LEGALINK

INTERNATIONAL BUT PERSONAL

GUIDELINES FOR INVESTMENTS IN **REAL ESTATE**

2019

INTRODUCTION

The world has changed a lot since we launched the 2nd edition of this book in 2012 with an overview regarding Investments in Real Estate all over the world.

In recent years the world has faced some difficult situations not only in the political, but the economic world. We face a crisis in the EU with the never-ending Brexit discussion over the last two years. Some important political leaders, both inside and outside of the EU, seem to lack the ability to carefully listen to others or take diverse views into account and sacrifice compromise and "win-win" solutions on the altar of egoism. Such attitudes jeopardize not only the political but the economic relationships between countries, and disrupt the balance needed for good relations over the long term.

In these times it is very important to have personal contacts and friends in the world you really can trust, who are familiar with the laws in their area. Our Legalink network, which is grown internationally over the last 25 years, is exactly what is needed these days, because our prominent experts in the network know each other personally from attending at least two meetings a year. At our conferences, therefore, we meet as friends, and not just as lawyers.

In uncertain political times many people look to diversify their investments into safe havens, but still want something more than the interest banks pay on simple monetary investments, which do not even keep pace with the inflation rates in most countries. Therefore, in addition to investments in the stock markets, we see not only in Germany, but in other stable economies throughout the world, substantial investment in real estate, with accompanying increases in prices. Such price increases, however, while seemingly rewarding the investor, make it more necessary than ever before to carefully evaluate the long-term viability of investments in the real estate market, keeping in mind that history shows that if investments are professionally reviewed and professionally executed, then most are ultimately successful.

We are very happy to have in our growing Legalink network, which has more than 3000 lawyers in about 70 independent law firms located in most business centers on all five continents, recognized experts in the field of real estate acquisition and finance. These lawyers are ready to advise and assist investors in all aspects of investments and transactions involving residential and commercial real estate, and all other real property issues, as well.

From working together on cross-border projects in our network and in discussions with our clients, we found that many of them, as well as other potential investors, would like to receive an introduction to the rules governing investing in real estate throughout the world, as well as other aspects that have to be taken into account in real estate transactions. In this 3rd edition of our book we are pleased to give potential investors a first overview of various factors which must be considered when investing in residential or commercial real estate in many countries of the world in which they might be interested. Of course, every single transaction is unique and the laws and tax aspects of it must be reviewed in detail by specialists.

You will find contact data of the firms within this book and on the website of our Legalink network (www. Legalink.ch). All firms are pleased to assist in this field and will give you professional advice.

If you require a cross-border analysis of diverse law aspects, a joint effort to facilitate a cross-border transaction, or if you have any questions concerning how our network can get you the most advantageous solutions for investments in commercial real estate, please do not hesitate to contact us. We will be happy to refer you to the specialists of our network who can best assist you in your case.

Berlin, October 2019

Markus Jakoby
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ARGENTINA
NICHOLSON Y CANO ABOGADOS

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

In the Republic of Argentina, there are several forms or causes ('títulos/causas') to acquire ownership of, or title to, real property. These include the following: purchase or sale, barter or trade, accord and satisfaction ('dación en pago'), gift ('donación'), corporate contributions, merger or consolidation, and spin-off, among others. Not all of them share the same simplicity or strength, and some of them need to be specially analysed, considering the circumstances of each case. Moreover, compliance with certain steps and/or requirements should be evaluated to determine whether 'perfect title' is conveyed.

That said, and taking as an example a purchase and sale agreement – the most usual type of contract to acquire ownership of real property – in general the acquisition process involves the following stages:

Preliminary dealings with or without the issuance of a letter of intent or a memorandum of understanding (or similar, essentially non-binding instruments, despite the parties' duty to act diligently in good faith).
Execution of a purchase offer by the party interested in acquiring the property. When a broker acts in a transaction, the purchase offer is usually made by means of earnest money delivered subject to the seller's approval ('Reserva ad Referendum') (i.e., it is a prospective buyer's deposit of a certain sum of money with the broker to indicate the buyer's commitment to purchasing the property; then, the property is 'taken off the market' until the owner indicates whether or not the offer is accepted. If the owner does not accept the offer, the earnest money is returned to the prospective buyer, and the property is put back in the market).
Execution of a sales agreement, usually known as a preliminary sales agreement ('Boleto de Compraventa'), whereby the seller agrees to transfer title to the property to the buyer, and the buyer agrees to pay a cash price.
Execution of a deed (closing) before the acting notary public, with prior or concurrent delivery of possession of the real property and payment of the purchase price (or the percentage contemplated for that stage of the transaction). According to section 1017 of the Argentine Civil and Commercial Code, acquiring title to real property requires the implementation of the act by means of a public instrument (a notarial instrument) ad solemnitatem (that is to say, as a requirement for the validity and existence of the act). Therefore, in any event, the parties may dispense with all the documents referred to in the preceding items, except for the deed.
Lastly, the notary public must apply for registration of the act to the land register of the jurisdiction where the property is located in order for the change of ownership to be enforceable against third parties.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

The Argentine legal system basically permits the following (or similar) types of ownership: a) ownership

in fee simple of the entire property (including the land and all permanent accessions to such land, such as constructions); b) joint ownership: ownership shared by two or more persons of the same real property, wherein the joint owners or co-owners do not acquire title to a specific share or material portion of the property, but an undivided ownership percentage of the property generally known as undivided share ('parte indivisa'); c) trust ownership: within the framework of a trust created by means of an agreement or last will, of an ephemeral nature, subject to a condition or term and exclusively assigned to the purposes of the trust; d) horizontal property: as a special real right that grants to each co-owner the exclusive ownership right to their unit(s) (residence, office, business premises, parking space, storage unit, etc.) and joint ownership of the building's or larger complex's common areas on the basis of the respective percentage interests; e) real estate complex ownership ('derecho real de conjunto inmobiliario'): with a similar structure, but for country clubs, private or gated communities, industrial parks, yacht clubs, and other similar urban developments; and f) surface ownership ('derecho real de superficie'): within the framework of a surface right, the holder of the right may make constructions on the real property and acquire title to them (and even transfer or mortgage them), but limited to the duration of the surface right. Other cases may also be considered, which are related with more specific projects or very specific purposes (e.g. private cemeteries, time sharing, etc.).

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

There are several types of joint ownership of real property: a) direct joint ownership: as mentioned in item 2 above, in which the joint owners directly acquire an interest in the thing, in their respective undivided shares, with the characteristics and complexities of this concept: requirement of unanimous approval for any relevant material or juristic act; possibility of requesting a division at any time (unless there is an agreement not to divide the property, which shall not exceed 10 years), etc.; and b) indirect joint ownership: when through a legal entity (or artificial person), or a trust, the joint owners or participants have (indirect) contact with the real property, such as companies, non-profit organisations, foundations, cooperatives, mutual associations, trusts (the trustee is the holder of the trust ownership and will exercise it for the benefit of the beneficiaries), etc.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

In Argentina, the property right (ownership) on real property extends to all accessions, namely anything that is built, planted, nailed or adhered to the land on a permanent basis. Therefore, ownership of all the aforesaid is implied in the ownership of the land.

There may be a few exceptions, such as the above-mentioned case of surface ownership (in principle, as long as the surface right remains effective, anything built will be the property of the surface owner; however, upon expiration of the term of the surface right, they will remain for the benefit of the landowner); also, in the above-mentioned cases of horizontal property and real estate complex ownership, where, in the event real property is subjected to such types of ownership, all the common areas (including the land) and common buildings become the joint property of all the condominium members (the owners' association).

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

As indicated above, the acquisition of a real right in real property (for instance, the ownership right) must be registered in the Land Register of the jurisdiction where the land is located. The purpose of such registration is to ensure publicity and enforceability against third parties.

Nevertheless, since registration is merely for declaratory and not constituent purposes, and since the land register just takes note of the acts, analyses their basic forms, and verifies compliance with certain legal requirements, without checking their merits or validity, in order to be deemed a purchaser 'in good faith,' a prospective buyer shall undertake a prior due diligence on the property, including a special analysis of the abstract of title through the acting notary public called Title Search ('Estudio de Títulos').

