly or through other buildings or works
- Rights in rem that are created in relation to real properties such as ground leases (erfpacht), rights of superficies (opstalrechten) and rights of usufruct (vruchtgebruik)

1.2 What laws govern real estate transactions?

Property law is governed by Dutch private and public law, including tax law, administrative law, leasing law and environmental law.

1.3 What is the land registration system?

Through the land registration system, ownership of all real estate in the Netherlands can be verified. This also applies to rights over real properties.

In principle, one can rely on the information contained in the land registry.

The state will be held liable for damages for any mistake committed by land registration authority personnel.

1.4 Which authority manages the registration of titles?

Title registration is usually managed by civil law notaries who execute the deeds of transfer of title of real property or rights over real property.

The land registry itself is kept and managed by the semi-public authorities responsible for the registration of real property and rights over real property.

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

- Ground leases (erfpachten)
- Rights of superficies (opstalrechten)
- Rights of usufruct (vruchtgebruik)
- Rights of mortgage (hypotheek)

Public authorities such as municipalities, provinces, environmental and water authorities can also publish certain restrictions in relation to real property in the land registry, such as municipal preemption rights and decrees pursuant to the Soil Protection Act.

1.6 What documents can land owners use to prove ownership over real property?

Land ownership may be proven using transfer deeds which have been registered with the land registry.

1.7 Can a title search be conducted online?

Yes. Searches can be done by entering the property location details or the name of the owner in the online tool of the land registry. The results will show the owner of the property and the details of the deed of transfer. Also, any attachments or mortgages will be visible. Furthermore, the underlying deeds can be retrieved online very quickly.

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

Yes. Foreigners can own real property and there are no restrictions.

1.9 Can the government expropriate real property?

Yes. Based on the Expropriation Act, the government has the means to start proceedings for expropriation if certain conditions, such as urgency,

are met. Please note that a claim for expropriation is not easily awarded because the government has to strictly adhere to all applicable conditions.

1.10 How can real estate be held?

Generally, an interest is held as asset or through shares.

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

- Asset deals
- Share deals

1.12 How are real estate transactions usually funded?

Usually, purchasers finance acquisitions with external loans and they provide mortgage rights to external lenders.

1.13 Who usually produces the documentation in real estate transactions?

Generally, the civil law notary will prepare a letter of intent, the sale and purchase agreement and the deed of transfer. The civil law notary also takes care of the registration of the transfer deed in the land registry. The registration of the transfer deed will complete the transfer.

1.14 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?

Yes. In general, liabilities carry over to the next owner or occupier. For this reason, thorough due diligence combined with appropriate representations and warranties in the sale and purchase agreement are required so the risks can be mitigated. For instance, in case of environmental claims, the current owner could be liable for cleanup of soil pollution even if this has occurred before they purchased the property.

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

Yes, it is possible. To a certain extent, the risk for a seller can be mitigated through appropriate representations and warranties laid down in the sale and purchase agreement.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Letter of intent
- Sale and purchase agreement
- Transfer deed
- Loan agreement
- Mortgage deed

2.2 What are the warranties given by a seller to a purchaser?

A seller usually gives the following warranties:

- The seller has the right and full powers to transfer title to the property.
- No government subsidy for which conditions have yet to be satisfied has been applied for or granted in connection with the property.
- The property will not be used by third parties without any right or title thereto.
- The property is connected directly to the public water, energy and sewerage systems.

- The property is used in accordance with its intended use and has all the characteristics (eigenschappen) needed for the intended use.
- It will deliver to the purchaser a freehold title which is unconditional and not subject to encumbrances and/or any curtailment, cancellation or annulment whatsoever, which is not subject to seizures and is not encumbered by obligations relating to a particular title as referred to in Article 6:252 of the Dutch Civil Code and other rights in rem (zakelijke rechten).
- There are no disputes with regard to third parties, nor are there any (intended) legal proceedings, binding advice procedures or arbitrations pending with respect to the property.
- No obligations exist to third parties on the basis of a preferential right, right of option and/or contractual right of first refusal.
- The authorities have not required compliance with any local laws with respect to the property that have not yet been completed to the satisfaction of the authorities in question and neither have any such provisions been announced.
- The seller has not received notification and has not been included in a designation with regard to the property as referred to in the Municipalities Preferential Rights Act (Wet voorkeursrecht gemeenten).
- The local authority has not adopted any urban renewal plan or environmental order involving the property, as defined in the Urban and Rural Regeneration Act (Wet op de stads-en dorpsvernieuwing).
- The property has not been included in any (pending application for) designation or listing order or registration of the property sold as a protected townscape or landscape.

- The property is not involved in a land development plan and is not nominated for expropriation.
- No rulings and/or orders in respect of the property as provided for in Article 55 of the Soil Clean Up Act (Wet Bodembescherming) have been registered at the offices of the land registry in the Netherlands.
- No underground tanks are present on the property that would form an obstacle to the intended use.
- Sufficient extended fire cover for the property has been taken out and, to the seller's knowledge, there is no increased risk; the latest insurance premium has been paid.
- The property including all buildings on it are built and used in accordance with the applicable environmental permit(s) (omgevingsvergunning(en)), which are irrevocable, the fire safety and building requirements under the Building Decree 2012 (Bouwbesluit 2012), and the zoning plan which has been approved by the municipality and that it is in accordance with all other applicable rules and regulations pertaining to public and private law.
- The property is not encumbered by obligations to allow certain acts as referred to in the Public Works (Removal of Impediments in Private Law) Act (Belemmeringenwet Privaatrecht).

2.3 When is the sale legally binding?

The sale of residential immovable property or a component thereof, has to be concluded in writing if the purchaser is a natural person who, when entering into the agreement, does not act in the course of his/her professional practice or business. Other than the aforementioned, the sale and purchase of immovable property is, in principle, not prescribed by regulation. Therefore, parties can be bound to each other even before one word is on paper. Also under Dutch law, the parties can be bound vis-á-vis

each other in the pre-contractual phase, ie, at a certain stage of the negotiations, parties can not withdraw without being liable towards the other party to a certain extent.

2.4 When is title transferred?

Title is transferred when the registration at the land registry of the deed of transfer, executed by a civil law notary, is completed.

2.5 What are the costs usually shouldered by the parties?

The purchaser usually pays for the following:

- The property
- The real estate transfer tax or value-added tax
- The notary's costs
- The costs of registration at the land registry

The seller usually pays for the following:

- The seller's own advisor's costs
- Costs of deletion of mortgages

3. Leases

3.1 What are the usual forms of leases?

Leases are subject to various statutory provisions and administrative regulations. The three most important lease regimes are: office space, commercial space and housing.

For all three types of leases, the Dutch Real Estate Council provides a standard contract (Raad voor Onroerende Zaken or ROZ), which also provides for a set of general conditions that form an integral part of the

contract. An ROZ contract contains certain deviations from mandatory law (which have been approved) and is quite landlord-friendly.

3.2 Are lease provisions regulated or freely negotiable?

Yes. Lease law is highly regulated in the Netherlands. With respect to office space, a semi-mandatory system applies, which allows parties — to a great extent — to freely negotiate the rent and other terms of their agreement on the basis of prevailing market conditions. The rental price is often indexed on the basis of a price index figure. Upon termination of a lease, the tenant is granted two months' protection from eviction by operation of law and the courts can grant protection from eviction to a tenant for a maximum of three years.

With respect to retail business space, a more complicated and more regulated semi-mandatory system applies, which reduces the freedom to execute contracts, for instance, with respect to the term and termination of the lease (by providing protection from eviction and compulsory renewal). The system also allows the courts to control the rental price. Leases for retail business space have a five-year term (unless special circumstances apply) with an option allowing the tenant to renew the contract for another five years. After five years, the landlord can terminate the lease agreement only on exceptional grounds and the landlord cannot terminate the lease agreement out of court. With these provisions, the law aims to protect the tenant's business interests.

Housing leases are even more regulated in Dutch law. Considerable mandatory law should be taken into account to protect the tenant, the most significant rules of which relate to the termination of the lease and the rental price.

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

There is no maximum term for leases.

3.4 What are the usual lease terms?

The lease terms with regard to business premises are quite regulated.

The general rule is that the lease concerning retail premises has a term of at least 10 years broken down into two periods. The first period generally runs for at least five but less than 10 years. After the first period expires, the lease will be extended by operation of law (van rechtswege) by the period remaining to have the lease run for 10 years.

The first exception is that the parties — without court permission — can agree that the lease will be in effect for less than two years. The second exception is that the parties can deviate from the general rule with the court's permission.

After the lease has been in effect for 10 years, it will be converted by operation of law into a lease for an indefinite period of time, unless otherwise apparent from the lease.

Because this rule is included in the section regarding commercial space, it is semi-mandatory. For the tenant's benefit, the parties may agree that the lease will run for more than 10 years.

This system has the following implications:

- A lease entered into for four years will be converted by operation of law into a lease running for at least five years, which is extended by operation of law into a lease for a total of 10 years.
- A lease entered into for seven years will be extended by operation of law into a lease for a total of 10 years.
- The parties may agree that the lease will run for 15 years.

The lease term for other business premises is governed by the principle of freedom of contract. However, the tenant of other business premises is

entitled to eviction protection. This eviction protection enables the tenant to ask the court to extend the period within which the tenant must vacate the space at the landlord's request by one year. The tenant may request this a total of three times. This eviction protection cannot be contracted away.

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

Yes, but this depends on the kind of premises that are leased. (Please refer to the sections above for more details.)

3.6 On what grounds may a lease be terminated?

A landlord can generally terminate the lease of business premises upon expiry of the term, unless it concerns retail premises.

In such case, termination by the landlord can only take effect at the end of the first period of at least five but less than 10 years if the termination is based on one of the below two limited grounds:

- The tenant has not acted with due care
- The landlord him/herself needs to use the space (urgent use for him/herself)

If the landlord terminates the lease with effect from the end of the period by which the lease has been extended by operation of law, it can — besides the grounds mentioned above — base the termination on any of three additional grounds:

- There is reasonable weighing of interests
- The tenant did not accept a reasonable offer to enter into a new lease, insofar as this offer did not entail a change in the rent
- Pursuant to an applicable zoning plan, the landlord wishes to effectuate the designated use for the leased space

Please note that a lease agreement relating to retail premises cannot be terminated out of court by the landlord.

Early termination of a lease agreement is only possible with the permission of the court (eg, in case of breach of contract).

3.7 Must rent be paid in local currency?

No, parties are free to decide on the currency to be used for rent payments.

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

Rent is not necessarily paid on a monthly basis and the parties are free to decide on this. However, a monthly or trimonthly basis is common, as is payment in advance.

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

Under the commonly used ROZ template, rent is reviewed in accordance with the consumer price index. Sometimes a cap on the indexation is agreed upon by the parties.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Provide a well-maintained property (unless agreed otherwise)
- Carry out certain maintenance of the leased property (parts like the roof, facade, etc.)
- Repair any defects to the leased property

The following is usually required of tenants:

- Pay rent

- Carry out maintenance of the property, such as installations and other internal/minor maintenance work
- Provide a guarantee (concern guarantee/bank guarantee) or pay a cash deposit

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

For transfer of the lease by the tenant, it has to obtain prior written approval from the landlord, unless otherwise agreed in the lease agreement.

Under the Dutch Civil Code, the tenant has the right to sublet the leased property (under certain circumstances); but under the commonly used ROZ template, the tenant does not have the right to sublet without prior written consent from the landlord.

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

In case of destruction of the property under certain circumstances (eg, if the destruction is not caused by any action of the tenant), both parties have the right to terminate the lease agreement.

3.13 Who is usually responsible for insuring the leased premises?

The landlord usually takes out the building insurance (opstalverzekering). Other insurance is the responsibility of the tenant.

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

Yes. The sale of the property does not constitute grounds for termination of the lease agreement.

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

This depends on the content of the mortgage deed and on whether the lease already existed when the mortgage deed was executed. If the lease existed first, the lease will have to be respected in the event of foreclosure. If the lease has been arranged after the execution of the mortgage, the lease will only have to be respected in case of foreclosure if the lease was allowed under the mortgage deed or by the mortgage holder.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Zoning law, which relates to the zoning plan and the general environmental permit (omgevingsvergunning), is enforced by various authorities (different authorities deal with the different aspects of zoning law), which have a wide range of instruments at their disposal to ensure observance thereof.

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

Depending on the kind of activities that the occupier of the premises intends to exploit, several permits, based on different environmental laws (such as the Environmental Management Act and the Hazardous Waste Decree), might be mandatory.

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

- A building environmental permit (omgevingsvergunning)
- A fire safety permit or notification (depending on the kind of real estate)
- Several other permits, depending on the kind of real estate and the kind of construction work the owner intends to carry out

4.4 Can an environmental cleanup be required?

Yes. The authorities have the right to demand a cleanup and, depending on the circumstances, they can order both the occupier and the owner to carry out the cleanup. The Soil Protection Act does not give priority to either the landowner (or leaseholder) or the polluter as being primarily responsible for the cleanup. However, the wording of the act clearly implies that its purport is to hold the polluter primarily responsible for the pollution and, if the polluter no longer exists, cannot be found, or is not creditworthy, the landowner will be held responsible. The authorities apply this principle in making their decision of who is responsible for the pollution.

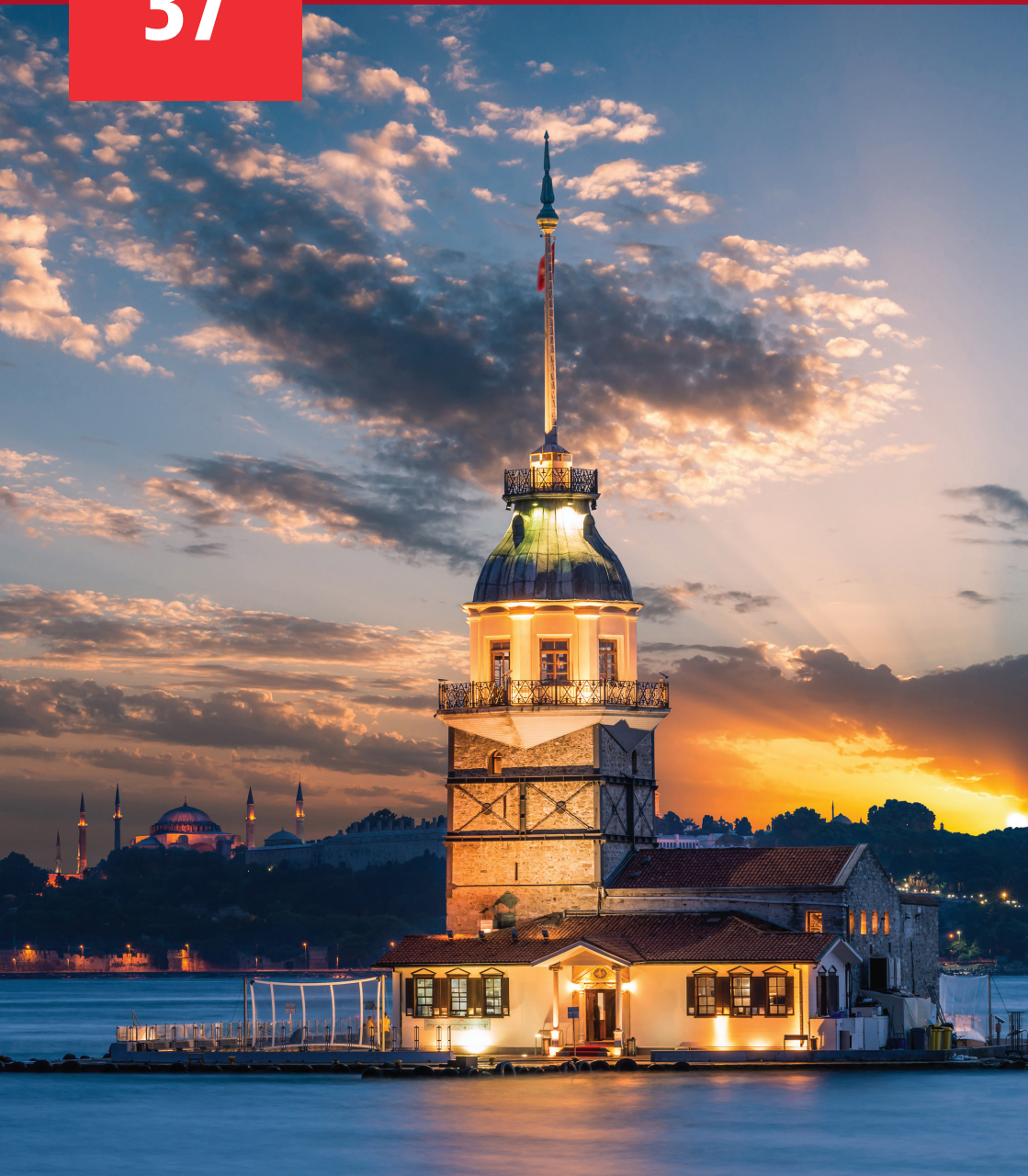
4.5 Are there minimum energy performance requirements for buildings?

Pursuant to the Decree Energy Performance Buildings, the owner of a building needs to be in the possession of an energy label. This applies to certain new buildings or existing buildings as referred to in that decree as buildings for which an energy performance coefficient is required. Note that this does not apply to buildings with an industrial purpose. In case of a building subject to an energy label, it is required that the owner possesses an energy label and that this label is handed over to the purchaser of the building.

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

Yes. Please see above.

37 Turkey



1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate property" includes the following:

- Land (together with any constructions/buildings on it)
- Independent and continuous rights registered at the land registry (that shall have a term of at least 30 years and shall be transferable)
- Independent sections registered to the condominium registry
- Buildings and its integral parts

  An integral part of a building means a part that forms a main component of the property in question according to local customs/practices applicable in the place where the property is located. An integral part should also be inseparable from the property, unless the property is destroyed, damaged or the structure of the property is materially changed (eg, elevator, roof systems, integrated air conditioning system). Any integral parts meeting these requirements will be subject to the provisions on ownership of land. In other words, the landowner(s) will also be the owner of integral parts. Buildings, plants and sprinklers also constitute integral parts of real estate property.

- Fixtures

  A fixture is a movable asset attached to the main property through integration, adhesion or in another manner, and is continuously allocated to the main property for operational or protection purposes, and for the benefit of the main property pursuant to the appreciable will of the owner(s) or local custom/practice (eg, factory machinery or hotel furniture).

Any disposal of real estate property also includes its fixtures. The fixtures serve an economic purpose for the benefit of the main property. If the main property is transferred, pledged or any right in rem is granted over the main property, the fixtures will also be subject to the transfer, pledge and granting of any right in rem where no exception is specifically agreed. If real estate property is transferred and registered before the land registry, the fixtures automatically transfer to the purchaser without any further transaction.

A pledge on real estate property also covers integral parts and fixtures, and items explicitly indicated and recorded as fixtures in the land registry, unless otherwise provided by law.

Fixtures integrated or attached to real estate property cannot be subject to an isolated pledge that fails to include the related real estate property. To pledge a fixture in isolation from real estate property, a prospective pledger must prove that the movable asset does not possess the characteristics of a fixture.

Similarly, the fixtures of a building that form an integral part of the land are deemed fixtures of the relevant real estate property.

1.2 What laws govern real estate transactions?

Under Turkish law, the basic regulations on real estate property are set forth under the Turkish Civil Code (the "Civil Code"). Real estate property is also governed by various other laws such as the Turkish Code of Obligations (the "Code of Obligations"), Deed Law, Condominium Law, Zoning Law, Cadastre Law, bylaws, related regulations and other secondary legislation and judicial precedent.

1.3 What is the land registration system?

In Turkey, each real estate property is registered in a land registry where the real estate property is located and a cadastral survey is conducted for each registered property. The land registry allocates a separate page for

each real estate property indicating the surface area, block and section numbers of a parcel, legal information on the owner(s), any encumbrances, annotations and undertakings, and the ownership status of the relevant real estate property. The land registries are maintained on a village and district basis.

Upon failure to conduct a cadastral survey, any such real estate property is recorded and registered in minute books.

Certain categories of real estate property cannot be registered with the land registry, including land under the control of the Turkish government, real estate property allocated for public use and real estate property not subject to ownership.

Pursuant to Condominium Law No. 634, real estate property converted into a condominium-classified real estate property must be registered with the condominium registry. Each independent section is recorded on a separate page of the condominium register.

Each land registry also maintains a journal for all real estate properties, which indicates the registration dates of rights and encumbrances on real estate properties chronologically. This journal may also be maintained electronically, as opposed to the land register and condominium register.

Real estate property law fully respects the land registry as evidence of property ownership. Pursuant to the Civil Code, Law No. 4721, the rights of bona fide third parties are protected should they acquire ownership or any other rights in rem by relying on the records in the land registry. The Turkish government will be liable for losses of bona fide third parties due to erroneous registrations in the land registry.

This principle does not provide protection to a third party claiming ownership or any other rights in rem in bad faith. Reliance on the land register cannot be enjoyed by a third party who is aware or ought to be aware of the illegal and wrongful registry of any right in rem in the land

register. Any person whose rights in rem are damaged due to wrongful registration may directly assert such wrongful registration against third parties acting in bad faith.

In Turkey, the ownership of a real estate property, of which the cadaster work has not been completed, is determined based on possession and by commissions duly established in accordance with the administrative procedure under the Cadastre Law.

1.4 Which authority manages the registration of titles?

Title registration is usually managed by land registry offices, which form part of the General Directorate of Land Registry and Cadastre.

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

Generally, the registration of the title deed has a protective effect with respect to the acquisition of ownership and the entitlement to limited rights in rem on real estate properties. In this respect, the acquisition as well as the loss and amendment of ownership rights (mülkiyet hakki), liens (ipotek), annuity bonds (irat senedi) and mortgage certificates (ipotekli borç senedi) as well as limited rights in rem, such as usufruct rights (intifa hakki) and the right of construction (üst hakki) are realized through registration. Preemption right (önalim hakki), right of purchase (alim hakki), right of repurchase (vefa hakki) and the right to lease can also be asserted against third parties through annotation (şerh) to the title registry.

1.6 What documents can land owners use to prove ownership over real property?

The records available at the land registry are primary documents. Although a title deed may be obtained from the land registry, title deed records shall prevail in the event of any discrepancy between the title deed itself and the title deed records.

1.7 Can a title search be conducted online?

With the exception of government bodies, no online search of title deed records or access to the central title deed registration system is available. Anyone who can prove his or her interest in a real estate property may examine title deed records, and may obtain a copy from the title deed registry. Attorneys may also examine title deed records. To obtain a copy of the title deed record, however, an attorney must present a power of attorney from a concerned real estate property title or interest owner.

On the other hand, the owner of the real estate property may access its property information online through the web-deed system which is a new infrastructure. The property owner may authorize third-party individuals to access their real estate property information through the web-deed system and may also apply for real estate property-related transactions and submit documents electronically without physically appearing before the Land Registry.

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

- Natural persons with foreign nationality

  Pursuant to the most recent amendments in Article 35 of the Deed Law, natural persons with foreign nationality who are citizens of countries designated by the Council of Ministers (the list of designated countries is not publicly available) can purchase real estate property and acquire limited rights in rem subject to:

  - legal restrictions
  - events requiring action deemed necessary for public interest

  Within the Republic of Turkey, the total surface area of real estate property and continuous limited rights in rem owned by a natural person with foreign nationality, cannot exceed 10% of the privately

owned surface area in the relevant district, and 30 hectares per person. The Council of Ministers has discretion to double the allowable surface area of real estate property that may be held by foreigners.

- Foreign legal entities

  Foreign legal entities that are established in a foreign country pursuant to their local laws may only own real estate property and limited rights in rem within the scope of special provisions of Turkish law, including the Petroleum Law, Tourism Incentive Law and Industrial Area Law.

  The Council of Ministers may also:

  - designate the country, person, geographical region, period, number, portion, type, qualification, surface area and quantity of real estate property
  - partially or wholly suspend and restrict the acquisition of real estate property, and limited rights in rem by natural persons with foreign nationality and foreign companies, where the public interest so requires

  Natural persons with foreign nationality and foreign companies must seek the relevant ministry's approval for a projection of their project concerning real estate property they have acquired without a building (ie, a site only) within two years of acquisition. Upon approval, the commencement and completion dates are designated by the relevant ministry and the approved project is sent to the land registry for project registration.

  If the project is not submitted to the ministry within two years following the real estate property acquisition or is not completed by the completion date, the real estate property shall be liquidated within a certain time period designated by the Ministry of Finance, which

cannot exceed one year. Otherwise, the real estate property will be liquidated by the state, with proceeds from the liquidation sale paid to the right owner, excluding expenses incurred from the sale.

- Turkish companies with foreign capital

  Pursuant to Article 36 of the Deed Law, Turkish companies with foreign capital, in which persons with foreign nationality or foreign companies (i) own shares of 50% or more, or (ii) have the right to appoint/dismiss persons with management rights, may acquire and use real estate property or limited rights in rem to carry out the activities stated in their articles of association.

  The same property rights apply in cases where companies with foreign capital become direct/indirect shareholders of a company incorporated in Turkey and own 50% or more of the company's shares.

  If real estate property is in a private security zone, acquisition of ownership in real estate property interests by a foreign entity must be approved by the city's governorship where the real estate property is located. Similarly, where real estate property is located in the military forbidden zone, military security zone or a similarly designated region, acquisition by a foreign entity must be approved by the army general staff or responsible deputies.

1.9 Can the government expropriate real property?

If deemed necessary for the public interest, real property owned by natural persons and legal entities under private law may be expropriated by the relevant administration in accordance with the provisions under the Expropriation Law. If the relevant administration and the owner of the real property cannot agree on an expropriation fee, the amount shall be determined by the judicial bodies. Those affected by an expropriation decision may initiate a lawsuit before the administrative judicial bodies for the evaluation of the suitability of the expropriation decision.

1.10 How can real estate property be held?

Generally, real estate property is held by:

- The owner
- The lessee
- Within the scope of the condominium
- In terms of a limited right in rem (eg, usufruct right, right of construction)

1.11 What are the usual structures used in investing in real estate property?

- Acquisition of ownership
- Acquisition of the shares in a company owning real property
- Acquisition of an independent and continuous right of construction/usufruct right
- Build-Operate-Transfer model
- Real Estate Investment Trust

Real Estate Investment Trust companies

Real Estate Investment Trust companies (REITs) can be established in Turkey by obtaining permission from the Capital Markets Board. The quality of Turkey's REITs is more important than their number. Turkey's large-scale REITs possess high-value portfolios and have the potential to distribute consistent dividends. These conditions are improving the investors' trust in and awareness of Turkey's REITs.

A REIT in Turkey must take the form of a joint-stock company under the registered capital system, but can be registered immediately, and existing joint-stock companies can be converted into REITs. The minimum share

capital of a REIT is currently more than EUR 7.5 million (TRY 30 million), but registered capital may be increased up to the limit stated in the Capital Markets Board Law, which governs REITs in general. While there are strict requirements on accounting practices and listing on the Turkish Stock Exchange, Borsa Istanbul, the true advantages are the exemptions from corporate income tax and capital gains tax.

Borsa Istanbul currently houses 31 REITs, up from six in 2000, when the new indirect real estate property investment listing vehicle was introduced.

1.12 How are real estate property transactions usually funded?

The acquisition of real estate property is generally funded based on the monetary value of the transaction by natural persons and through the internal resources of legal entities or through banks and similar credit institutions. In practice, if a bank loan is used for the acquisition of a real estate property, the bank usually requests an adequate guarantee for the loan and/or the establishment of a lien on the property subject to the loan. REITs organized in line with the Capital Markets Law are quickly becoming one of the most significant players in the Turkish real estate property market. These REITs fund large-scale real estate projects such as trade centers and shopping malls by offering their shares to the public.

1.13 Who usually produces the documentation in real estate property transactions?

Generally, transaction documents relating to the sale of real estate property are produced by the purchaser, mainly the purchaser's legal adviser.

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

In the absence of any right registered or annotated to the title deed registry (lien, preemption right, etc.) or any public encumbrance, no liability

under private law will apply to the purchaser for any reason that existed prior to acquisition of the real estate property.

On the other hand, the new owner will be jointly liable with the previous owner for the property tax, even if such tax arose prior to the acquisition.

After sale or disposition of real property, the seller and/or the occupier may face various forms of liability relating to the real property. Pursuant to tax legislation, after the sale of real property, the seller and the purchaser are severally liable for any unpaid property tax corresponding to previous years (however, the purchaser's right of recovery against the seller is reserved).