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

The most typical way to finance the acquisition of real property is through a bank loan. In general, a mortgage is created on the property to be acquired, under the agreements implementing such form of financing (a bank loan), as security for the repayment of the loan. Alternatively, the purchase of real property may also be financed by a loan granted by a private source of funds, and a mortgage is also usually created on the property as security for the repayment of the loan. Also, to a much lesser extent as to their application in practice, there may also be more sophisticated financing alternatives with the placement of securities in the capital market through the issuance of corporate bonds ('obligaciones negociables') or the creation of a financial trust.
Moreover, there is the possibility of the purchase to be financed by the seller itself (and also the developer, to the consumers of the final product) with the granting of time for paying the balance of the purchase price, either during the stage or period between the preliminary sales agreement (the sales agreement) and the deed (closing), or after the closing (true financing). In this case, it is usual for such obligations to be secured by a mortgage on the purchased real property (notwithstanding any other collateral security that may be demanded by the seller, as applicable).

A mortgage is the most usual means to secure a bank loan used to finance the purchase of real property. To a lesser extent, and for special cases, other types of security may be given, such as a security trust under which the purchased real property is assigned in trust as security for the repayment of the loan.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

From the viewpoint of the legal aspects of the financing, the following main points can be highlighted: (i) Currency: Mortgage bank loans are granted in Argentine pesos. Further, in the case of Reference Stabilisation Coefficient (CER)-indexed mortgage loans denominated in Purchasing Value Units (UVA, by its acronym in Spanish) under Law 25,827 and of Construction Cost Index (ICC)-indexed mortgage loans denominated in Housing Units (UVI, by its acronym in Spanish) under Law 27,271, their equivalent in UVA and UVI, respectively, shall be stated, in addition to the principal amount loaned in

pesos, according to the criterion established in the lending policy rules of the Argentine Central Bank (BCRA). UVAs and UVIs are used to index the principal amount owed and constitute an exception to the general prohibition of indexation. Moreover, UVAs are indexed by the Reference Stabilisation Coefficient (Coeficiente de Estabilización de Referencia, CER) that is prepared by the BCRA to measure inflation using as a basis the Consumer Price Index ('**Índice de Precios al Consumidor**', IPC) published by the National Institute of Statistics and Censuses (INDEC). Unlike UVAs, UVIs are indexed using the Construction Cost Index ('**Índice del Costo de la Construcción**', ICC) published by the INDEC. (ii) Repayment system: Mortgage loans may be granted under the French repayment system, the German repayment system or other repayment systems that the lending institutions deem proper based on the characteristics of the loan applicant. (iii) Interest rate: Mortgage bank loans may be granted at fixed or variable interest rates. In the latter case, an agreement may be made as to a maximum (cap) or minimum (floor) amount or both (collar) over the interest rate on the loan. (iv) Frequency of instalment payments: The frequency of instalment payments shall be monthly. (v) Instalment/Income Ratio: Each monthly instalment of the loan shall not exceed the percentage between the total amount of the mortgage loan instalment and the applicants' computable income. (vi) Amount/Valuation Ratio: The loan amount should not exceed the percentage between the agreed loan amount and the valuation of the property obtained before the granting of the mortgage loan. (vii) Prepayments: Mortgage loans may be prepaid in whole or in part. (viii) Life insurance (if the purchaser is an individual): The insurance shall meet at least the following requirements: (a) coverage of the applicants for the balance of the loan amount due that has to be repaid in the event of a loss; and (b) the policy shall be issued or be endorsable to the financial institution or to the person that becomes the mortgage loan creditor in the future. (ix) Property damage insurance: The property must be covered by property damage insurance meeting at least the following requirements: (a) coverage of the property throughout the term of the mortgage loan against the risks of fire, total or partial destruction, vandalism and other usual types of loss; and (b) the covered amount shall be equal to the unpaid balance of the mortgage loan at all times and, upon the occurrence of a loss, the insurance shall repay such amount in the event of total destruction. The insurance policy may provide that, in the event of partial destruction, the insurance payment be used to rebuild the property. It should be noted that certain restrictions or limitations arising from the consumer protection legal system (the consumer protection law, as regulated and supplemented) apply to the purchase, and specifically the financing, of housing.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

The purchase of real property is subject to the following taxes:

National/Federal Taxes
(A) Income Tax/Real Property Transfer Tax ('Impuesto a la Transferencia de Inmuebles', ITI):

Corporate transferor or assignor: Income tax applies.

a. **Resident corporate transferor or assignor taxpayer:** A 30% tax rate (up to the tax period ending

31st December 2019) shall be applied to the gross profits obtained from the transfer of the property.

b. **Non-resident corporate transferor or assignor taxpayer:** If there is no Double Taxation Agreement establishing a special rate, the general 35% tax rate is applied to foreign beneficiaries, and the presumptions under Section 93 of the Income Tax Law ('Ley del Impuesto a las Ganancias', LIG) shall also be applied to the determination of the taxable net income, which therefore generates an effective 17.5% or 35% tax rate.

Individual transferor or assignor, or undivided estate: Since the tax reform made by Law 27,430, two tax regimes are in force depending on whether the property was acquired before or after 1st January 2018.

a. **Real property acquired before 1st January 2018:** The sale of property acquired before 1st January 2018 is subject to the Real Property Transfer Tax (ITI), to the extent such transaction is not subject to Income Tax. Therefore, Income Tax applies to any profit resulting from the disposition of real property by individuals and undivided estates that purchase or sell property 'on a regular basis' or, otherwise, income arising from: (i) transactions with real property owned by a sole proprietorship; (ii) real estate development (subdivisions); (iii) building and marketing of real property in a horizontal property regime; (iv) development and marketing of real property as real estate complexes; and (v) the disposition, within a term of 2 (two) years, of real property received as repayment of loans arising from professional activities.

   Resident individual transferor or assignor, or undivided estate: The ITI is applied at a tax rate of 1.5% on the price.

   Non-resident individual transferor or assignor, or undivided estate: The taxpayer shall apply for a 'Tax Withholding Certificate' to the Federal tax authority ('Administración Federal de Ingresos Públicos', AFIP), which certificate will indicate the amount payable as ITI.

b. **Real property acquired since 1st January 2018:** The new schedular tax is applied at a tax rate of 15%.

   Resident individual transferor or assignor, or undivided estate: The tax is applied to the difference between the updated cost of acquisition and the sales price, plus the deductions permitted by the law.

   Non-resident individual transferor or assignor, or undivided estate: The tax is also calculated on the difference between the updated cost of acquisition and the sales price, but only expenses made in Argentina may be computed.

(B) Tax on Bank Debits and Credits ('Impuesto a los Débitos y Créditos'): This tax is applied to debits and credits of any nature in accounts opened with the institutions mentioned in the Financial Institutions Law. The tax is also applied to all transactions made, regardless of how they are called, the means used to execute such transactions – including by cash movements – and their legal implementation. Further, the tax is applied to all movements or deliveries of the taxpayer's or third party funds, even in cash.

The general tax rate is 0.6% for credits and for debits. In the event no withholding is made, the executive order establishes a 1.2% tax rate when no financial institution is involved in the transaction and when the proceeds of the transaction are not debited or credited, as the case may be, in a current account opened in the name of the respective requesting party or beneficiary.

The recently-issued Executive Order 463/2018 exempts from this tax all transactions related with settlement or financial payment cheques used to pay for the onerous transfer of title of real property located in Argentina, provided that both the drawer of the cheque and the beneficiary of the payment are residents in Argentina.

Executive Order 463/2018 also exempts from this tax all fund transfers made by any means, when the source and/or intended use of the funds is to pay for the onerous transfer of title of real property located in Argentina, provided that the funds are debited from, or credited with, financial institutions belonging to taxpayers residing in Argentina.