There are comprehensive regulations on soil pollution under the environmental legislation, zoning legislation, local administration legislation and criminal legislation. In terms of environmental legislation, the party who is responsible for the pollution is generally obligated to eliminate the pollution regardless of fault.

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

After the disposition of the real estate property, the seller and/or the occupier may face various forms of liability relating to the real estate property, including:

- The seller and the purchaser are severally liable for any unpaid property tax corresponding to previous years pursuant to tax legislation, after the sale of the real estate property (however, the purchaser's right of recovery against the seller is reserved)
- The seller will be liable to the purchaser for any representations and warranties made pursuant to the contract between the parties if the owner transferring the real estate property has undertaken special

representations and warranties in the property sale agreement with respect to the real estate property

- The tenant shall be liable for any damages to the real estate property covered in the lease agreement incurred during the tenant's occupancy, even if the tenant evacuates the real estate property
- Any person causing environmental pollution on real estate property (soil pollution, etc.) will be liable for such pollution, even if the real estate property is transferred to a third party or the real estate property is evacuated.

2. Acquisition of Real Property

2.1 How is real property acquisition classified?

Real estate property acquisition in Turkey can be classified as either:

- Acquisition through registration
- Acquisition without registration

Acquiring real estate property ownership is legally executed by registration. This main principle, however, has a number of limited exceptions, such as acquisition by inheritance, court order and expropriation, and where the rights in rem are acquired without registration. Nevertheless, where ownership is acquired without registration, the new owner should register such acquisition as a precautionary step.

Registering transfers of title may only be carried out by executing a real estate property sale agreement between the parties, in accordance with official formalities, at the relevant Land Registry Office.

Formalities require the seller and the purchaser, or their representatives, to present themselves at the Land Registry Office during the transaction.

Both parties, or their representatives, must declare their intent to execute the essential components of the real estate property sale agreement in the presence of an official at the Land Registry Office.

Non-compliance with official formalities will render the real estate property sale agreement null and void.

2.2 What are the usual documents involved in such transaction?

- Due diligence report

  Purchasers often prefer to conduct due diligence of legal, financial, environmental and technical matters concerning the transaction, particularly with respect to real estate property acquired for investment in industrial and commercial activities, and high-value property.

  Depending on the scope of the investment, the due diligence procedure will encompass a review of the title deed registry records, zoning status and the physical status of the real estate property. The outcome of the due diligence review facilitates the decision whether to realize the acquisition and the determination of the seller's representations and warranties should the transaction proceed.

- Real property sale agreement

  Generally, real property sale agreements are drawn up in official form at the title deed registry office. Any sale agreements not drawn up in the official form are null and void. The official bill of sale shall contain all essential elements of the transaction, including information on the real estate property subject to transfer, the parties and the purchase price. Furthermore, the parties may provide their mutual representations and warranties and certain performance or non-performance obligations in the official bill, if desired. The sale

procedure shall be realized in the presence of a title deed officer and by means of the official bill.

Each party to the real property sale agreement must separately pay, as a title fee, 2% (for year 2018) (subject to change each year) of the current property tax value of the real estate property, as determined by the municipality or the purchase price, whichever is higher.

- Real property preliminary sales agreement

  In certain cases, the parties to a potential real estate property transfer may prefer to enter into an agreement stipulating that the transfer will only occur under certain conditions. In these circumstances, the parties may enter into a real property preliminary sales agreement. Preliminary sale agreements should be drawn up in the presence of a notary public. To be asserted against third parties, the preliminary sale agreement must be annotated to the title deed records at the land registry.

As the real property preliminary sales agreement is signed before the notary public, the following will arise:

- Notary fee
- Option rights (purchase, preemption, repurchase rights)

  Through purchase and repurchase rights, the beneficiary may create an acquisition relationship with the other party, in line with the conditions foreseen in the agreement, through a future statement. Any agreements granting option rights, such as purchase and repurchase rights, must be executed in an official form at the title deed registry office. If the agreement is annotated to the title deed records, the beneficiary under the contract will also be entitled to assert their contractual rights against third parties claims. The annotation is valid, in principle, for a maximum period of 10 years, and

a new annotation can be made upon the expiry of such period. Contrary to other option rights, a preemption right may be exercised by initiating a lawsuit.

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

A seller usually gives the following warranties:

- A warranty indicating that there are no restrictive rights impacting real property
- A warranty indicating that there are no outstanding tax liabilities regarding real property
- A warranty that the real property's zoning status conforms with the purpose of acquisition
- A warranty indicating the scientific and technical conformity of the soil and buildings/construction (if any) over real property

2.4 What are the costs usually shouldered by the parties?

The purchaser and seller usually pays the following:

- A transaction levy (title fee) (both, separately) amounting to 2% of the real estate property sale value (4% in total), calculated based on the property's current property tax value, which is determined by the municipality or the purchase price, whichever is higher (the rate of transaction levy is subject to change every year)
- The commission payable to the sales intermediary, if any
- Consultancy fees and costs (legal adviser, technical consultant, investment adviser, etc.)

3. Leases

3.1 What are the usual forms of leases?

- Commercial and residential leases
- Usufruct leases
- Leases for any real estate property other than a residence and roofed workplace (such as land)

3.2 Are lease provisions regulated or freely negotiable?

With the exception of residences and roofed workplaces, the principle of freedom of contract is applied to all other real property lease relationships, provided that imperative provisions are reserved. The Code of Obligations governs the lease provisions concerning residences and roofed workplaces.

3.3 What are the usual lease terms? Is there a maximum term for leases?

The term of a lease agreement may be freely determined by the parties. Parties may enter into an indefinite agreement for such purposes. While there are no express legal restrictions, a Court of Appeals precedent states that lease agreements can only be validly annotated to the title deed records for a maximum term of ten years. A new annotation can be made at the end of this period with the parties' mutual agreement.

Although no legal restrictions on the term of lease agreements apply, in practice, residential leases are entered into for a period of one to three years. Longer periods of five to 10 years are anticipated for workplace leases, depending on the parties' requirements.

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

Under Turkish law, there is a renewal provision for residential and roofed workplace leases whereby the term of a lease agreement automatically extends for an additional year, absent of the required notice. Automatic

renewal can be prevented only by the tenant through a written notice sent to the landlord at least 15 days prior to the expiry date, or where any grounds for evacuation under the law apply.

With respect to lease agreements other than residencies and roofed workplaces, the term of the lease may be extended upon agreement of the parties. In such lease relationships, if the lease relationship de facto continues even though the term of the lease agreement has expired, fixed-term agreements will automatically convert into an agreement with an indefinite period. Lease agreements entered into by the government and municipalities within the scope of State Procurement Law No. 2886 will automatically terminate at the end of the lease term if no provisions for an extension are foreseen under the agreement.

3.5 On what grounds may a lease be terminated?

A residential and roofed workplace lease agreement may be validly terminated under certain conditions set forth in the Code of Obligations, including a written undertaking to evacuate, entered into after execution of the lease agreement, and where a landlord or his or her family members need to use the property as a residence or a place of business pursuant to a profession or trade.

Termination is further restricted by the necessity of the lease agreement to contain the right to terminate due to a gross breach of agreement or the occurrence of default twice within one year of the total lease term, provided notification of each default is effectively communicated to the tenant. Due to provisions in favor of the tenant, it is impossible to terminate a lease agreement for reasons other than gross breach of the agreement (eg, damaging the property, reoccurring default) and the limited termination and evacuation grounds explicitly stated in the Code of Obligations.

The lease agreement can also be terminated by the owner through a lawsuit under any of the following circumstances:

- The leased premises is to be used by the owner himself or herself, his or her spouse, lineal kinships or dependents
- Essential renovation or reconstruction of the leased premises is necessary

3.6 Must rent be paid in local currency?

Rent payments pursuant to a lease may be made in Turkish lira or in foreign currency. Court of appeals precedents, however, indicate that any revision of a monetary term in a lease agreement ordered by the courts shall be determined in Turkish lira, even where the lawsuits concern lease agreements containing monetary terms denoted in foreign currency.

On the other hand, the Code of Obligations permits monetary terms in lease agreements to be determined in a foreign currency. However, in such cases, the stipulated rent payment term in these leases cannot be increased for a period of five years. The Code of Obligations provides for an exemption for the occurrence of an unforeseeable event, as defined by this Code.

Article 344 of the Code of Obligations concerning rent indexation of workplace leases has been postponed until 2020 by Law No. 6353 published in the Official Gazette of 12 July 2012. Therefore, the limitations will not apply to workplace lease agreements until 2020. Article 344, however, will apply to rent agreements where the lessee is not a merchant, legal entity or public entity.

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

Parties to a lease have the freedom to agree as to whether rents are paid on a monthly, annual or other basis.

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

Pursuant to Article 344 of the Code of Obligations, rent indexation clauses will be valid to the extent that the indexation does not exceed the increase in the previous year's producer price index. Otherwise, the indexation rate will be limited to the previous year's producer price index, or the court will determine an equivalent indexation rate applicable to similar properties. The Turkish Statistical Institute (Turkstat) determines the producer price index by measuring the average change in prices of domestic producers' output.

For the lease agreements, whereby the tenant is a legal entity, the indexation rate can be freely agreed between the parties until July 2020.

The Code of Obligations entitles a tenant to petition the courts for an adjustment of rent under the following circumstances:

- An unforeseeable event or an event the parties could not have reasonably expected to foresee at the time of execution occurs (an "Unforeseeable Event") due to reasons not attributable to the tenant
- The Unforeseeable Event changes the conditions existing at the time of the lease's execution to a degree where expectation of the tenant to perform its obligations would be inequitable
- The tenant has not paid the relevant rent or paid the rent while reserving the right to request an adjustment of rent

If an adjustment is not feasible, the tenant may terminate the agreement. The Code of Obligations explicitly sets forth that this adjustment mechanism shall also apply to debts in foreign currency.

3.9 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Deliver the real estate property to the tenant

- Pay any taxes relating to the real estate property, and in case of a residency, provide obligatory insurance (DASK-Natural Disaster Insurance)
- Bear any ancillary costs relating to the use of the leased property (repairs and similar costs)
- Maintain the leased property in a usable condition in line with the purpose of the lease (warranty for defects) and prevent any third-party claim of any superseding right over the property (to prevent any nuisance)

The following is usually required of tenants:

- Pay the lease amount and the monthly subscription, if any
- Use the leased property with due care
- Provide for the cleaning and customary maintenance of the leased property
- Notify the landlord of any defects on the property
- Request and provide the landlord with access to the leased premises for the removal of any material defects

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

With respect to residential and roofed workplace leases, the tenant cannot (partially or as a whole) transfer or provide the leased property to the use of third parties without the consent of the landlord. As to other leases, unless the parties have agreed otherwise, the tenant is entitled to transfer his/her/its rights arising from a lease agreement.

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

If the parties cannot be held liable for the destruction of the leased premises or the leased premise becomes unusable, the lease agreement shall be terminated. On the other hand, in case one of the parties is responsible for the destruction of the leased premises or has made it unusable, the respective party must indemnify the damages incurred by the other party.

3.12 Who is usually responsible for insuring the leased premises?

While the landlord is responsible for payment of obligatory insurance for residential buildings, the parties shall determine whether the leased premises shall be further insured and, if so, who will be liable for the payment of the relevant premium.

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

If the leased premises is transferred to a third party after signing the lease agreement, the new owner of the leased premises automatically becomes the party of the lease agreement.

Where a residential and roofed workplace lease agreement is annotated to the title deed records, the lease agreement is binding on a new owner in the event of transfer. In this respect, the new owner steps into the shoes of the vendor and may only request evacuation of the leased property by relying on the same grounds for evacuation as the vendor or transferor.

The new owner may initiate an evacuation lawsuit within a period of six months following the acquisition date under the following circumstances:

- The lease agreement is not annotated to the title deed records
- There is a necessity for the leased premises to be used as residence or workplace by himself or herself, his or her spouse, lineal kinships or dependents

This is provided that the tenant has been notified of such necessity within one month of the acquisition, without waiting for the expiry date. The new owner is also entitled to terminate the lease agreement due to such necessity by initiating a lawsuit within one month following the expiry date.

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

Where real property subject to a lease is appropriated through compulsory acquisition or sold due to mortgage foreclosure and acquired by auction, the purchaser's options to validly remove a tenant vary according to different circumstances. If the lease agreement is annotated to the title deed and indicated in the auction specifications, the purchaser is obligated to comply with the provisions of the lease agreement. If the lease agreement is not annotated to the title deed, the purchaser may send a notice of evacuation to the tenant in accordance with the forced sale. The tenant may nullify the evacuation order by proving the existence of tenancy prior to the date of the appropriation or mortgage of the property. The tenant may supply an official document, such as a lease agreement certified or drawn up by a notary public, as such proof. Otherwise, the tenant will be required to surrender the property.

4. Planning and Environmental issues

4.1 Who has authority over land development and environmental regulation?

- Land development

  The use and development of real property in Turkey is subject to a number of planning procedures. In order of hierarchy, such plans can be identified as regional plans (bölge planlari), environmental order plans (çevre düzeni planlari), master zoning plans (nazim imar planlari) and application zoning plans (uygulama imar planlari).

Regional plans are drawn up by the Ministry of Development to determine the socioeconomic growth trends of the area subject to planning. Where necessary, the Ministry of Development will also consider the growth potential of habitation, the dispersion of sectorial goals, activities and infrastructures.

Environmental order plans specify decisions regarding habitation and land use in areas such as housing, industry, agriculture, tourism and transportation in accordance with regional plans. The metropolitan municipality environmental order plans are drawn up by the relevant metropolitan municipality. Provincial environmental order plans for provinces located outside the boundaries of the metropolitan municipalities, or located in cities that do not constitute metropolitan areas, are drawn up by the Ministry of Environment and Urban Planning, or by the provincial municipality or the special provincial administration. The Ministry of Environment and Urban Planning, however, holds the authority to prepare any environmental order plans for natural parks, natural reserve areas, natural protected areas, wetlands, specially protected environmental areas and similar areas with protected status.

Zoning plans must comply with regional and environmental order plans. Zoning plans are managed through the use of a master zoning plan and an application zoning plan. Application zoning plans must comply with master zoning plans. Construction permits will not be issued with direct reference to a master zoning plan without adhering to the formalities of an application zoning plan. Metropolitan municipalities and municipalities that are not part of a metropolitan municipality are authorized to draw up master zoning plans within their boundaries. The special provincial administration oversees planning for areas falling outside such boundaries of municipal areas. The Ministry of Environment and Urban Planning, however, has general supervisory and intervention powers with respect to zoning plans. Furthermore, in certain areas, the authority to draw up zoning

plans is granted to the Ministry of Environment and Urban Planning, the Prime Ministerial Privatization Administration and the Prime Ministerial Housing Development Administration.

- Environmental regulation

  Responsibility for carrying out environmental planning is generally undertaken by the Ministry of Environment and Urban Planning. Various administrations, by virtue of specific laws, carry out environmental planning for certain areas.

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

Under Turkish Law, environmental planning must take into consideration laws regulating the protection of certain public properties. In this respect, the principal legislation can be identified as follows:

- Environmental Law
- Coastal Law
- Forestry Law
- Agricultural Law
- Law on Land Protection and Area Occupation

Secondary legislation also impacts the use and operation of real estate property, including:

- Water pollution regulations
- Air quality regulations
- Regulations on the control of soil pollution
- Regulations on the control of solid waste

- Regulations on the control of hazardous waste
- Regulations on the protection of wetlands
- Regulations on the control of pollution caused by hazardous materials in waters and surrounding areas
- Regulation on nuclear safety and radiation safety
- Regulations on the protection of botanic and zoological wildlife
- Regulation on energy production and transportation

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

Mainly pursuant to zoning legislation, construction projects to be carried out on real property must comply with the conditions outlined in the respective zoning plans. Those undertaking a construction project must obtain a building (construction) permit (yapi (inşaat) ruhsati) from the relevant municipality within the provincial area and, if the area is located outside the municipal territory, from the relevant special provincial administration.

To occupy a building where construction is finalized, an occupancy permit must be obtained from the municipality or the special provincial administration that issued the building (construction) permit.

Additionally, permission in accordance with the abovementioned environmental and other relevant regulations may be required based on the nature of the project and/or building. For instance, an environmental impact assessment and/or permission from the Ministry of Environment and Urban Planning for certain buildings or facilities listed in the environmental regulations may be required.

4.4 Can an environmental cleanup be required?

Pursuant to environmental and zoning regulations, preventing and ending environmental pollution is an obligation. Enforcement measures can be anticipated such as the ceasing and prohibition of pollution-causing activities, or the imposition of administrative monetary fines. These measures and sanctions may be addressed to the polluter, the owner of the facility, the owner of the land or building or its legal successors.

4.5 Are there minimum energy performance requirements for buildings?

The Energy Efficiency Law and the Regulation on Energy Performance in Buildings apply to new buildings, as well as any renovations to mechanical and electrical wiring/installations and material repair and modification projects in existing buildings. Projects failing to comply with these regulations will not be granted a building permit and/or occupancy permit.

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

The Regulation on Buildings to be Constructed in Earthquake Areas provides certain conditions and building requirements for any buildings to be constructed or modified in earthquake areas.

The Law on Renewal (Transformation) of Areas under Disaster Risk (the "Urban Transformation Law") foresees the restoration, improvement and renewal of areas under disaster risk (a "Disaster Area"), which are designated by the Council of Ministers.

In summary, upon the decision of at least two thirds of the owners/condominium owners of a building in a Disaster Area, a licensed institution will conduct research on the building and prepare a report to determine whether the related building is a "building under disaster risk." If the building is so designated, the owners are given at least 60 days to evacuate and demolish the building. If they fail to do so within this period,

the period will be extended. If the building is still not evacuated and demolished, it will be evacuated and demolished by the local authorities.

Owners, condominium owners and construction companies stand to benefit from the Urban Transformation Law's advantages, as the law provides an easy process for the renewal of buildings under disaster risk; any kind of transactions, agreements, transfers and registrations arising from the Urban Transformation Law are exempt from title fees, notarial fees, municipality fees, stamp tax, etc.

For the purposes of taking measures against earthquake risks there are regulations on the establishment of housing areas, industrial areas, commercial areas, techno parks, public service areas, recreation areas and all kinds of social reinforcement areas by municipalities as well as on rebuilding and restoring old parts of the city, preserving the historical and cultural texture of the city and carrying out urban transformation and development projects.

There are special regulations for cultural assets, such as historical buildings.

38 Ukraine

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Any capital buildings or structures on it

1.2 What laws govern real estate transactions?

The main laws governing real estate transactions are the Civil Code, the Commercial Code and the Land Code.

Real estate transactions are also governed by the following specific laws:

- The Law of Ukraine On State Registration of Property Rights to Real Estate and Their Encumbrances dated 1 July 2004, with the restated version having legal effect from 26 November 2015 (the "Registration Law"), governs the registration of property rights (eg, ownership, lease rights) to real estate including land and encumbrances
- The Law of Ukraine On Land Lease is a specific law governing lease of land plots
- The Law of Ukraine On Lease of State and Municipal Property applies to all lease agreements, regardless of the ownership of the leased property (state, municipal or private) unless otherwise provided in the relevant lease agreement

1.3 What is the land registration system?

There are currently two real estate registers in Ukraine:

- The State Register of Rights to Real Estate (the "Register"), in which the ownership, lease and other property rights to land, as well as servitudes, easements and encumbrances over land, are registered

- The State Land Cadaster, in which the technical information about land is recorded (eg, the area, zoning (designated use), owner and/or user, and encumbrances). The operation of the State Land Cadaster is regulated by the Law of Ukraine On the State Land Cadaster dated 7 July 2011

The State Land Cadaster and the Register are electronically connected. Under law, information contained in one of these registers must be automatically transferred to the other register. However, in practice, such automatic transfer is not always carried out.

1.4 Which authority manages the registration of titles?

The State Land Cadaster is maintained and operated by the State Service for Land Survey, Cartography and Cadaster.

The registration of rights to real estate (including ownership and lease rights) and its encumbrances in the Register is done by a state registrar, which is either of the following:

- A notary
- A state registrar of the executive body of a village, town or city council, state administration or accredited state legal entity
- State or private executor – in case of state registration of encumbrances imposed during the enforcement of the obligatory decisions or in case of state registration of the mortgage termination in connection with the acquisition of a mortgaged property at an auction

If an agreement regarding real estate is subject to notarization, the state registration of the rights under the agreement must be performed by a notary on the same date as the notarization of the agreement.

The registration of property rights to real estate is carried out regardless of the location of the real estate within the respective region or the city of Kyiv. The registration of encumbrances is carried out regardless of the location of the real estate.

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

The following rights to real estate must be registered:

- Ownership
- Right of possession, use, including lease, servitude, superficies (the right to construct on someone else's land plot) and emphyteusis (the right to use someone else's land plot for agricultural purposes)
- Asset management, operating control, operational management
- Mortgages and any other encumbrances
- Tax lien and other property rights, if required under the law

1.6 What documents can land owners use to prove ownership over real property?

Ownership of land that was acquired before 1 January 2013 is confirmed by the state act on ownership rights to the land plot. If ownership of land was acquired after 1 January 2013, the title document confirming ownership of land is the decision of the state registrar on the registration of ownership rights to the real estate or the extract from the Register in electronic or paper form.

1.7 Can a title search be conducted online?

Yes. Any person or legal entity can obtain information about real property from the Register in paper or electronic form.

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

Ukrainian law recognizes private ownership of real estate. Foreign citizens and legal entities may own real estate. However, foreign individuals, legal entities and joint ventures are prohibited from owning agricultural land in Ukraine. In addition, they may own non-agricultural land only within city limits if they acquire real property or land for commercial development; and beyond city limits if they acquire real property located on targeted land.

The Land Code appears not to 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.

Moreover, certain agricultural land (eg, land shares, land sites for agricultural production and land sites allocated to owners of land shares for individual agricultural activities) may not be disposed of unless such disposal results from demise, exchange of land plots or withdrawal of land for public purposes.

1.9 Can the government expropriate real property?

Real estate can be expropriated by the government and local authorities for public needs or public necessity. In such case, the appropriate compensation must be paid.

Real estate can be confiscated without compensation as a sanction for breach of law upon court decision.

1.10 How can real estate be held?

Generally, an interest is held by any of the following means:

- Freehold

- Leasehold
- Easement

Also, Ukrainian law provides that an interest in land can be additionally held by any of the following means:

- Perpetual/indefinite use
- Superficies
- Emphyteusis

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

- Special Purpose Vehicle (SPV) in the form of a limited liability company or a joint stock company
- Investment/joint-activity agreement

Due to the abovementioned changes in the state registration of rights to real estate, the registration of an investor's ownership rights to real estate based on the relevant investment agreement is not sufficiently tested in practice and, therefore, it cannot be presumed that the State Registration Service would refuse to perform such state registration.

1.12 How are real estate transactions usually funded?

Both debt and equity financing are widely used for real estate transactions in Ukraine.

In construction, financing can also be secured through mutual funds, which are known in Ukraine as mutual investment institutions (MIIs). MIIs accumulate investors' funds to raise profits from investments (eg, in securities, corporate rights or real estate).

Lending institutions seek to take a pledge or mortgage over the existing assets to secure debt repayment by the company. Without a pledge or

mortgage of the existing assets, the banks may consider taking a pledge of the shares of the project company, the holding company, or both.

1.13 Who usually produces the documentation in real estate transactions?

Generally, the buyer's lawyer will prepare the initial draft of the sale and purchase agreement.

1.14 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?

For properties held in freehold, government authorities can require the owner to clean up ecological contamination even if the owner did not cause it. However, the owner may require the previous owner (seller) to compensate for losses/costs caused by such contamination and its removal.

For properties held in leasehold, the tenants are not usually held liable for environmental damage caused by a previous tenant.

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

A seller can retain liabilities relating to the real estate after it has disposed of it, as provided by the relevant agreement. The seller can also be liable for ecological contamination caused before the disposal of the property.

For properties held in leasehold, the tenant is generally not held liable for a previous tenant's obligations.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Sale and purchase agreement

  The main document in any real estate acquisition is normally the sale and purchase agreement between the buyer and the seller. This agreement should contain all necessary business terms for the transaction, including a description of the real estate, purchase price and any other special terms. These agreements also typically contain representations and warranties by the seller.

  The conclusion of the sale and purchase agreement can be preceded by the conclusion of a preliminary sale and purchase agreement (the "Preliminary Agreement"). Under the Preliminary Agreement, the parties would agree to enter into the sale and purchase agreement before a certain date (which cannot be later than one year after the execution of the Preliminary Agreement) upon fulfillment of the conditions precedent. The Preliminary Agreement should include all the main terms of the future sale and purchase agreement.

- Due diligence report

  Before the conclusion of the sale and purchase agreement (within the term of the Preliminary Agreement), the buyer would, usually through a lawyer, conduct a legal due diligence investigation of the property being acquired. This includes verification of the title documents, previous transfers of the property, zoning, title searches and a review of any leases and encumbrances of the property.

  An independent technical due diligence investigation is often recommended, particularly for property for development.

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

The seller would normally warrant and represent the following to the buyer:

- That the seller is the sole registered owner of the property and there are no encumbrances over and disputes concerning the property
- That there are no pending, contingent or outstanding debts and obligations regarding the property
- That the property is free of any defects, any ecological pollution, and there are no breaches of the ecological legislation with respect to the property
- That the seller has all power and authority to enter into the sale and purchase agreement

However, there is little practice in Ukraine relating to the consequences when a warranty and/or representation appears to be untrue. Thus, a buyer is generally recommended to conduct an extensive due diligence investigation of the property to be acquired.

2.3 When is the sale legally binding?

Parties are legally bound as soon as they execute the sale and purchase agreement. Under Ukrainian law, a sale and purchase agreement for real estate should be notarized.

2.4 When is title transferred?

The title is deemed transferred upon the state registration of the ownership rights of the buyer in the Register, which is performed by the notary certifying the sale and purchase agreement.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- The buyer's agent's fees
- The costs of the due diligence investigation
- Notarial fees
- Registration fees
- Pension fund duty

The seller usually pays for the following:

- The seller's agent's fees
- Income tax on any profit made on the sale of the real estate

3. Leases

3.1 What are the usual forms of leases?

- Land leases

  Leasing arrangements can be short-term (up to five years) or long-term (up to 50 years). The tenant can lease the land plot for various purposes, the most common of which are construction and further operation of buildings and agricultural production.

- Commercial leases

  Most commercial office and retail space, as well as industrial space, is available through a commercial lease. The lease agreement should contain the material terms, including a description of the leased property, space and value, term, rent (including indexation thereof), method of depreciation charges, restoration of the leased property

and terms of its return to the landlord, liabilities of the parties and other special terms.

Under Ukrainian law, a lease agreement for real estate concluded for three years or longer is subject to mandatory notarization and the relevant lease rights are subject to state registration.

The lease agreement usually requires a tenant to pay basic rent plus service charges comprising a proportionate share of insurance, utility and common area maintenance charges and a management fee. In a retail lease, a tenant may also be required to pay rent based on a percentage of its annual sales in addition to the fixed amount of rent.

- Residential leases

  Residential leases are regulated by the Civil Code and Residential Code. The legal provisions are aimed at protecting the rights and interests of tenants or individuals. In the event of a discrepancy between the provisions of a residential lease and legal requirements, the latter will prevail.

3.2 Are lease provisions regulated or freely negotiable?

Generally, lease provisions are not regulated and are freely negotiable. However, the law establishes certain rights of the tenant on a statutory basis, such as the following:

- The tenant's preemptive right to extend the lease
- The tenant's preemptive right to buy out the lease object in case of its sale

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

Ukrainian law establishes a maximum term for ground leases only, which is 50 years.

3.4 What are the usual lease terms?

Most ground leases are concluded for 5–25 years.

Commercial leases are often concluded for up to three years to avoid the additional expense of their notarization and state registration of lease rights.

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

Under the law, a tenant duly performing under the lease has a preemptive right to extend the lease subject to all other conditions of the new lease being the same. The procedure for lease extension (including the procedure for notifications and negotiating the lease terms) are subject to regulation under the lease. The courts have ruled, however, that the extension right does not apply if the landlord does not intend to lease out the property anymore.

3.6 On what grounds may a lease be terminated?

A landlord can generally terminate the lease when the tenant breaches the terms of the lease, which usually includes the following:

- Failure to pay the rent and other payments under the lease
- Insolvency
- Intentional damage to the property
- Subletting the property without the consent of the landlord
- Use of the property in breach of its prescribed use

A tenant can generally terminate the lease when the landlord breaches its obligations under the lease, particularly the following:

- The property does not correspond to the conditions of the lease

- Insolvency
- Failure of the landlord to perform capital repairs

3.7 Must rent be paid in local currency?

If the lease is concluded between two Ukrainian residents, then the rent should be set and paid in local currency. If the lease is concluded between a resident and non-resident, then the rent is to be set and paid in foreign currency.