Lastly, this executive order has further exempted all current account debits and credits used or originating in an onerous transfer of title to real estate, namely the execution of a preliminary sales agreement or any similar document transferring possession of, or title to, the property, provided the owner is a taxpayer residing in Argentina and the property is located in Argentina.

Local Taxes:

Stamp Tax: Stamp tax is a provincial tax levied on notarial instruments or other instruments of any nature or source (among other documents) for the transfer of title to, or possession of, real property. Usually, the tax base is the total value of the transaction, whilst the tax rate varies depending on the province involved. For instance, the tax rate in the City of Buenos Aires for tax period 2019 is 3.6%.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

Time is an essential element to determine, in certain special cases, whether an individual or an undivided estate transferring or assigning real property acquired before 1st January 2018 has to pay ITI or Income Tax. The following are the cases as regards which the time determines the applicable tax:

Lot subdivision in stages: If, within a term of two years from the effective date of the sale, more than 50 lots in the same fraction or unit of land are disposed of (in whole or in part), even though they are subdivisions made at different times, income tax shall be paid instead of ITI.

Transactions with real property assigned to a sole proprietorship: For the purposes of the tax, a sole proprietorship or single-member company or corporation that ceases doing business shall be deemed to continue in existence until all of their assets are realised or until the assets can be deemed to be definitively incorporated into the members' or sole proprietor's individual assets, which shall be deemed to occur when more than two years elapse from the date on which the proprietorship, company, or corporation performed the last transaction under their specific business activity. If, when this happens, the members or the sole proprietor dispose of their assets, the disposition shall not be subject to income tax, but to ITI.

- **Replacement Option:** Under this option, an individual taxpayer or undivided estate may opt not to pay ITI upon the sale of their only housing and/or lands in order to acquire or build another one intended to be their own housing. The law provides that this option may also be exercised when a taxpayer's only housing and/or lands are assigned in order to erect a building in a Horizontal Property regime and up to one individual unit is received as consideration that will be used as the taxpayer's own dwelling house. The replacement option will be admissible provided that the disposition and the acquisition of the replacement property occur within one year.

- **Tax-Free Reorganisation:** Income from a reorganisation in compliance with the requirements of the LIG, as regulated, will not be liable to tax. If, as a result of the sale of real property within a term of two years from the reorganisation date, any of the above requirements are not met, the transfer of the property will be liable to tax.

- **Asset Sale and Replacement Option:** In the case of the sale of real property used in a business as property, plant and equipment, the LIG gives all taxpayers the option not to include the gain obtained from the sale of the property in question in the balance sheet for tax purposes and instead subtract it from the acquisition cost of the replacement asset. This results in a lesser depreciable amount or a lower computable cost of the new asset.

For this option to be exercised, a number of requirements must be met, such as the fact that the real property used in the business as property, plant and equipment, or assigned as a lease or subject to an assignment for profit of usufruct, use, habitation, antichresis, surface or other real rights must be at least 2 (two) years in existence at the time of its disposition. In addition, the option will only be admissible when both transactions – sale and replacement – are carried out within the term of 1 (one) year.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

At present, there are no regulatory restrictions prohibiting access to the foreign exchange market in order to repatriate an investment made in Argentina.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

If a person acquires a property that has been leased or given for use to one or more third parties under any other legal concept —provided or not provided for in the law— (for instance, a loan for use, a right of use, a right of usufruct, etc.), the purchaser shall preserve the existing relationship and the agreed term, and will be simultaneously assigned all the rights and obligations under the relevant contractual relationship (assignment of a contractual position), so that, in addition to acquiring title to the real property, the purchaser will be in the same position and place that the seller or transferor of the property had and was entitled to as regards the current lease (or other) relationship. This shall also apply to any construction or service agreement, or any other type of agreement affecting and/or relating to the property, that is in force on the date of the acquisition. For this reason, and as stated above, it is important for the prospective buyer to conduct a due diligence.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

Since the Republic of Argentina is a country structured as a 'federal' political organisation, any matters related with the regulation of the use of the land and zoning, including the issue of urban indicators, buildable capacities, heights, intended uses, densities, minimum admitted measures, etc., have been reserved to the local jurisdictions. Thus, for instance, any possible change of intended use, as well as any requirements and/or procedures for their application and/or to obtain the relevant permits, will be required to comply with the provisions of the local regulations issued by the jurisdiction where the real property is located. In general, there are few inconveniences or limitations for a dwelling's (or residential) intended use. Nevertheless, such requirements shall be checked in each case after analysing the matter, based on the regulations of the relevant location.

Further, for certain special types of ownership, such as the horizontal property regime and/or the real estate complex, where exclusive ownership of the respective unit comes under a larger whole (for instance, a building, a country club, an industrial park etc.), it will be necessary to also comply with the respective Organisation and Operation Regulations ('Reglamento de Copropiedad') governing the intended use of the relevant development.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly notarial costs?

– notarial costs?

As indicated above, since the Republic of Argentina is organised as a 'federal' structure, each province has the power to regulate professions (in this case, the notarial profession) and to impose local rates, taxes and fees. Thus, the notarial, registration and tax costs could vary from jurisdiction to jurisdiction. Having said that, and based on information provided by a notary public of renown with full expertise in the real estate business, below are the costs currently charged in two of the most relevant jurisdictions: a) in the city of Buenos Aires, notarial costs hover around 0.5% and 0.6% of the value of the transaction; and b) in the province of Buenos Aires, notarial costs hover around 0.3% and 0.4% of the value of the transaction.

- land register?

The same comments made for notarial costs apply in this case. Using the same examples (also based on the information provided by the same notary public): a) in the city of Buenos Aires, the current registration costs hover around 0.3% and 0.4% of the value of the transaction; and b) in the province of Buenos Aires, the current registration costs hover around 0.3% of the value of the transaction.

- real property transfer tax?

As indicated above, the real property transfer tax varies depending on whether the seller is a corporate taxpayer or an individual, or an undivided estate. In turn, in the case of an individual or an undivided estate, the tax also varies depending on when the seller acquired that property. Lastly, there are differences in all categories based on whether the taxpayer is a resident taxpayer or a non-resident beneficiary. Having said that, below we discuss the different cases that may arise:

Seller that is a resident corporate taxpayer: Income tax applies.
- Tax base: sales price less computable cost.
- Tax rate: 30% (currently applicable for tax periods ending 31st December 2019).

Seller that is a non-resident corporate taxpayer:
- Tax base: net income determined on the basis of the presumptions under Section 93 of the LIG, namely:

a) 50% of the sums paid for the onerous transfer of property located, placed or used for a profit in Argentina, belonging to companies or enterprises organised, established or located abroad;
b) the amount resulting after deducting the gross benefit paid or credited, any expenses incurred in Argentina and necessary to obtain, maintain and preserve the property, as well as all permitted deductions.

- Tax rate: 35% (if there is no double taxation agreement establishing a special tax rate). In the cases under clause a) above, the effective tax rate is 17.5%, while in the cases under clause b), the effective tax rate is 35%.

Seller that is a resident individual taxpayer or undivided estate – Real property acquired before 1st January 2018: ITI applies.
- Tax base: purchase price.
- Tax rate: 1.5%.

Seller that is a non-resident individual or undivided estate – Real property acquired before 1st January 2018: The taxpayer shall apply for a 'Tax Withholding Certificate' to the AFIP, which certificate will indicate the amount payable as tax.

Seller that is a resident individual or undivided estate – Real property acquired since 1st January 2018*: The new schedular tax applies.*
- Tax base: acquisition cost less the sales price, plus the deductions permitted by the law.
- Tax rate: 15%.

Seller that is a non-resident individual or assignor, or undivided estate – Real property acquired since 1st January 2018: The new Schedular Tax applies.
- Tax base: acquisition cost less the sales price, plus any expenses incurred in Argentina.
- Tax rate: 15%.