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

This will depend on the agreement of the parties. Rent is usually paid in advance on a monthly basis.

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

Rent under a commercial lease is usually subject to monthly indexation based on the increase/decrease of the exchange rate of USD/EUR to Ukrainian local currency. Moreover, the parties would normally agree that for each subsequent year, the rent will increase based on the CPI index or another index as set out in the lease agreement.

Rent under a ground lease is subject to annual indexation according to the coefficient established and published by the central authority on land resources.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Conduct capital repair of the property and maintenance of the common areas
- Insure the property

- Enter into agreements for utility services (electricity, water supply, etc.)

The following is usually required of tenants:

- Pay rent on time
- Keep the property in good order
- Inform the landlord if capital 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 to conduct work

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

Tenants are generally allowed to assign the lease or sublet the premises provided that they obtain the prior consent of the landlord in writing.

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

If the premises are substantially damaged or destroyed by an act of God, the lease is often terminated.

If the premises are damaged or destroyed due to causes attributed to the tenant, the tenant may be liable for repairs or replacement.

3.13 Who is usually responsible for insuring the leased premises?

The landlord is usually responsible for insuring the leased premises. On the other hand, tenants are usually responsible for insuring leased public (state or municipal) land.

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

Lease agreements survive and are binding on the new owner.

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

Lease agreements survive and are binding on the new owner if the leased premises are foreclosed.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Property development is primarily regulated by the laws of Ukraine, such as the Law of Ukraine On the Regulation of City Development Activities, and On Architecture. Municipalities typically control land use and development through master plans of cities and villages and land zoning. Development charges, such as share contribution for the development of engineering and social infrastructure, are also imposed by many municipalities on new developments within their jurisdiction.

State Construction Norms and State Sanitary Norms set specific standards for the construction of buildings, and depending on the construction category and its complexity, the construction may require a notification on commencement of the construction work or a building permit.

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

Environmental matters that should be considered during the construction and operation of real estate are generally governed by the Law of Ukraine On Environmental Protection, On the Protection of Atmospheric Air, On the Protection of Land, and On the Environmental Impact Assessment.

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

To commence design work, the city planning terms and restrictions issued by municipalities is required.

In case of construction of buildings with average (CC2) and significant (CC3) consequences, a building permit issued by the local department of

the State Inspectorate for Architecture and Construction Monitoring is required to commence construction work. Buildings with average (CC2) and significant (CC3) consequences are commissioned after positive conclusion of the state commissioning committee issued in the form of certificate.

Constructing buildings with minor consequences (CC1) may be commenced based on the developer's notification on commencement of the construction work to the local department of the State Architectural and Construction Inspectorate of Ukraine. Buildings with minor consequences (CC1) are put into operation based on the written declaration of the developer regarding the completion of the construction work and registration of such declaration with the local department of the State Architectural and Construction Inspectorate of Ukraine.

4.4 Can an environmental cleanup be required?

Generally, an environmental cleanup may be required where the authorities seek to reduce or mitigate potential dangers to human health.

4.5 Are there minimum energy performance requirements for buildings?

The State Construction Norms provide minimum energy efficiency requirements for new buildings. Old buildings are usually not covered by these requirements.

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

No.

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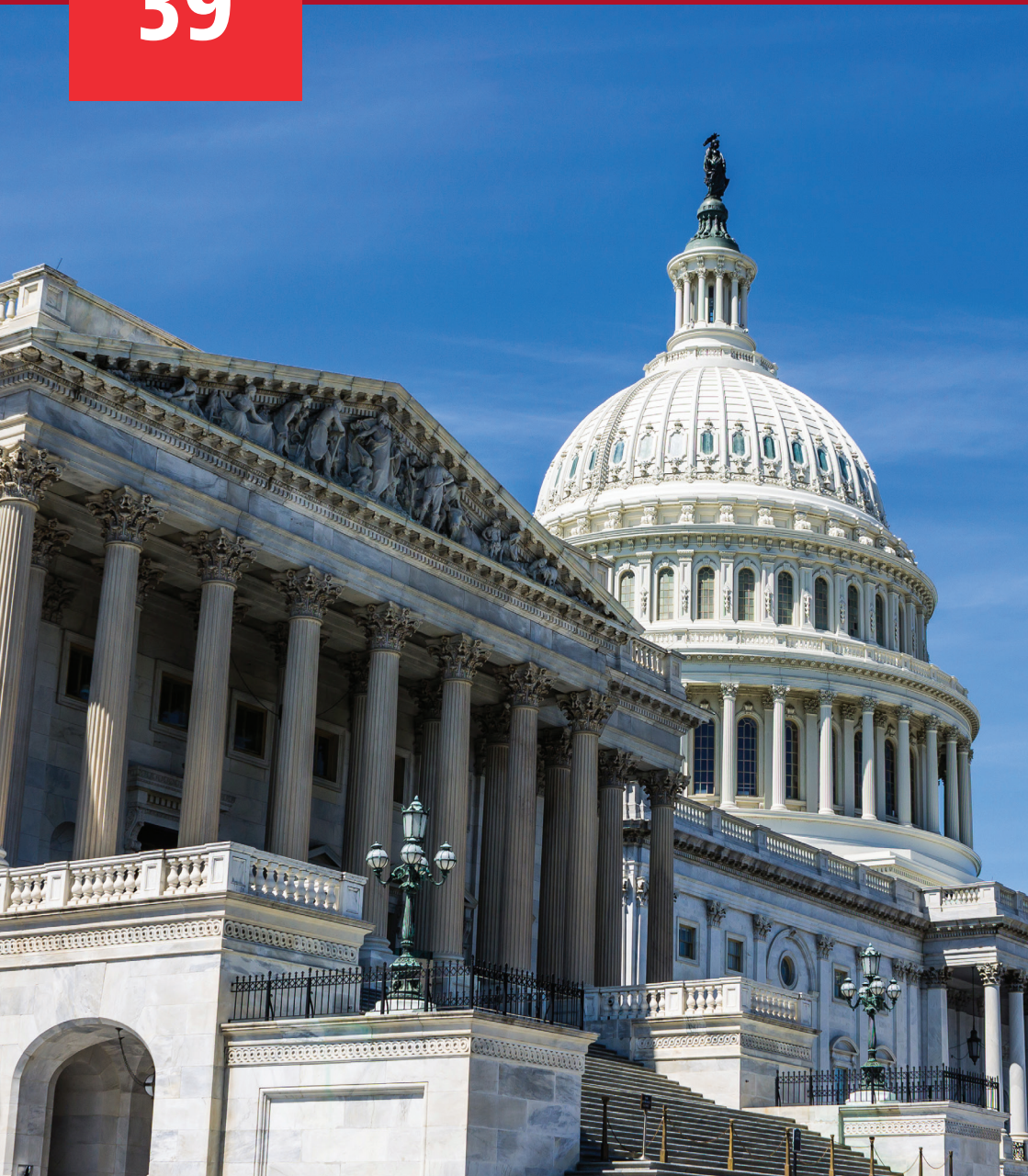

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Any buildings or structures on it

1.2 What laws govern real estate transactions?

Primary responsibility for property law rests with the states and not the federal government. In all states, property law has developed through the English common law process.

1.3 What is the land registration system?

All states maintain a system of public land title recordation where ownership can be verified and through which interests in land are recorded.

The traditional recordation system is a "recordation of deeds" system, which provides only for the public recording of instruments affecting land and does not itself make any qualitative statement concerning the status of title. A person wishing to record an interest in real property simply leaves a document setting forth a claim of interest to the real property with the local Recorder of Deeds. This is known as "filed for record" and such claim of interest is thereupon deemed to be recorded. Such recording gives constructive notice to the whole world that the person filing the document is claiming an interest in the property in question. Thereafter, courts of law resolve claims and actually determine the interests of competing claimants.

1.4 Which authority manages the registration of titles?

Title recordation is maintained by the Recorder of Deeds, located in all counties within each of the 50 states and is commonly referred to as the Recorder's Office.

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

Rights are generally not required to be registered. However, third parties who do not have notice (constructive or actual) are not bound by unregistered interests over property. So, owners or others claiming an interest usually register any document creating or evidencing an interest in real estate. This includes the following:

- Transfers
- Mortgages
- Easements
- Restrictive covenants
- Leases
- Co-ownership agreements
- Options to purchase
- Judgment lien holders
- Mechanic liens
- Tax liens

1.6 What documents can land owners use to prove ownership over real property?

Deeds prove ownership, though an updated title search is necessary to confirm that no deeds or other encumbrances have been recorded against the property since the date of the deed. A valid title insurance policy is often used as customary evidence of title interests.

1.7 Can a title search be conducted online?

Most land titles jurisdictions allow electronic searches of land-related documents.

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

Substantially, any and all restrictions on the ownership of real property by non-US persons are found on the state rather than federal level. Restrictions usually center around interests in agricultural property, natural resources, use of corporate ownership vehicles with a large number of shareholders and limitation on acreage to be owned. States are gradually eliminating or limiting these restrictions. Attention must be given to federal regulations set forth in the Foreign Investment in Real Property Tax Act ("FIRPTA"). There are special tax rules and reporting requirements for non-US ownership found in FIRPTA.

1.9 Can the government expropriate real property?

Property can be expropriated by government and quasi-government authorities for public use, but appropriate compensation must be paid.

1.10 How can real estate be held?

Generally, an interest is held by the following:

- Fee simple

- Leasehold
- Condominium or strata title ownership

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

- Individual ownership
- Business corporations
- Co-ownership or co-tenancy
- Partnerships
- Limited partnerships
- Trusts, including bare trusts or nominee arrangements
- Limited liability corporations

1.12 How are real estate transactions usually funded?

Most real estate financings are arranged through institutional lenders such as banks, trust companies, pension funds, credit unions and insurance companies. Interest rates are generally fixed for a specified period of time or are variable, based on LIBOR or a "prime rate" set by a lending institution on a periodic basis. The prime rate is based upon a rate charged by a lending institution to its most favored customers. Typically, it will be the borrower's responsibility to pay for all of the lender's legal and other costs, such as commitment and processing fees, in arranging property financing. Interest rates generally must be expressed as an annual or semi-annual rate and a higher rate upon default is not permitted when the loan is secured by real property.

Lending institutions typically take both primary and collateral security in real property and related assets. Typical primary security includes a mortgage, deed of trust, or charge, a debenture containing a fixed charge

on real property or, in some cases where more than one lender is involved, a trust deed securing mortgage bonds or debentures and including a specific charge over real property.

Collateral security often includes assignments of leases and rents, general security agreements for personal property and personal guarantees.

Banks and trust companies are regulated under state and federal laws.

In recent years, alternative financing arrangements, including real estate investment funds (REITs), funding and sale leaseback arrangements have become more appealing to owners due to tighter banking regulations and corresponding higher costs.

1.13 Who usually produces the documentation in real estate transactions?

Generally, the buyer's lawyer will prepare the initial draft of the purchase agreement, though it is not uncommon for the seller's lawyer to prepare initial drafts as the party preparing the initial draft of a purchase agreement generally receives some benefits in negotiations by preparing the first draft. It is customary for the seller's lawyer to prepare closing documents, provided that the buyer's lawyer will review and comment upon same as well.

1.14 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?

For properties held in fee simple, government authorities can require the owner to clean up environmental contamination even if the owner did not cause it.

For properties held in leasehold, tenants can be held liable for environmental damages caused by a previous tenant.

Indemnifications are usually sought from sellers and landlords by buyers and tenants with respect to such environmental matters.

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

A seller can retain liabilities relating to the real estate even after it has disposed of it. The seller is liable for any environmental contamination caused before, during or after its ownership and for any indebtedness secured by a mortgage placed by it on the real estate (unless it is assigned to the new property owner).

For properties held in a leasehold, a former tenant or operator may also be held liable for its actions at the property.

Indemnifications are usually sought from sellers and landlords by buyers and tenants.

"Cleanup" obligations are taken on by the owner, tenant or operator.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Sale and purchase agreement

  The first document in any real estate acquisition is normally the sale and purchase agreement between the buyer and the seller. This agreement should contain all the necessary business terms for the transaction, including the description of the land, purchase price, deposit (if any), the closing date and any other special terms. These agreements also typically contain conditions for the benefit of the buyer and representations and warranties by the seller. These agreements outline what documents will be required to complete the transaction. Such documents may include deeds, bills of sale, transfer tax declarations, title clearance documents, 1099s, FIRPTA statements and the like.

- Due diligence report

  Once the sale and purchase agreement is signed, it is generally the responsibility of the buyer, usually through the buyer's lawyer, to conduct due diligence with respect to the property being acquired. This includes title and zoning searches and a review of any leases and surveys of the property. An independent environmental assessment is often recommended and an independent engineering review of the property, particularly in the case of property with older buildings, is common. The buyer's lawyer will also provide a title opinion to the buyer or obtain title insurance for the buyer. A title policy is the universal insurance obtained by a buyer, lender, or tenant.

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

The trend is for sellers to give limited representations and warranties and the buyer often takes a property in its "as-is" and "where-is" condition. This is the concept of caveat emptor. Thus, a buyer is generally responsible to conduct an extensive due diligence with respect to the property to be acquired.

2.3 When is the sale legally binding?

Generally, parties are legally bound as soon as they execute the sale and purchase agreement; however the trend is for a buyer to have the ability to terminate the deal following a due diligence period if it is not satisfied with the condition of the property.

2.4 When is title transferred?

Signing of a deed or other instrument purporting to convey an interest in real property is typically seen as the act that marks the transfer of title from the seller to the buyer. Usually, the parties agree to a transfer of title on a particular date (closing date) with the deed to be recorded in the public records promptly following such closing.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for:

- Buyer's agent's fees
- Own legal costs
- Due diligence costs for consultants who have prepared building condition reports, environmental assessments, valuation appraisals and real estate surveys
- Due diligence inquiries made to statutory and government bodies
- Registration fees
- Lender title policies

The seller usually pays for:

- Listing agent's fees
- Own legal costs
- Income tax on any profit made on the sale of the real estate

Allocation of certain costs are driven by the customs of each state, including survey costs, title insurance premiums and transfer taxes.