- advising lawyer (due diligence)?
Although the provision of services in general is not regulated under federal law (Argentine Civil and Commercial Code, Section 1255), each jurisdiction established, at the time of regulating the practice of law, the respective schedules of professional fees. In general, the fees are percentage values based on the value of the asset or the transaction involved, and also supplemental criteria for certain activities with no calculation basis. Thus, the costs of legal advice will vary according to each specific case, based on the aforesaid factors.

- estate agent?

Based on information provided by some brokers of renown, the fees of a real estate agent or broker would currently be between 3% and 4% of the amount of the transaction, for business of the characteristics described above. Notwithstanding that, the percentage could be lower in the case of a regular customer of the broker, or a customer with a business potential, or based on the value of the transaction. There could also be variations if more than one broker is involved (for instance, a broker for the buyer and another broker for the seller), or if the transaction is commissioned to several brokers. Like in the previous cases, in each case it will be necessary to analyse local regulations governing fees.

- others?

Depending on the specific case and its circumstances, there may be other associated costs, especially when the prior due diligence requires the participation of professionals in different areas, namely surveyors, environmentalists, accounting/tax advisors, architects or engineers, etc.

All the above assumptions and considerations are for illustration purposes only based on current criteria or guidelines within the framework of this general and conceptual analysis. In any event, an interested party shall undertake a specific analysis in each particular case.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

National taxes:

1) Tax on personal assets: Resident individuals and undivided estates based in Argentina, as well as non-resident individuals and estates based abroad are taxed on their assets located in Argentina and abroad. The difference lies in that non-resident taxpayers only pay this tax on the assets located in Argentina. Real property located in Argentine territory and the real rights created on assets located in Argentina are deemed to be located in this country. As regards rural property – a characterization attributed by the relevant cadaster – the law provides that such property will, regardless of their intended use or allocation, be exempt from this tax provided their owners are individuals or undivided estates.

Resident individuals and undivided estates based in Argentina: Resident individuals and undivided estates based in Argentina will be exempt from this tax provided their assets do not exceed, for tax period 2019, an aggregate wealth of ARS 2,000,000 (approximately US $5,000 as of January 2019). If the value of the assets exceeds that amount, the tax is applied on the amount exceeding the minimum non-taxable amount. Real property intended for use as the home of the taxpayer or the decedent, in the case of undivided estates, will not be taxed when the value of the property, as determined in accordance with the law, is equal to or lower than ARS 18,000,000 (approximately US $482,000 as of January 2019).

For liquidating this tax, individuals are divided in three different segments. Each segment has to pay a different fixed sum. If the individual exceeds the minimum value of its segment, a tax rate is applied

to the excess. The fixed sums payable range from ARS 7,500 (approximately US $200 as of January 2019), and the tax rates range from 0.25% to 0.75%.

Non-resident individuals and undivided estates based abroad: A pro rata tax rate of 0.25% is applied, except in the case of real property located in Argentina that is not given any use or that is intended for lease, recreation or vacation purposes. In these cases, the tax rate is doubled. The law provides that no tax shall be paid when the amount is equal to or lower than ARS 255.75 (approximately US $7 as of January 2019).

Local taxes:

1) Real Property Tax: This is a provincial (local) tax levied on real property. Thus, the tax varies from province to province. In general, the owners, holders or usufructuaries of real property located in the territory of a province shall pay the tax on a yearly basis. The assessed value (or partial value) of property is used to determine the tax base for this tax. The tax base is determined by applying a chart of smoothly progressive tax rates, and the tax quantum is then obtained.

Specifically in the City of Buenos Aires, a fixed sum is paid as real property tax, and a tax rate is applied to the excess. Both the fixed sum and the tax rate vary depending on the tax value of the property. The fixed sums payable range from ARS 800 to ARS 6,300 (approximately US $170 as of January 2019), and the tax rates range from 0.40% to 0.70%.

2) Municipal rates: The municipalities charge rates for the services provided by them, such as the rate charged in the City of Buenos Aires for the service of 'street lighting, sweeping and cleaning' (ABL). The rates in each case vary depending on the municipality where the real property is located.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

Based on the information provided by specialists in this area, in rental buildings, the tenants usually end up paying the Property Management service, and the fee would amount to approximately 4% of the building's annual budget (just the building operation, not the rental payments). More specifically, for buildings located in the City of Buenos Aires, the property manager's fee should be estimated at between US $1.20/m2 and US $2.00/m2 per annum. The same comments in the answer to question 13 on this type of assessment and discussions apply here.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country

- directly in real estate?

- through real property funds, open or closed ones?

- through other clear and secure financial products?

- In commercial real estate or in residential property?

Nicholson y Cano Abogados advises and represents both institutional and entrepreneurial clients in

connection with real estate transactions (i.e., in the acquisition, sale, exchange, financing, development, going to market and management of real estate), and in connection with land use and zoning. The real estate team also has broad experience in assisting clients (locals and/or foreigners) in: (i) all the aspects related to constructions, installations, the provision and assembly of construction works (from architectural to engineering and infrastructure aspects); and (ii) within the full range of rural investment projects (agribusiness). The main feature of our real estate department is that, besides having solid theoretical background, all of the team members have renowned experience in the three main stages of the real estate business: a) asset investment and acquisition; b) development and financing; and c) legal structuring of the product and its marketing/commercial operation/administration. Our experience has been acquired over many years of assisting the most relevant developers, investors, brokers and other professionals in the real estate market, in the most varied projects and locations.

Nicholson y Cano Abogados also has wide experience in connection with the real estate needs of companies in the financial, industrial, services, and consumer products sectors, and gives assistance in the negotiation of construction, funds flow and development loans, sale-leasebacks, equity interests, trusts and real estate funds, securitisation, joint ventures, and management or administration agreements and services. Our lawyers have given advice in important investment, development and/or commercial operation projects in connection with hotels, tourist resorts (for example, ski resorts), shopping centres, office buildings, retail spaces and business premises, country clubs, industrial parks, logistics centres, nautical neighbourhoods, clubs and sports facilities, etc. Our extensive experience in real estate allows us to provide full-fledged services to clients who undertake these ventures.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

Under our legal system, and since the enactment of the Rural Lands Law 26,737 ('Ley de Tierras Rurales'), there are certain limitations and restrictions for foreign individuals or legal entities to acquire ownership or possession of rural lands (i.e., land located outside an 'urban area,' regardless of their location and/or intended use). The same happens with the border security areas regime (Decree Law 15,385/44) ('Régimen de Zona de Seguridad de Fronteras') that imposes conditions and restrictions for the acquisition of an interest in real property located in border areas of Argentina.

Further, from the viewpoint of capacity, individuals shall have sufficient capacity to acquire the real property in question, and foreign legal entities (artificial persons) shall, before acquiring real property for their subsequent operation and/or allocation to a specific activity, comply with the requirements of organisation and registration under Argentine law with the competent corporate authorities, either by establishing a branch or a permanent representative office or by organising a local subsidiary.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

As indicated above, if a plot of land is located on a rural or border area, and if there is no legal impediment for a foreign investor or its corporate vehicle to acquire a plot of land (for instance, Rural

Lands Law 26,737 prohibits the acquisition by foreigners of real property adjacent to major permanent watercourses), the foreign investor shall apply for the relevant permits before acquiring the property, and the processing of each permit will depend on several factors (location of the property, complete filing of forms etc.) and may take some months.

Likewise, a foreign legal entity that has not previously registered with the competent national authorities shall undertake its registration, either to establish a branch or a representative office in Argentina, or to organise a local subsidiary (in this latter case, after the foreign entity is registered with the competent authorities, its subsidiary shall be organised and registered in Argentina).

Further, if the plot of land is accompanied by other assets (for instance, an architectural project, a contract for works/services, livestock, furniture or machinery, trademarks, other intangibles, etc.) that suggest the existence of a company or business unit, then it will be necessary to evaluate, based on certain economic parameters (turnover, billing of buyer and its economic group, value of the assets and/or the transaction), if the prior approval of the transaction by the controlling authority under the 'Antitrust – Control of Concentration between Undertakings' regime (Law 27,442) ('Ley de Defensa de la Competencia') has to be secured. Such approval shall be applied for in advance, and the length of the procedure will depend on several factors.