3. Leases

3.1 What are the usual forms of leases?

- Ground leases

  One form of leasing arrangement is a long-term ground lease, in which the tenant leases vacant land and develops it. Once development is completed, the ground tenant will sublet space to retail, office or industrial tenants, depending on the type of development or may

occupy the space themselves. Ground leasehold interests may be bought and sold in a manner similar to fee sample property interests.

- Commercial leases

  Most commercial office and retail space, and much of the standard industrial space in the US, is available only through a commercial lease. Most commercial lease transactions commence with an offer to lease (sometimes called letter of intent), which contains the business terms agreed upon by the parties, including the space, term, rent and any tenant inducements. Commercial leases are typically on a net rental basis, which requires a tenant to pay basic rent plus additional rent comprising a proportionate share of real estate taxes, insurance, utility and common area maintenance charges or on a gross net basis, which requires a tenant to pay a fixed rent inclusive of all additional costs and expenses. In a retail lease (particularly shopping centers), a tenant may also be required to pay rent based on a percentage of its annual sales.

- Residential leases

  Residential leases are sometimes regulated by state or local city legislation; in some cases, the applicable legislation will override the terms of the lease contract, regardless of the intention of the parties. In some cities (New York and San Francisco being prime examples), the ability of the landlord to increase residential rent is limited by regulation. Some cities establish certain rights and obligations of residential property owners and operators above a certain size and commercial landlords and tenants. These rules override the terms of lease agreements, which are otherwise freely negotiated.

3.2 Are lease provisions regulated or freely negotiable?

Leases are freely negotiable. In smaller transactions, standard forms that favor the landlord are often used.

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

The term of a lease is subject to negotiation as are extension rights.

3.4 What are the usual lease terms?

Leases for residential property are usually for one year. Options are possible. For all other asset classes, terms are more long-term, usually set at five, 10 or 15 years with additional options of the tenant extending the term. The market conditions at the time of the lease usually influence the outcome of negotiations. Both parties always want a lease long enough to achieve a return on any investment made to or for the property.

There is no maximum limit on the term set by legislation but certain entities may lack legal authority to enter into a lease beyond a certain number of years.

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

Where a tenant plans to make substantial improvements to the premises, it has greater leverage to request extension rights but, like other terms, this is negotiable.

3.6 On what grounds may a lease be terminated?

A landlord can generally terminate the lease when the tenant breaches the terms of the lease (with timely payment of rent and upkeep of the property being the most important terms), which usually includes insolvency (subject to statutory restrictions) and assigning or subletting the property without the consent of the landlord. Negotiated termination rights following a full or partial condemnation or casualty of the property are common as well.

3.7 Must rent be paid in local currency?

The parties are free to set the rent in other currencies. But arrangements for payment of rent in foreign currency are not at all typical.

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

This will depend on the agreement of the parties. Rent is usually paid monthly, at the beginning of the month.

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

Rent is usually fixed for the initial term. Rent upon renewal or extension may also be fixed or may be adjusted to reflect the fair market value at the time of renewal or extension. The parties may also agree to periodic adjustments when there is a longer term lease.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Repair and maintain the structure of the property, except when the tenant leases all of the property and makes improvements on it
- Insure the property
- Provide tenants with a valid notice of termination (in writing) if terminating the tenancy
- Provide a non-defaulting tenant with quiet enjoyment of the property

The following is usually required of tenants:

- Pay rent on time, including taxes and a share of the operating expenses for certain asset classes
- Keep the property in good order
- Inform the landlord if repairs are needed that are the landlord's obligation 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
- Seek the landlord's prior consent before making alterations to the property

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

Tenants are generally allowed to assign the lease or sublet the premises provided that they obtain the consent of the landlord. The landlord is usually required to be commercially reasonable when considering the tenant's request. Tenant sublet rights are often regulated by state law for residential leases.

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

If the premises is substantially damaged or destroyed by an act of God, the lease is often terminated. Rent generally abates according to the extent of the damage or destruction. Where there is partial damage, the lease is usually not terminated and the landlord is obligated to restore the premises.

If the premises is damaged or destroyed due to causes attributed to the tenant, then the tenant may be liable for repairs or replacement.

3.13 Who is usually responsible for insuring the leased premises?

The landlord is usually responsible for insuring the leased premises and recovers the cost from the tenant in a net lease.

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

Lease agreements survive and are binding upon the new owner.

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

In the absence of a non-disturbance agreement, if a foreclosure is the result of a prior mortgage over the property, the lease will not survive at the option of the lender. It is typical therefore for a lender to request that the tenant sign a subordination and non-disturbance agreement so that the lender can keep a lease in place at its option.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Property development is regulated, primarily at the municipal level. Municipalities typically control land use and the density of the development through official plans and zoning bylaws. The ability of an owner to subdivide property is also restricted and regulated. Development charges are also imposed by many municipalities on new developments within their jurisdiction.

Construction of new projects is also subject to municipal legislation. Building codes set specific standards for the construction of buildings and most municipalities require building permits before the commencement of construction. Building codes also regulate the maintenance of existing structures.

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

Each state adopts laws on matters affecting the use and occupation of real estate. The federal government also has jurisdiction on certain kinds of environmental conditions.

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

Generally, a site plan agreement and/or a building permit are required for the construction or renovation of real properties. Occupancy permits must be obtained prior to occupying newly constructed or renovated real estate.

4.4 Can an environmental cleanup be required?

Generally, an environmental cleanup may be required where the authorities seek to reduce or mitigate potential dangers to human health.

4.5 Are there minimum energy performance requirements for buildings?

Local building codes provide minimum energy-efficiency requirements for new buildings. Old buildings are usually not covered by these requirements.

However, there are a number of voluntary standards for environmentally sustainable buildings. The building owners and manager associations in various cities have a voluntary environmental certification program for commercial buildings. The US promotes the Leadership in Energy and Environmental Design (LEED) rating system, a third-party certification program and an internationally accepted benchmark for the design, construction and operation of high-performance green buildings.

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

No.

40 Venezuela

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:

- Land
- Any buildings or structures on land
- Personal property permanently incorporated into the land that is deemed to be real property due to its use or purpose

1.2 What laws govern real estate transactions?

The Civil Code governs the purchase and sale and the lease of real property. The Law on Real Estate Lease governs the lease of urban and suburban properties. The Law on Commercial Real Estate Lease specifically governs the lease of "real estate properties intended for commercial purposes" within the context of said law.

In addition, there are various laws that govern real estate transactions subject to special regimes and there are also rules applicable to specific real estate transactions contained in various laws.

Some examples are the Law on Lands and Agrarian Development, the Law on the Sale of Plots, the Law on Condominiums and the Special Law for the Protection of Home Mortgagers.

The Venezuelan Civil Code is a Napoleonic code.

1.3 What is the land registration system?

There is a system of public registry of deeds where one can verify the ownership of, and which serves to record the rights to, real property.

The real folio system is used, whereby the subject of the recordings is the property and not the owners. This system enables the establishment of

legal transfers of real property, the charges and encumbrances created on them and their respective payments, as well as the judicial measures and data regarding the suspensions thereof.

In zones with no cadaster surveys, the recording is made by means of the personal folio.

1.4 Which authority manages the registration of titles?

The registration of deeds is handled by the Ministry of the Interior and Justice, through the Autonomous Service of Registries and Notaries. There are real estate registry offices in various regions of the country and the deeds are recorded in the competent real estate registry office based on the property's location.

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

Documents, actions and decisions must be subject to registration formalities. Those not registered are not enforceable vis-à-vis third parties.

The following transactions are subject to registration:

- The purchase and sale, and any other action whereby title to a real property is transferred
- The creation and cancellation of mortgages
- The establishment or modification of easements, rights of use or dwelling and usufruct
- The judicial awarding of real property
- Lease contracts for terms of more than six years

However, the purchase and sale and the lease of real property, even if not registered, are valid between the parties because the consent of the contracting parties for a contract to exist suffices. Almost all sales and

transfers of title to real property are registered for them to be valid vis-à-vis third parties.

Moreover, registration is required for the validity of the creation, modification and cancellation of mortgages.

1.6 What documents can land owners use to prove ownership over real property?

Deeds and documents that are duly registered prove title to the real property, both vis-à-vis the persons who sign the document and third parties. Private documents, including those executed before notaries, may be enforced against the other parties, their assignees or heirs.

When the document is executed, the registry office delivers to the signatory the original copy of the document. The document executed is recorded in the protocols or books kept by the Real Estate Registry Office, which may issue certified copies thereof.

1.7 Can a title search be conducted online?

All the entries recorded are available to the public and the information regarding the title chain of the real property may be obtained by an interested party upon a review of the books and protocols. The Real Estate Registrar may also issue certified data regarding the title chain and encumbrances on the real property, upon payment of a fee.

At this time, no electronic or digital entry system has been implemented, so no online registrations or searches can be made.

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

Generally, there are no restrictions for foreign citizens to own land in Venezuela, save for certain exceptions. For example, foreign citizens cannot own real property without the written authorization of the executive

branch of the government in the so-called "security zones" referred to in the Organic Law on Security and Defense, namely: a strip adjacent to the sea, lakes and navigable rivers' shores; the zone surrounding military facilities and basic industries; and any other zone deemed necessary for the security and defense of the Republic.

1.9 Can the government expropriate real property?

Real property may be expropriated by government authorities, but it must first pay an appropriate indemnification and follow the procedure provided in the Law on Expropriation for Reasons of Public or Social Interest. However, in recent years, a considerable number of urban and rural properties have been expropriated without observing the procedures provided in this law and without previously paying the fair indemnity provided by law.

1.10 How can real estate be held?

Generally, rights [over real property] are held pursuant to the following:

- Absolute ownership
- Lease
- Ownership in condominium or community property system

In recent years, the government has implemented the awarding of real property to certain persons that are mostly of low income and in need, the award of which allows them to use the property, but does not give them the right to dispose of the said property (they cannot sell or mortgage it).

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

- Civil associations or partnerships
- Stock corporations

1.12 How are real estate transactions usually funded?

Most of the financing for real estate is granted through financial institutions. The sale of some houses is financed with preferential rates. The rates may be fixed or variable. The borrower must pay the legal costs and administrative expenses arising from the financing.

To guarantee the loan, a real estate mortgage is established. Occasionally, collateral guarantees are established, such as the assignment of rental fees and personal guarantees.

1.13 Who usually produces the documentation in real estate transactions?

Generally, a lawyer for the seller prepares the initial draft of the sales agreement. When a financial institution grants the credit for paying the price and a real estate mortgage is created, the lawyers of the financial institution prepare the documentation.

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

To the extent that damages have been caused to the environment due to matters related to the real property and the liabilities of the parties involved in the transaction have not been defined, it is possible that the new owner or occupant be deemed by the competent authorities as responsible for the event that caused the contamination if the buyer cannot prove that the contaminating event took place before the acquisition of the property.

If there is a mortgage on the real property sold, it will remain guaranteeing the debt. The mortgagee may foreclose the mortgage and cause the real property to be subject to judicial auction to collect its credit even when the real property has been disposed of in favor of a third party.

If a mortgaged property is to be bought at a judicial auction, it is necessary to previously summon the mortgagees in the mortgage foreclosure

proceedings. If the mortgagees are not summoned, the mortgage will subsist.

In the event of a sale of leased real property, the lessee has a preferential right to acquire the real property. If the lessee does not exercise its preferential right to acquire the leased property, the new owner must respect the lease agreement until the expiration of the lease term.

Regarding real property subject to the condominium system, condominium expenses shall be due to the owner of the property, even if these have been incurred before the purchase of the property.

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

A seller may continue having liabilities related to a real property, even after selling it. In fact, the administrative, criminal and civil liability arising from environmental pollution due to activities related to the real property remains with the seller, regardless of whether the property has been sold or not. Additionally, the seller and the buyer may contractually provide that the buyer's liability for environmental pollution subsists after the sale of the property.

The seller is also responsible for any debt guaranteed by a mortgage created by such owner over the real property.

For the properties held in lease, the lessee is not generally deemed to be liable for the obligations of the previous lessee.

Regarding buildings, the constructor is liable for a term of 10 years, for any ruin or deterioration of the building or due to defects of the soil. The promoter and seller of the work or building that have built or caused the construction thereof and the banks and other financial institutions that have funded the work shall have the same liability as the constructor of the building.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transaction?

- Preliminary or pre-contract agreement (purchase option, purchase-sale promise, etc.).

  These preliminary agreements are used when the parties cannot or do not wish to make a contract at that time, but do wish and undertake to enter into it in future. It must contain the term within which they undertake to execute the final agreement, the conditions and terms that will govern the final agreement (sales price, form of payment), the amount delivered as earnest payment (if any) and the amount of the indemnity to be paid by the contracting party that defaults on the obligation to enter into the final agreement.

- Purchase and sale agreement

  This agreement must contain the description of the real property, the price and other terms and conditions of the transaction.

- Due diligence

  Before closing the transaction, a review should be made with the competent Real Estate Registry Office regarding the title to the property and the encumbrances and measures that may be imposed on the same. This research may be made by the interested party or through its representatives. A certificate of encumbrances may also be requested from the Real Estate Registrar, including a title chain to the property, upon payment of the relevant fees. Also, before entering into the transaction, it is advisable to check the permits and/or national and municipal authorizations related to the compliance with environmental and health legislation provided by the seller and/or reviewed at public offices.

Environmental technical assessments and report on the condition of the real property must be made by the interested party and are advisable in some cases. The buyer's attorney will also provide an opinion on the title to the property or will obtain insurance for the title for the buyer (in which case the lawyers will provide an opinion on the title to the property to the insurance company). Also, it is advisable that the buyer's lawyer provide an opinion on the status of the permits and/or national and municipal authorizations related to the observance of the environmental and health legislation provided by the seller and/or reviewed at public offices.

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

The seller is responsible for the buyer's quiet possession of the real property and any hidden defects. That is, the seller answers if the buyer is disrupted in the possession, or dispossession of, the property, because a third party has a better right, and also answers for the hidden defects of the property that render it inadequate for the intended use. However, the contracting parties may increase or reduce, and even agree, that the seller is released from this responsibility.

2.3 When is the sale legally binding?

A sale of real property is a consensual agreement. Therefore, the sale is binding from the moment one of the parties accepts the offer made by the other party. Three conditions must be met: the identification of the real property, the price and the statement of the will to enter into the agreement. The purchase-sale document is a means of proof of having entered into the contract, but the sale may be legally binding even if the document has not been executed.

2.4 When is title transferred?

Title is transferred when the offer made by one of the contracting parties is accepted. The delivery of the property takes place upon the execution of

the title deed. However, the parties may defer or advance the delivery of the property.

2.5 What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- Fees of the buyer's attorneys and of the attorney that prepares the sales document
- Costs of due diligence report on the condition of the building, environmental assessments, valuation report and cadaster reports
- Registration fees
- Although not mandatory and upon agreement with seller, the stamp taxes from 0.45% to 0.60% on the selling price due when filing the sale of real estate property at the Registry Office

The seller usually pays for the following:

- 100% of the fees of the real estate broker. Commercial practice is for the seller to cover the broker's fees; however, this is not regulated by law and the parties can mutually agree on this specific matter
- An income tax advance of 0.5% of the sales price, which may be credited against the final income tax of the taxpayer in the relevant fiscal year
- The overall income tax on any gain obtained from the sale of the property; the gain would be measured by the difference between the adjusted cost of the real estate and the sales price and must be reported in the year end income tax return of the taxpayer — the progressive income tax rate will vary from 6–34% for individuals and 15–34% for corporations

- The sale of the "permanent home" will not be subject to either advanced or the overall income tax
- The urban real estate property municipal taxes due at the moment of sale — municipal tax must be paid to the municipality in which the real estate is located; while municipal taxes are not precisely "transfer taxes," they must be entirely satisfied to execute and register the sale of the property at the Registry Office
- Upon agreement with buyer, the stamp taxes from 0.45-0.60% on the selling price due at filing the sale of real estate property at the Registry Office.
- The sale of real estate will not be subject to VAT nor to specific transfer taxes.

3. Leases

3.1 What are the usual forms of leases?

- Lease of any kind of real property
- Lease with purchase option
- Lease of lands
- Commercial leases

  Leases of offices, factories and industries are governed by the Law on Real Estate Leases. While leases of "real estate properties intended for commercial purposes" (meaning those in which business activities are performed or services are rendered on a regular basis) are governed by the Law on Commercial Real Estate Lease.

  The Law on Commercial Real Estate Lease presumes (unless evidence to the contrary) that all real estate properties in which a commercial establishment operates, are intended for commercial use, regardless if

they are located in a mall, in an office building or in a housing building. This excludes the real estate properties intended for uses such as housing, offices, industries and rural farms.

Regarding shopping centers under construction, in some cases, a pre-lease agreement is used, which provides the terms and conditions that will govern the lease once the property is completed and ready for operation. Usually, a guaranty equivalent to three or four rental fees, or a bond, is requested to guarantee the lessee's obligations. A grace period of one to three months is also usual to condition the premises or office to the lessee's requirements.

The normal condominium expenses are for the lessee's account and the extraordinary expenses are borne by the lessor. The costs of the utilities received at the property (electricity, gas, phone, etc.) are for the lessee's account.

In all cases, most leases are entered into by executing the contract before a notary public.

- Residential Leases

  Residential leases are governed by the Law to Regulate and Control Leasing of Homes (the "LRCAV"). Rentals of all residential properties are subject to regulation, whereas commercial properties built after January 1987 are exempt from regulation. In addition to the regulation of the rentals, a resolution of the National Executive that prohibits increasing the rentals of the leased homes has been in force for several years.

3.2 Are lease provisions regulated or freely negotiable?

In commercial leases, there are provisions that may be freely negotiated between the parties, and others that are imposed or regulated by the law or by decrees and resolutions issued by the executive branch of the

government. Meanwhile, the LRCAV establishes that provisions that govern the lease of houses are of public interest; thus, the margin for the parties to freely negotiate the terms of the contract is very limited.

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

The Civil Code sets the maximum term for leases at 15 years. However, case law has established that after 15 years, the lease continues but becomes a lease for an indefinite term. In such case, an eviction may only be requested if there is a default on any essential obligation set in the contract or any of the restrictive causes contemplated in the Law on Real Estate Leases.

3.4 What are the usual lease terms?

Commercial leases are generally made for a term of one to five years and, in many cases, they provide for automatic extensions. In the case of properties leased to expatriate workers, transnational companies and others, it is usual to include a diplomatic clause that allows for terminating the contract before the original term, by giving prior notice to the lessor and paying an indemnity.

In residential leases, the lessors are obligated to renew the agreement at the expiration of its term, at the sole will of the lessee (the lessee has a preferential right to continue occupying the property at the expiration of the agreement). For this right, it is only sufficient that the lessee has complied with payment of the rentals and all other obligations pursuant to the agreement and the law. This preferential right is automatic and deemed enforced for the sole expiration of the term of the agreement. To avoid this, the lessee must notify the lessor at least 30 days before the expiration of the agreement and through an authentic document that must also be filed with the Office of the National Superintendent of Residential Leases (the "SNAV").

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

In commercial leases for a definite term, there is the possibility of the legal extension that allows the lessee to continue occupying the leased property upon the expiration of the term agreed to in the contract. This extension varies from one to three years, depending on the duration of the lease relationship.

In residential leases, as stated earlier, the lessee has the preferential right to continue occupying the property on expiry of the agreement. Also, the LRCAV prevents eviction from properties used for housing, even if there is a judicial decision declaring the termination or rescission of the contract, until the executive branch of the government guarantees that the lessee has a real property to live in.

3.6 On what grounds may a lease be terminated?

In case of leases subject to the Law on Real Estate Lease:

- In case of contracts with a definite term, the lessor is entitled to request the termination of the contract due to the expiration of the term or due to default by the lessee.
- In contracts with an indefinite term, the eviction of the property may be requested if there is a default on an essential obligation of the contract or any of the restrictive causes contemplated in the Law on Real Estate Leases. This basically includes the lessee's failure to pay two rental fees, the need to demolish the property, or the lessee using the property for dishonest purposes, the use of the leased of the property that is not consistent with what was agreed upon in the contract, lessee causing major damages to the property or effecting unauthorized improvements, or assigning the contract or subletting the property without authorization from the owner.

In cases of leases subject to the Law on Commercial Real Estate Lease, the lease may be terminated by expiration of the term. The law expressly

prohibits the inclusion of clauses providing for the parties' unilateral right to terminate the lease contract. However, the eviction of the property may be requested if there is a default on an essential obligation of the contract or any of the restrictive causes contemplated in said law.

In cases of leases of properties intended for housing or residence subject to the LRCAV, the limitations referred to in items 3.4 and 3.5 above apply.

3.7 Must rent be paid in local currency?

Concerning commercial leases subject to the Law on Real Estate Lease, in cases where the payment of rental fees has been agreed in foreign currency, the lessee may always be released of the obligation by paying in bolivars at the official exchange rate. However, in spite of the fact that it is valid to assume obligations in foreign currency in Venezuela, the public offices (notary offices, real estate registries, etc.) are forbidden from recording documents that set forth that obligations have been assumed in a currency other than the bolivar. Additionally, the Venezuelan exchange legislation provides that the Central Bank has the monopoly of the purchase-sale of foreign currency, wherefore all foreign currency that enters the country must be sold to the Central Bank. Even though it is not illegal for the payment to be made outside of Venezuela, due to the interpretation given by government officials and agencies, there are serious risks that the authorities will impose penalties or even criminal sanctions if rent is required to be paid in foreign currency.

Concerning commercial leases subject to the Law on Commercial Real Estate Lease, the establishment of lease payments in foreign currency in lease contracts is expressly prohibited by Article 41 of that law. Agreements executed before the enactment of the Law on Commercial Real Estate Lease, which established the payment of rent in foreign currency, had a six-month term to adopt this requirement. As a consequence, the rent must be thereafter paid in bolivars at the official exchange rate.

Concerning residential leases, the LRCAV establishes that payment of rentals cannot be set in foreign currency. The agreements executed before the enactment of the LRCAV, which established payment of rent in foreign currency, have a 30-day term to adopt this requirement. As a consequence, rent must be thereafter paid in bolivars at the official exchange rate.

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

Concerning commercial leases, this will depend on the agreement between the parties. It is usually agreed that rent be paid in advance, within the first few days of each month.

Concerning residential leases, rent must be paid monthly, within the first five working days of a given month by way of deposits in a current account to be opened by the lessor and which cannot be closed during the lease relationship.

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

The general principal is that rent (i) is fixed for the first year of the contract; and (ii) for the following years, renewals or extensions, may be adjusted by mutual agreement between the parties.

The Law on Real Estate Leases provides that if the parties have not agreed upon an annual adjustment mechanism they may use the Consumer Price Index reflected by the Central Bank of Venezuela as a basis for increasing rent. However, one must bear in mind the comments in the preceding paragraphs, regarding the existence of real property (of all kinds) the rent of which is subject to regulation, and real property (residential), where there is a prohibition from increasing rent (rental freeze).

The Law on Commercial Real Estate Lease provides that rent may be adjusted (i) once a year has elapsed since the execution of the lease agreement (on the basis of section "Diverse Goods and Services" of the Consumer Price Index reflected by the Central Bank of Venezuela, corresponding to the preceding year); and (ii) whenever the landlord makes

improvements on the leased premises, the value of which exceeds 40% of such leased premises' value used for establishing the rent.

3.10 What are the basic obligations of landlords and tenants?

The basic obligations of landlords or lessors are the following:

- Deliver the leased property to the lessee
- Preserve the property in a condition that serves the purpose for which it has been leased
- Maintain the lessee's quiet enjoyment of the property
- Conduct the repairs required by the property, save for minor repairs

The basic obligations of lessees are the following:

- Pay the rent within the agreed-upon term
- Properly use the property for the use intended in the contract
- Inform the lessor if any repairs are needed and allow the lessor access to the property to carry out the repairs
- Return the real property in the same condition as received

The LRCAV establishes several new obligations for the lessors:

- Lease agreements must be written in a public instrument (notarized or recorded with the real estate registry) and previously reviewed by the SNAV. Three original copies must be executed, one for each party and one for the SNAV and it must comply with the guidelines established by the LRCAV, especially in connection with the rental. The agreement must be accompanied by the resolution by means of which the SNAV establishes the rent.

- Rent not calculated according to the methods established by the LRCAV, or according to a resolution issued by the SNAV, cannot be established in an agreement.

Lessors must open a current account for the lessee to pay the rent by way of deposits into that current account. The account cannot be closed during the lease relationship. If the account is not opened or if it is closed, the lessee is not obligated to pay rent.

Before carrying out any operation to transfer the ownership of the leased property, the lessors are obligated to offer the property to the lessee who has complied with the payment of rent (offering a preferential right). The offer must be personally made to the lessee occupying the property by means of an authentic document that must contain the sales price (which cannot be higher than the price established by the SNAV in the resolution issued to calculate the rent and that must be attached to the offer), the terms and conditions of the negotiation (obligation to sell on credit, minimum term of one year to obtain a mortgage credit, prohibition to request payment in arrears or assets to secure the operation, prohibition of unilateral termination of the agreement by the owner). notification address, title and condominium deeds of the property and certificate of liens.

The owner will be obligated to make a new offer to the lessee if a year elapses from the date of the rejection or lack of answer and the property has not been sold to third parties. Sales to third parties without notifying the lessee to enforce the preferential right will be void without the need for a judicial action.

The owners are obligated to give a discount on the sale price to the lessees (from 10% to 25%), depending on the number of years of the lease relationship (between 10 and 41 years, or more).

The buyers of the leased property must notify the lessees, by means of a public document, of any transaction to transfer the ownership of the

leased property. A certified copy of the document containing such transaction must be attached to such notification. The lessees are entitled to subrogate themselves in the same conditions established in the transfer document, in the place of the third party acquiring the leased property under such operation, if the owner transfers the property without taking into consideration the preferential offering right. The lessee will have a term of 180 business days, as of the date of the notification of the acquiring party, to institute the legal lease retraction.

The infringers of the LRCAV will be punished with fines of 50, 100, 400 or 1,000 tax units. The fines must be paid within five business days following their notification. Recurrence will be punished with double the fine imposed. A third recurrence by the owner of more than five homes for leasing will entitle the SNAV to expropriate the property, which will be awarded to the lessee (Articles 141, 142, 143 and 145)

The multi-lessor of homes that have been leased for more than 20 years must offer them to their lessees within a term of 60 days as of the enactment of the law, following the procedure established thereof concerning the offering preferential right.

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

The assignment of the contract or the subletting of the leased property without the lessor's express authorization is a cause for termination of the contract.

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

If due to an act of God the property should be entirely destroyed, the contract is rescinded. If it is partially destroyed, the lessee may, according to the circumstances, request the termination of the contract or a reduction in the price.

If the leased property is damaged or destroyed due to causes imputable to the lessee, the lessor will be entitled, in addition to a request for the termination of the contract, to demand that the lessee pay for the damages caused.

Under the Law on Commercial Real Estate Lease, the tenant may be evicted from the leased premises in case of duly justified demolition.

3.13 Who is usually responsible for insuring the leased premises?

Legally, there is no obligation to maintain a property insured. In commercial leases or leases of property to be used as offices, usually the lessor demands that the lessee insure the leased property. In properties to be used for residential purposes, usually the lessee is not required to insure the leased property.

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

Lease agreements shall be maintained and are binding upon the new owner.

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

Yes. If the foreclosure is due to a mortgage foreclosure, the lessee must be called to court to enforce the lease agreement. If the foreclosure is due to other causes, the lease is maintained.

4. Planning and environmental issues

4.1 Who has authority over land development and environmental regulation?

Real estate developments are regulated at a local and/or national level, according to the impact of the real estate project.

Persons interested in developing projects that have a spatial impact and imply actions of occupation of territory having national importance or that are located in two or more states must seek approval from the National

Public Administration (Administrative Office of Permits of the Ministry of the People's Power for the Environment).

Projects that have a spatial impact and imply actions of occupation of the territory having regional importance must be approved by the State Public Administration, for the purposes of authorizing the guidelines and provisions of the plans for territorial distribution, once the environmental and sociocultural impact study has been evaluated and approved by the Ministry of the People's Power for the Environment, to incorporate the environmental variable in all stages of the project.

Projects that have a spatial impact and imply actions of major local territorial occupation must be approved by the Municipal Public Administration for the purposes of authorizing the guidelines and provisions of the territorial distribution plans and the municipal zoning ordinances.

In all cases, the national, state and municipal administration agencies that are competent for granting authorizations and approvals to occupy territory and for determining the fundamental urban variables shall ensure the incorporation of the environmental variable in the programs and projects subject to your supervision and control.