Upon completion of the purchase, after obtaining the previously mentioned approvals and registrations, as applicable, the owner shall review the type of permits and/or approvals that will be necessary to undertake the proposed activity (including as regards any construction, development of activity, or environmental matters, etc.). This will depend on the characteristics of the specific case, the location of the property, the foreseen intended uses, and, as mentioned before, the respective applicable local regulations of the relevant jurisdiction.

In that regard, there might be local regulations (for instance, provincial laws) that also establish restrictions and/or limitations to the development of certain activities (for instance, in the province of Buenos Aires, Law 12,573 on large business surface areas) ('Ley de Grandes Superficies') that should also be analysed in the prior due diligence.

The foregoing will also apply in the event a foreign investor seeks to undertake certain specific activities, as regards which it will be necessary to analyse the respective regulatory framework at both national and possible local levels in order to rule out any possible limitations and/or restrictions on foreign investors.

19. Could your firm assist foreign investors in

- Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?

Nicholson y Cano Abogados does not provide this type of service that goes beyond legal issues. However, we do know perfectly well the local market and its many stakeholders, including developers, brokers, investors, business providers of works and services, etc., pursuant to our track record and expertise in this area (real estate).

- Developing construction projects?

As stated above, Nicholson y Cano Abogados typically advises clients at the stage of the material development of the real property project, giving advice on the hiring of the works and services required by such processes, as well as on purchase agreements, the supply and provision of materials, equipment and facilities, including the legal aspects typical of contracts for the financing of the respective works, always within the framework of legal advice.

- All legal aspects involved in these contexts?

Ditto as above.

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AUSTRALIA MELBOURNE
BEHAN LEGAL

I. PROCEDURE OF A REAL ESTATE TRANSACTION

1. Short outline about the formal procedure of a real estate transaction in Australia starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser

In Australia an interest in land becomes indefeasible upon registration of a transfer of the property from a vendor to the purchaser. The following phases in the real estate transaction achieve that outcome.

- pre-contractual;
- contractual;
- conveyancing;
- settlement; and
- post-settlement.

Real estate agents market and sell real estate on behalf of vendors; however, vendors can act on their own behalf, but this is not the usual practice. Real estate agents offer the real estate for sale by public auction, private sale, negotiation or by invitation to tender.
Vendors must provide disclosure statements for the real estate before being able to enter a contract of sale with a purchaser. The purchaser should conduct the due diligence about the title to the real estate and any other matters affecting the title and the property.

Contract of sale
The vendor's lawyers usually prepare the contract of sale and the disclosure statement.
The content of the contract of sale is in fact prescribed by legislation, which slightly differs from State to State. In Victoria, for instance, the real estate agent can only use the standard form permitted by the regulations, whereas only a lawyer can prepare a contract of sale that differs from the standard form.
The contract of sale of land must be in writing and to be enforceable must be signed by the parties.
Usually, the parties execute two copies of the contract of sale and the acknowledgment of the disclosure statement. Purchaser should be diligent in checking whether the contract of sale has adopted the standard form or has been modified by any special conditions.
Special conditions may vary certain legal safety nets. The vendor may use special conditions to increase the penalty rates of interest payable on a failure to settle on time or shorten a notice period or remove or limit a purchaser's rights for loss and damages, or even altering the manner of calculation of settlement adjustments.
The contract of sale may contain conditions precedent that must be met before the contract of sale become enforceable such as obtaining finance by a certain date or obtaining approval under the Foreign Acquisitions and Takeovers Act 1975, or if the purchaser buys the real estate 'off the plan' the contract of sale will be subject to the necessary statutory approvals, such as the approval of the plan of subdivision.
The purchaser usually pays a deposit up to 10% of the purchaser price when making the offer to buy and submitting the signed contract of sale to the real estate agent or the vendor's lawyer who hold the funds in trust. The vendor can then either accept or reject the offer. When the vendor accepts the

written offer, the parties then start the process of transferring the title to the purchaser.

Transferring title for the real estate

From the outset, the purchaser should lodge a caveat on the title to the real estate to protect its equitable interest in the property until registration of the transfer of the real estate. A caveat prohibits any dealing affecting the estate or interest by anyone other than the purchaser.

The purchaser's lawyer must carry out searches, enquiries and verifications of the matters set out in the disclosure statement and on the title to the real estate. It is necessary to investigate all relevant statutory authorities as to whether the property is affected by any burden or proposal that may interfere with the purchaser's intended use and that the purchaser will have the property set out in the title and the sale documents. Additionally, the purchaser's lawyer needs to verify all registered and unregistered mortgages or other encumbrances such as covenants or easements. An easement is a right another person or entity who does not own the land to carry out some limited activities on the real estate. An example of an easement is a sewerage right granted in favour of the water authority to access the real estate so it can carry out works or repairs.

The vendor must arrange for the discharge of all mortgages and other interests to transfer unencumbered title to the purchaser on the agreed terms of the contract of sale at settlement. The purchaser on the other hand must ensure that it has the necessary funds to complete the purchase with the stamp duty and transfer fees at settlement.

Settlement

Lawyers must conduct the completion of the settlement on PEXA a government controlled electronic platform; this electronic settlement must include each party's representative and all relevant banking institutions. This enables the digital signing of all legal documents by the legal representatives and electronic lodgement of the transfers and title with instant registration of the title to the purchaser providing immediate indefeasibility against any other person's equitable or subsequent legal rights.

2. Does your legal system permit different sorts of ownership like ownership of the whole land and construction or ownership for example only of one unit or lots of units (condominium) of the improvements?

It is possible to own a unit, apartment or town house situated on the same block of land without ownership of the land where the building is situated, similarly to civil law countries with 'condominium' legislation. These situations are referred to strata title. Each State of Australia has different laws.

In Victoria, for example, the Subdivision Act 1988 allows strata subdivision and all separate parcels on the subdivision are called "lots". The purchaser can buy an individual lot as well as the share of the common property with people who own the other lots. Often an apartment is sold with a parking bay, which will give rise to separate titles for the real estate and the parking bay. Common property usually includes as gardens, roofs, swimming pools, gyms, external walls, staircases, and driveways.

The common property is managed by an owners corporation. Each owner of the lot or unit is entitled to use the common property and must pay levies for the management and maintenance of the common property. The owners corporation is a separate legal entity and can be sued or sue in its own rights.

3. Does the legal system of Australia permit joint ownership of real estate? Which kind of entities can be owner of real estate in Australia?

Anyone who has legal capacity can buy real estate either as a:

- Joint tenant, or
- Tenant in common.

The legal presumption of co-ownership is that when two or more co-owners purchase real estate, they will become joint tenants unless they express a contrary intention in the transfer document. The most common way to express the contrary intention is by indicating the words of severance on the transfer document to be lodged at the land registry on completion of settlement.

The difference between a joint tenancy and a tenancy in common is the right of survivorship. As each joint tenant universally own the whole of the real estate, on the death of a joint tenant the surviving co-owner will automatically own the whole real estate contained in that title and the interest of the deceased co-owner in that real estate ends upon the death. Therefore, it is not legally possible to transfer or gift the interest of a joint tenant by will or otherwise to third parties.

On the other hand, tenants in common each separately own a part or share of the real estate, not in a physical or special way but in terms of discrete legal interest. Upon the death of the tenant in common the right of survivorship does not apply and the interest of the deceased co-owner in common passes according to the to the deceased's will or under the rules of intestacy.

A separate legal entity such as a company can own real estate in either its own right or as trustee of a trust. It can do so as joint tenant or as tenant in common.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in Australia as well and is it possible to have different owners of the land and the building erected on it?

Any building or fixture attached permanently to the real estate belongs to the registered proprietor on the title.

A strata title allows for the ownership of the lot or unit separately from the ownership of the land upon which the building is situated. The owners corporation holds the title of the common property including the land; however, a certificate of title exists for each lot, and the accessible land detailed on the title will indicate it is common property, therefore the ownership of that land is not held in the same manner as the lot itself.