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

In general, there are national regulations (laws, decrees and resolutions) that affect the use and occupation of properties, as well as the municipal regulations (ordinances). Mainly, these regulations are contained in the Organic Law on the Environment, the Organic Law for Territorial Distribution, the Criminal Law of the Environment and other technical regulations related to environmental matters.

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

Generally, they require environmental, health and municipal permits for building or occupying real property, such as authorization to occupy the territory, authorization to affect natural resources, conformity of use, fire department permit, municipal habitability permit and health habitability permit.

4.4 Can an environmental cleanup be required?

The Ministry of the People's Power for the Environment may require, as a prior control mechanism on environmental matters, the filing of an environmental impact study, specific environmental assessments and baseline studies, etc. Also, the Ministry of the People's Power for the Environment may authorize environmental audits, assessments and supervisions as a subsequent control mechanism to confirm compliance with environmental regulations.

4.5 Are there minimum energy performance requirements for buildings?

The minimum power requirements for buildings may be set by the Ministry of the People's Power for Electricity.

4.6 Are there minimum energy performance requirements for buildings?

No.

41 Vietnam

1. Real Estate Law

1.1 What is included in the term "real estate"?

The term "real estate" includes the following:[13]

- Land
- Houses, constructions attached to land, inclusive of other properties attached to those houses or constructions
- Other properties attached to land
- Other properties provided by law

1.2 What laws govern real estate transactions?

The following laws generally govern real estate transactions:

- Land Law
- Real Estate Business Law
- Residential Housing Law
- The Civil Code
- Enterprise Law
- Investment Law
- Law on Energy Efficiency and Conservation
- Notarization Law
- Other specialized laws for special real estate transaction

[13] Article 174.1 Civil Code (2005).

1.3 What is the land registration system?

The current Land Registration System[14] (also known as the Immovable Property registration system) provides for the following:

- The provincial People's Committee (or its authorized provincial department of natural resources and the environment) issues the Certificate of Land Use Rights and Ownership of Residential House and other Assets Attached to the Land (the "Property Title Certificate") for general organizations, religious organizations, Vietnamese individuals residing overseas, foreign-invested enterprises carrying out investment projects and foreign diplomatic organizations
- The district People's Committee issues the Property Title Certificate for Vietnamese households, Vietnamese individuals, Vietnamese communities, or Vietnamese individuals residing overseas who are eligible to own houses attached to residential land use rights in Vietnam

1.4 Which authority manages the registration of titles?

The provincial or district level Land Use Rights Registration Office, which belongs to the respective National Resources and Environment Department in the provincial or district authority. But this office is just for the receipt and the return of the application dossiers. The decision-making and issuance body is the same as described for the Real Property Registration system above.

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

- Transfers
- Inheritances

[14] Article 105 of Land Law 2014.

- Donations
- Leases and subleases
- Contributions as capital
- Mortgages
- Easements
- Covenants

1.6 What documents can land owners use to prove ownership over real property?

The document that the land owner can use to prove ownership over real property is the Property Title Certificate. Aside from this, there are other old forms of ownership title documents as regulated by the old land law (such documents still remain valid but need to be converted to the current single and unified form of ownership title), including the certificate of land use rights (red book), certificate of house ownership and residential land use rights (pink book), certificate of construction ownership and state decision on leasing or allocating land.

1.7 Can a title search be conducted online?

No.

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

Foreigners can own real property in Vietnam, both indirectly or directly.

Foreigners can indirectly own real property by (a) acquiring shares or charter capital in Vietnamese joint stock companies or limited liability companies, respectively, and these entities can carry out real estate projects in Vietnam and hold the Property Title Certificate for such

projects; and (b) establishing other non-real estate organizations, representative offices or branches of foreign organizations operating in Vietnam, which can buy and own property in Vietnam for their offices or their staff accommodation purposes. 100% foreign ownership is allowed, and the term of land use rights ownership may be as long as 50 years, or 70 years in some circumstances (eg, for the project development in harsh socio-economic geographical areas).

Foreigners can directly own residential properties including certain condominiums or townhouse/villas, subject to certain restrictions. Specifically, there is a 30% ownership cap on the total number of condominium units within a single condo building, and a maximum ownership of 250 villas/townhouses within the geographical scope of an administrative ward, which is currently available for foreigners buying residential properties in Vietnam. In addition, the ownership term for foreign buyers is 50 years, which can be extended to another 50 years, or can be converted to indefinite term for foreigners married to Vietnamese citizens.

1.9 an the government expropriate real property?

Yes. The government can expropriate real property, but appropriate compensation shall be paid.

The state may expropriate land in the following circumstances:

- For military or security purposes
- Social-economic development projects for national and public welfare that have been approved by:
- the National Assembly
- the Prime Minister, or
- the Provincial People's Council

- Where the previous land user violated land laws by delaying the implementation of a project; the state will accommodate some delay, by providing a 24-month extension on the land use term provided the land rental fee/land use fee is paid over this period of extension. However, if the project is still not completed after the extension, the State shall expropriate the land without any compensation payable to the land user
- Land user's dissolution, death without an heir; voluntary return of the land; expiry of the land use term; and where the land is contaminated

1.10 How can real estate be held?

Generally, real estate is held in any of the following manners:

- Land lease
- Land allocation (only for Vietnamese entities and individuals)
- Recognition of land use rights (mostly in the past and for Vietnamese entities and individuals only)
- Ownership right of private houses, construction and premises attached to land

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

- Limited liability company
- Joint stock company
- Business cooperation contract
- Build-operate-transfer, build-transfer-operate and build-transfer projects
- Public-private partnerships

- Individual (for residential purposes, with certain restrictions)

The choice of an appropriate structure will depend on the nature and use of the particular property and parties involved in the acquisition.

1.12 How are real estate transactions usually funded?

Real estate financing is mostly arranged through credit institutions operating in Vietnam that are licensed to engage in the lending business. Funds for real estate transactions are subject to limitations by several security ratios as regulated by the state bank at the time. Foreign lenders may lend to Vietnam's real estate projects, subject to state bank rules and registration requirements, but their security rights with respect to real property collateral are limited.

1.13 Who usually produces the documentation in real estate transactions?

This matter is negotiable by the parties involved.

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

Yes, in some cases.

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

Yes. Certain liabilities are applied to those who caused them, not the owner or tenant, unless otherwise agreed by the parties involved.

2. Acquisition of Real Property

2.1 What are the usual documents involved in such transactions?

- Sale and purchase or transfer agreements

- Investment certificates, investment registration certificates and enterprise registration certificates of the real estate investment project vehicles
- Identification documents of the parties involved
- Certificate for the title of the real property transacted
- Marital status demonstration document of the individual party involved
- Residential registration book of the individual party involved
- Others depending on the case
- Where foreign investors are involved, land use rights cannot be bought directly from Vietnamese private or state-owned land users, so tripartite agreements for the novation of a lease with the relevant provincial authority as lessor are a common solution.

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

It is not common to have warranties given by a seller to a buyer in Vietnam. As long as the competent authority or notary public's office has certified the sale and purchase agreement, it is verified and accepted that the sale and purchase agreement is lawful and the real property is able to be transacted. However, representations and warranties are seen in transactions involving foreign investors in the real estate M&A context, where sellers normally give representations and warranties that the property is free of all encumbrances, easements, seizure of assets and mortgages. Thus, a buyer is generally responsible for conducting any due diligence reviews with respect to the property to be acquired.

2.3 When is the sale legally binding?

The sale (of private properties) is legally binding when the competent authority or notary public's office certifies the sale and purchase or transfer agreement.

2.4 When is title transferred?

Title is usually transferred at the time of re-registering the title at the competent authority. In the case of foreign investors, it would be on the issuance of a new Property Title Certificate in the name of the foreign-invested entity.

2.5 What are the costs usually shouldered by the parties?

The seller usually pays for the following:

- Income tax on any profit made on the sale of the real estate
- Real estate transaction floor fee where applicable

On the other hand, the buyer usually pays for the following:

- Value-added tax
- Registration fees for the change of title

3. Leases

3.1 What are the usual forms of leases?

- Land lease agreement with the state

  Long-term leases are typical, where the tenant leases a vacant land and develops it for a period of up to 50 or 70 years. Once the project development is completed, the tenant may sublet, transfer the space to a retail store, office, or residential or industrial tenants, depending on the type of project development and the terms of the business

certificate. Land rent may be paid annually or in a lump sum. However, land use rights are only subject to mortgage when the lump sum payment method is used.

- Sublet land in economic, export-processing, industrial zones

  Subleases are prohibited except in certain contexts, including industrial zones where the prime lease would be between the developer and the provincial authorities. Long-term leases are typical up to the remainder of the prime lease. Here, the tenant leases the land with available infrastructure for production from an economic, industrial zone infrastructure developer. Rent may be paid annually or in a lump sum, in addition to an annual payment of the service fee.

- Commercial lease

  The main commercial leases tend to be office or retail space leases which are contracted for a few years. The common practice for a payment term is three months' rental and service fee paid in advance.

- Residential lease

  Negotiable between the parties. Only foreigners who are permitted to stay in Vietnam for three consecutive months or more and meet other specific conditions can enter a residential lease agreement in Vietnam.

3.2 Are lease provisions regulated or freely negotiable?

Lease provisions are freely negotiable, provided that the parties have full legal capacity and authority to enter into lease agreements and follow the statutory procedures.

When it comes to a land lease with the state being the lessor, lease provisions are regulated and little negotiation is usually involved.

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

The maximum lease term of land from the state is 70 years (except diplomatic organizations, for which the maximum lease term is 99 years) and can be renewed. Except for residential projects, however, the standard maximum is 50 years.

For a private entity or individual, there is no maximum lease term for leases set by regulations, but the lease term must be within the duration of land granted to the landlord in the Property Title Certificate or the operation terms stated in the business certifications of both parties.

3.4 What are the usual lease terms?

These may vary.

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

There are no instances where a tenant may demand an extension of a private lease, unless otherwise agreed by contract.

On the other hand, there are cases where tenants may demand for an extension of the lease with the state.

3.6 On what grounds may a lease be terminated?

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

- The tenant breaches the terms of the lease agreement, including insolvency
- The tenant violates the law or is not able to obtain the sufficient permissions or approvals for its business operations
- The property is destroyed or no longer exists
- It is in accordance with the parties' agreement

3.7 Must rent be paid in local currency?

Yes. Foreign exchange control regulations in Vietnam require that all transactions between two Vietnam-based entities must be denominated in Vietnam dong. This applies to a lease agreement.

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

Rent can be paid monthly, quarterly, yearly or in lump sum, or as agreed by the parties. The common practice is that payment should be made in advance for every payment term.

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

Review of rent is subject to negotiation. Rent is usually reviewed yearly by a maximum increase/decrease percentage compared to the previous rent. There are no legal limits to the increase in rent except for land leased directly from the state.

3.10 What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

- Ensure normal usage of the property by the tenant
- Repair and maintain the structure of the property

The following is usually required of tenants:

- Pay rent on time
- Pay an interest-free security deposit to the landlord
- Comply with laws and regulations, and maintain valid proper business licenses
- 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
- Be responsible for neglect, or damages caused to the property by the tenant's staff, contractors, visitors, etc.

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

The transfer of the lease by the tenant is subject to negotiation between the parties but it is not common in Vietnam. The tenant may have the right to transfer the lease agreement to its affiliates. In all cases, the consent of the landlord is required either in the agreement or for every specific case.

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

If the premises is substantially damaged or destroyed by force majeure, the lease is often terminated. Rent generally ceases during this period of time.

If the premises are damaged or destroyed due to causes attributed to the tenant, then the tenant is liable for repairs or replacement.

3.13 Who is usually responsible for insuring the leased premises?

The landlord is usually responsible for insuring the leased premises.

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

Yes. Usually the lease is binding upon the new owner.

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

If the owner goes into bankruptcy or foreclosure, normally it would not impact leaseholds unless otherwise provided in the relevant leases.

4. Planning and Environmental Issues

4.1 Who has authority over land development and environmental regulation?

Central and local governments have authority over land development and environmental regulations. Several ministries and local departments are also involved.

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

The Law on Environmental Protection and its guiding legal documents, as well as the new Law on Energy Efficiency and Conservation, the Construction Law and other legal documents govern the use and occupation of real estate.

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

- Investment certificate (this document also serves as the business registration certificate for foreign-invested projects) with the proper lines of business and operation terms
- Project approval documents
- Lease with the state or a competent landlord
- Property title certificate
- Construction permits

4.4 Can an environmental cleanup be required?

This is usually the responsibility of those who caused the damages if environmental contamination is discovered. However, the lessees leasing the land from the state must also engage surveyors to check for unexplored ordinance when developing new land, even in industrial zones. The Environmental Law also contains provisions that may impose responsibilities on land users to remediate contamination caused by prior users.

4.5 Are there minimum energy performance requirements for buildings?

Yes – these are regulated under the Law on Energy Efficiency and Conservation and its implementing documents.

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

Yes – these are regulated under the Construction Law, the Law on Energy Efficiency and Conservation, the Environmental Law and the Fire Fighting and Fire Prevention Law and their implementing rules.

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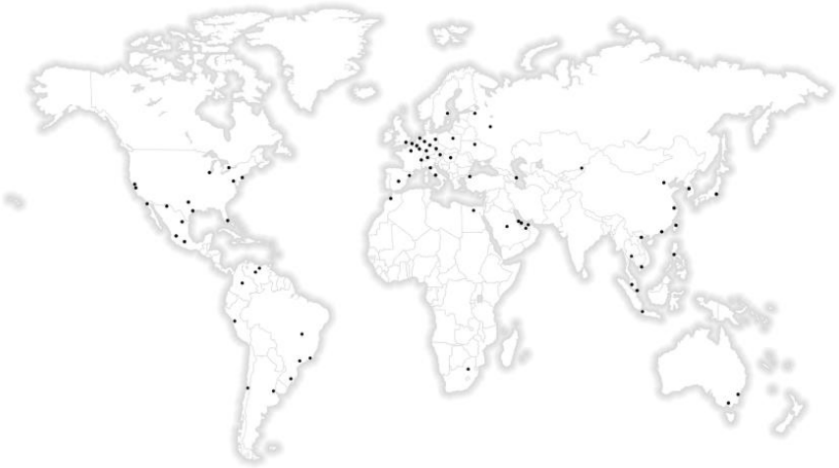

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