5. Is the land and/or the building registered in a formal register and is a good faith purchaser protected about the entries in this formal register?

In Australia the interest in land must be registered and the legal owner of the real estate has indefeasible title subject only to fraud.

As an example where the registered proprietor is found fraudulent, a later equitable interest created as a result of that fraud would prevail the earlier legal interest. Even if fraud cannot be established, a subsequently registered interest holder may still be able to challenge the priority of a prior registered interest based on an "in personam rights". These rights arise out of the transaction or relationship between the parties. These rights remain personally enforceable by the parties to the relationship or transaction based on the equitable doctrines (i.e. the purchaser's rights under the contract of sale of real estate and before registration).

The rule is that a good faith purchaser of the legal estate for value and without notice of the prior equitable interest will take the real estate free of the prior equitable interest. Good faith in this context means that the purchaser must acquire the real estate without any notice of a prior equitable interest. This rule has been embedded into statute in all States, except Western Australia, where the common law continues to operate.

II. FINANCING TOOLS OF THE TRANSACTION

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

A common way to finance a purchase of real estate is to borrow money from a lender which will require mortgage registered on the title. A mortgagee (the lender) obtains a security interest in the real estate of a mortgagor (the borrower), which the mortgagee registers on the title. The mortgagor retains the use and possession of the real estate whilst the mortgagee acquires the right to enforce its rights under the mortgage including the right to repossess and sell the real estate in case the mortgagor defaults.
Usually, a lender finances 80% of valuation of the real estate for individuals. Companies have a reduced borrowing capacity to buy real estate.
Most lenders may approve the loan 'in principle' (pre-approval) but this does not mean they will follow up lending the necessary funds. It is therefore necessary to enter a formal agreement with the lender before participating in an auction as this purchase cannot be conditional on financing. On the other hand, in a private negotiation, it is possible to negotiate a special condition to subject the sale to a finance approval before an agreed date.
It is possible for a vendor to finance the sale by a statutory process known as “vendor terms”. The vendor retains title to the real estate until the purchaser has repaid the loan in full. The real estate does not transfer to the purchaser (who only obtains an equitable interest in the real estate). The purchaser makes payments to the seller for a certain period at an agreed interest rate and on final payment or a refinance, the transfer is executed.

7. What should be taken into account when thinking about the financing of a purchase project in Australia?

Australia imposes a heavy regulatory framework on foreign investors that apply to non-resident borrowers. Accordingly, some banks now do not lend money to non-resident and some other institutions will lend only 60% of the purchase price[1]. It is difficult for temporary residents who do not earn an income in Australia to borrow money.

Although foreign investors are not allowed to buy existing houses, they can buy new ones, off the plan apartments or vacant land. A foreign investor needs an approval from the Foreign Investment Review Board (FIRB) for that purpose. The application costs together with stamp duty surcharges makes the investment very expensive. New South Wales, Queensland, Victoria, and South Australia currently apply a stamp duty surcharge to foreign citizens.

Foreign residents should consider the possibility of double taxation. Double taxation occurs when income, assets or goods are taxed in twice in two different countries. Unless there is a tax treaty in place between the country of origin and Australia, there is the possibility that the investor will pay tax in two countries.

1. At the time of writing only the National Australian Bank has a policy for foreign lending

III. COSTS FOR TRANSACTION

8. What tax aspects are directly involved in a purchase of real estate, for example real estate transfer tax and what is the percentage of it?

The Federal Government regulates and imposes:

- Good and service taxes (GST) in certain cases;
- Capital gains tax (CGT) when the real estate is sold, and
- Income tax if the real estate is used to produce income.

The State Governments regulate and imposes:

- Stamp duty on the transfer of real estate, and
- Land taxes.

Local Governments or Councils have the power to impose:

- Municipal rates, and
- Other statutory charges

Good and Service Tax

If a residential property is not new and the parties to the sale are not involved in a business to buy and sell properties (taxable supply), a sale of the real estate is an input taxed supply, there is no GST payable on a sale of real estate. Residential premises are new when any of the following apply:

- they have not been sold as residential premises before;
- they have been created through substantial renovations;
- new buildings replace demolished buildings on the same land.

For commercial residential premises accommodation, such as hotels, motels, inns, hostels or boarding houses, the sale is a taxable supply and attracts GST.

Whether it is a taxable supply it depends on the vendor's situation (for example whether it is registered for GST), who then will add the GST to the purchase price, so the purchaser must pay the GST.

Stamp Duty

Each purchaser must pay stamp duty on the transfer of land assessed by the relevant state revenue authority. For example, under the Duties Act 2000 (Vic), the amount of stamp duty depends on the purchase price paid for the real estate or its market value, whichever is greater. Duty is calculated on a sliding scale, starting at 1.4 per cent for properties valued at $25,000 and rising to 5.5 per cent for those valued at or above $960,000[2].

Similar duties are applicable in New South Wales[3], and in all other State of Australia[4].

2. See https://www.sro.vic.gov.au/non-principal-place-residence-dutiable-property-current-rates.
3. See https://www.revenue.nsw.gov.au/taxes-duties-levies-royalties/transfer-duty.
4. See Western Australia, http://www.finance.wa.gov.au/cms/State_Revenue/Duties/About_Transfer_Duty.aspx, Queensland https://www.qld.gov.au/housing/buying-owning-home/advice-buying-home/transfer-duty/how-much-you-will-pay/calculating-transfer-duty/transfer-duty-rates, South Australia: http://www.revenuesa.sa.gov.au/taxes-and-duties/stamp-duties, Tasmania: https://www.sro.tas.gov.au/

Surcharge stamp duty for foreign investors

A foreign investor includes a natural person who is not a citizen of Australia or New Zealand Citizen under one of the conditions of visa subclass 444 and present in Australia at the time the contract is exchanged. This includes Australian temporary resident (including the holder of 457 visa). A company registered outside Australia or in Australia if a foreign natural person, another foreign corporation, or a trustee of a foreign trust has a controlling interest in those corporations. This included trusts.

Additional duty applies to any contract or transaction involving the transfer of an interest in residential property to a foreign purchaser, including gifts and acquisition of part ownership. On or after 1 July 2016, the additional duty rate is 7%.

9. Do you have to hold the property for a specific time with respect to tax reasons or is it in this context no problem to buy and sell property on a short-term basis, for example within a year?

There is no obligation as to minimum time the owners must keep the real estate before selling it. However, time is relevant in assessing any discount for CGT.

The CGT provisions include in the taxpayer's assessable income any "net capital gain" made in the financial year. A capital gains arises when the sale of the real estate has a gain that exceeds an asset's cost base. A taxpayer's net capital gain is the total of all capital gains for CGT events (for example the sale of real estate or the sale of stock) for the income year less certain capital losses. CGT applies to all non-exempted gains that a taxpayer makes when dispose of an asset.

There are discount and concession that relates to the effluxion of time for CGT purposes. But if the 'disposal' (change of ownership) of the asset occurs within 12 months of the acquisition of the asset, the taxpayer is not entitled to any discount.

Discount on Capital Gains Tax

The Income Tax Assessment 1997 introduced a discount regime on capital gains when the gain made by an individual, complying superannuation entity, or trust after 21 September 1999. If the conditions are satisfied, the discount percentage is 50% if made by an individual or trust, or 66% (2/3) if made by a complying superannuation entity.

Where a trust has a net capital gain, parts of the net income attributable to the trust's net capital gain are treated as capital gains made by the beneficiary entitled to those parts. If the beneficiary is an individual or a superfund, that beneficiary then receives the benefit of the discount.

Small business concessions

If the asset is held by small business and the net value of the asset does not exceed AUD$6M and it is used in the course of carrying on a business, that is carried alone or in partnership and the stakeholder control at least 20% of the business, then small business concession may apply, in addition to the exemptions and rollovers available more widely. The reduction is 50% of the active asset value if it was owned more than 12 months.

Any capital gain arising from the CGT event is disregarded, if the active asset has been held continuously for at least 15 years, and the taxpayer is at least 55 years old or is permanently incapacitated or, if less

than 55, rolls the gain into a superannuation fund. A capital gain is disregarded if the proceeds are used in connection with retirement.

A capital gain from a CGT event can be deferred by applying the gain to the cost base of replacement assets acquired within 2 years of the CGT event (i.e. if roll the gain into replacement assets).

CGT for non- resident

Foreign resident capital gains withholding applies to vendors disposing of taxable Australian real estate. A 12.5% withholding is applied to these transactions at settlement. The assets subject to the withholding tax are:

- taxable Australian real estate, being vacant land, buildings, residential and commercial real estate, with a market value of $750,000 or more;
- an indirect Australian real estate interest;
- an option or right to acquire such real estate or interest.

Where the seller of these Australian assets is deemed a foreign resident, the purchaser must pay 12.5% of the purchase price to the Australian Taxation Office as a foreign resident capital gains withholding payment. At settlement, the purchaser must withhold the sum owed to the Australian Taxation Office if the vendor is a relevant foreign resident for the purpose of CGT.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Subject to finalising all taxation obligations and the foreign resident capital gains withholding payment, there are no rules or restrictions on the repatriation of funds from Australia under normal circumstances involving a sale of real estate.

11. If you buy real estate that is leased to one or more persons are you allowed to terminate the lease contract(s) or which restrictions must be taken into account?

When the owner sells the interest in real estate, any lease survives. The lease must be disclosed in the contract of sale and in the vendor disclosure statement. The new owner will start to receive rent from the day after the settlement in place of the vendor.

Different rules apply in different States. In Victoria, if the purchaser wants the residential tenant to vacate must give 60 days' notice to vacate, stating the reason (i.e. the real estate is being or has been sold with vacant possession). The landlord must serve the tenant the notice within 14 days of signing the contract of sale, or if the contract of sale has any special conditions attached, a notice to vacate may be served within 14 days of the last of these conditions being met. If the tenant has a fixed-term lease, the last day of the notice cannot be before the expiry date of the contractual fixed term.

Commercial leases or retail leases have different rules as well as land leases under the Torrens System, which is beyond the scope of this review.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so or is it not allowed at all?

Most Australian land is subject to zoning restrictions defined by the local council. The zoning includes residential, business, industrial, parks, recreational or mixed and more. The State government issues

planning schemes that the local council must respect when they decide on the zoning of an area. The real estate in a zone can be used for a particular purpose. Minor changes to the use of the real estate do not require a permit, while significant changes are not allowed unless a permit is issued.
The planning scheme is a public document that indicates the use it can be done of the real estate. If the use is permitted, then an application for the development of a parcel of land needs to be obtained from the relevant authority.
If the use is not permitted under a zone, a person may apply to the Minister to have the planning scheme amended.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5M, particularly:

- notarial costs?
- land register?
- real estate transfer tax?
- advising lawyer (due diligence)?
- estate agent?
- others?

Lawyers can charge fixed fees or item fees, which is dependent on the complexity of the transaction. Fees can vary. Due diligence depends on the types of reports that the purchaser requires before settling the transaction, as an example, the purchaser may require, inspection, pest, engineering, or surveyor's reports.
Loan establishment fee can be substantial for a foreign investor, for example up to 4% of the amount borrowed.
The vendor must pay the real estate agent's fees and commission, which is a percentage of the sale price between 2% and 5%, plus advertising. There is no real estate agent's fees and commission for the purchaser unless the purchaser decides to engage a 'buyer's advocate' to negotiate the purchase price on his behalf.
The purchaser must pay stamp duty and transfer of land fees when buying. The proposed €5M is equal to AUD$7.9M at the current exchange. On that value the purchaser will pay:

		VIC	NSW	QLD	TAS
Mortgage fee	AUD	108.10	141.60	187.00	135.09
Transfer fee	AUD	3,597.00	141.60	27,438.00	206.98
Stamp Duty	AUD	438,130.00	498,110.00	438,570.00	353,655.00
Foreign Buyer Stamp Duty	AUD	557,620.00	637,280.00	557,620.00	278,810.00
TOTAL		999,455,10	1,135,673.20	1,023,815.00	632,897.07

The Northern Territory is the only region that is free of the foreign stamp duty surcharge[5]. Apart from buying in the Northern Territory, there are other ways to avoid the surcharge, such as purchasing as joint tenants with an Australian citizen or become a permanent resident.

5. Fee are current as January 2019

IV. COSTS FOR HOLDING REAL ESTATE

14. What tax aspects are directly involved when holding real estate, for example yearly land tax after the transfer of ownership and what is the percentage of it?

Examples of holding costs are:

- Income Tax

Tax is payable on assessable income derived from the ownership of real estate, which includes rent, annuities, or royalties. The owner must declare the income and deduct certain expenses in the taxation return. The foreign owner must lodge a tax return in Australia. Depending on the place of residence, rules against double taxation may apply to avoid paying income tax twice.

- Land Tax

Each state has different land tax applicable to land ownership. In Victoria, land tax is an annual charge on owners of land at midnight on 31 December of the year before the year of assessment. The State Revenue Office assesses on a calendar year basis on the unimproved value of the real estate determined by general valuations carried by the relevant council every two years. There are some exemptions to land tax, but it is payable on investments properties and vacant land.

- The 'ghost tax'

A vacancy fee or tax known as "ghost tax" for foreign investors in real estate remained vacant exists if the property is not residentially occupied or rented out for more than 183 days (six months) in a year

- Rates and charges

Local Governments provide services such as road works and garbage collection. For that reason, Councils impose a statutory charge on the unimproved value of the land.

The rates are charged annually and are payable quarterly. Additional rates may be payable if the local council decide to carry out works on an adjacent property such as clearing vegetation or widening roads.

15. What are the costs you must calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

A purchaser can manage the property himself or use a property manager. Property managers will look after every aspect of the tenancy, which includes collecting rent, maintaining financial records, conducting regular property inspections, handling disputes, and arranging all repairs. Property managers charge a percentage of the weekly rent as a management fee, usually around 5-10%. Property managers o charge a one-off fee when they sign up the new tenant or negotiate an extension of the lease.

In the case of a unit dwelling or condominium, the Owners Corporation is responsible for the management of the common property and will levy annual fees. The fee varies according to the nature of the common property and the amenities such as gym, pool, lift lobby services.

V. FOREIGN INVESTORS

16. Would you advise foreign investors at the moment to invest in your country
- directly in real estate?
- through real property funds, open or closed ones?
- through other clear and secure financial products?
- In commercial real estate or in residential property?

There are two aspects that a potential investor in real estate must consider when evaluating the return on the investment: the capacity of the real estate to generate passive income and its potential to increase equity over a long period of time.

Directly buying a real estate.
Investing directly can be expensive but relative to the purchaser's financial standing. There are relevant costs involved at the time of buying, keeping, and selling real estate. This option suits a foreign investor who wants to physically locate their affairs in Australia or having the benefit to use the real estate.
The historical real estate market trend suggests that over the long-terms real estate investment produce relevant capital growth.

Real property fund
The advantage of investing in a property funds is that the reduced cost of establishment and the level of investment can be variable. The investment may be in share of the company who holds the real estate portfolio and fluctuation of these shares often affect the underlying performance of the funds more than the performance of the real estate on the market.

Commercial real estate
This investment is suitable to investor who wants to establish a small business in Australia or for migration purposes. It is possible to invest in commercial real estate through a real property fund.

17. Is any individual person and legal entity allowed to buy real estate in Australia or are there restrictions with regard for example to nationality or registered office of legal entities? If there are restrictions are there ways to organize a domestic entity for the purchase on a valid legal structure notwithstanding?

Subject to any FIRB requirements, there are no legal restrictions on the ability to buy real estate in Australia.
A foreign investor includes a natural person who is not a citizen of Australia or New Zealand Citizen under one of the conditions of visa subclass. Australian temporary resident is considered foreign. Foreign companies (that is, companies incorporated outside Australia: s 9 Corporations Act 2001) that wish to carry business in Australia must obtain registration).
Corporations and trustees that meet the definition of a foreign person under the Foreign Acquisitions and Takeovers Act 1975 must seek foreign investment approval to acquire interests in residential real estate.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed and what time and effort are needed normally to get it?

Foreign persons must get approval to buy a lot of vacant land for development, which require:

- That the development is completed within four years from the date of the approval; and
- Evidence of completion is submitted within 30 days from the date they have been received. This includes the occupancy permit or the builder completion certificate.

Vacant land which had a demolished dwelling on it before is not considered as vacant for the purpose of the approval. A foreign investor can buy an established dwelling for the purpose of redeveloping the land upon approval from FIRB, provided that the redevelopment genuinely increases the housing stock. An increase in Australia's housing stock is taken to mean that at least one additional dwelling will be created.

Property developers and other vendors can apply for an exemption certificate to sell new dwellings in a specified development to foreign persons, without each foreign person purchaser being required to seek their own foreign investment approval. The application is conditional the development will:

- Consist of 50 or more dwellings; and
- Be approved by the relevant state government.

Foreign persons that operate a substantial Australian business must apply for and receive foreign investment approval to purchase established dwellings in Australia to house Australian-based employees. Consideration will be given to the:

- Type of business being operated and whether it is rural or a metropolitan-based business;
- Difficulty in obtaining suitable rental accommodation or building a new dwelling;
- Difficulty in attracting and retaining suitable employees in the absence of suitable rental accommodation on an ongoing basis;
- Location of the dwelling, including its proximity to the business operation;
- Scale of the business operations;
- Duration of the need for housing for Australian-based employees;
- Foreign person's operating history in Australia and compliance standing.

The dwelling must be sold if unoccupied for more than six months.

If a foreign investor seeks to buy acquire an interest in commercial land, it must notify FIRB. Different rules apply depending on the land being vacant or not. Under the Foreign Acquisitions and Takeovers Act 1975, specific reference to developed with specific relevance to the types of acquisitions intended to be captured under the business, foreign persons are required to notify the Treasurer for each notifiable action related to interests in securities, for example an acquisition of at least 20 per cent in an Australian entity with total assets exceeding AUD$266M.

It is considered developed commercial land if it is:

- A hotel, motel, inn, hostel, or boarding house;
- Premises used to provide accommodation in connection with a school;
- A marina with berths occupied by ships used as residences;
- A caravan park or camping ground; or
- Any other premises like those outlined under the GST Act, other than premises used to provide accommodation to students in connection with an education institution that is not a school.

"Commercial residential premises" does not include retirement villages, aged care facilities and certain student accommodation.

A purchase of an interest in an agricultural business by a foreign person is subject to approval if the

investment is more than AUD$58M. Investors from countries being party of a trade agreement are exempt from applying for approval.
The foreign investor must notify FIRB when purchasing farmland worth AUD$15M or more as the fees can be substantial except investor from countries being part of a trade agreement with Australia.

FIRB application costs
FIRB fees for the application depend on the value of the real estate.

Value AUD$	Fee AUD$
$1 million or less	$5,600
$1 million to $1,999,999	$11,300
$2 million to $2,999,999	$22,700
$3 million to $3,999,999	$34,000
$4 million to $4,999,999	$45,400
$5 million to $5,999,999	$56,700
$6 million to $6,999,999	$68,100
$7 million to $7,999,999	$79,500
$8 million to $8,999,999	$90,900
$9 million to $9,999,999	$102,300
$10 million or higher	Refer to ATO

A lower fee will apply where a foreign business person (foreign person, except an individual, carrying on a business in Australia or elsewhere) acquires more than one interest in residential land under one agreement. The same treatment is reserved to a corporation, a trustee, or a general partner of a limited partnership that meet the definition of a foreign person under Australia's foreign investment rules.

19. Could your firm assist foreign investors in
- **Finding interesting real estate and related valid investment products in real estate in Australia where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

Yes. Behan Legal deals with numerous and diverse real estate and commercial transactions including construction and development projects and organising legal and corporate structures to assist clients in their real estate holdings.

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AUSTRALIA
PIPER ALDERMAN

I. Procedure for a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

1.1 Prior to Contract

(a) **Role of agents/brokers**

Interests in real estate are normally marketed by licensed real estate agents or land brokers appointed by and acting in the interests of the vendor, who will normally advertise the property online and usually in combination with various other marketing techniques designed to encourage the greatest possible potential buyer interest.

(b) **Methods of Sale**

There are a number of ways to purchase real estate in Australia. The existing owner (seller) will normally determine the manner in which the real estate is to be sold.

In the current market the most common method of sale is by expression of interest. In this method prospective purchasers will be invited to lodge an expression of interest, which is an informal non-legally binding indication as to what price the purchaser would be willing to pay and, in a very general sense, what other terms and conditions would apply to the purchase.

The expression of interest is usually lodged with the agent representing the seller, and the agent will normally have specified a date and time by which the expressions of interest must be lodged.

The owner and the agent will then consider which expression of interest they prefer and then will look to enter into a formal sale contract with the purchaser. The sale contract would typically be prepared by the owner's lawyer and would be the subject of some negotiation with the lawyer representing the purchaser.

Another method of sale (more commonly used in relation to the sale of residential property than commercial property) is public auction. In this method of sale a draft copy of the sale contract is made available to prospective purchasers before the auction and there is usually an auction campaign period of 3 to 4 weeks during which time the property is actively marketed and promoted and prospective purchasers are given the opportunity to review searches and conduct other due diligence. If the prospective purchaser bids at the auction and is successful then the purchaser will need to promptly pay a deposit (usually 5% to 10% of the purchase price) and promptly execute the sale contract. Settlement would typically be between 30 days and 90 days after the auction.

Private treaty is another method of sale. In the case of private treaty the owner or its agent will normally advertise the property at a particular asking price and invite offers from prospective buyers. Once a satisfactory offer has been received then a formal sale contract will be entered into

between the owner and the purchaser reflecting terms of the offer.

The other popular method of sale is by tender. Tender is similar to expression of interest but is more formal and usually involves prospective buyers being required to submit a potentially binding formal offer which, if accepted, will result in a formal contract having been entered into between the owner and the purchaser.

(c) **Activities prior to contract**

During the period prior to formal contracts being entered into, purchasers normally conduct their due diligence, satisfy themselves as to the state or condition of the property, confirm availability of finance if necessary to complete the purchase and negotiate any required alterations to the conditions of sale. As a great deal of risk in relation to the property passes to the purchaser on entering into a formal contract, issues such as the condition, quality or characteristics of the property or the conditions on which it is sold and accepted need to be satisfied prior to the contract being entered into.

(d) **Formulation of contract**

Generally the parties are not bound to proceed with a real property transaction until formal contracts are entered into and the property transaction laws governed by each relevant state in Australia mandating compulsory requirements as to matters which must be disclosed prior to contract are complied with, so as to provide intending purchasers with a minimum required level of disclosure concerning the property.

(e) **Role of Purchaser's advisors**

Except in the case of very large or special use properties, purchasers are usually not represented by agents or brokers but take advice from their lawyers and other professional consultants as to tax matters and legal issues. Purchasers may also engage financial consultants to advise on the financial feasibility of a development project envisaged for the relevant property or provide financial advice to assist with procurement of finance to fund the acquisition.

1.2 Entry into Contract and pre-closing/completion

(a) **Form of Contract**

The final agreed form of contract is usually prepared in duplicate and a copy signed by each party is exchanged with an identical counterpart, to record the final and binding set of terms and conditions governing the sale of the property and any matters that must be attended to between the time of contract and completion/closing. Most states require a number of annexures to the contract to ensure its validity.

(b) **Deposit**

A deposit of up to 10% of the purchase price is normally paid on the date contracts are entered into. In some jurisdictions, there is legislation that provides for the creation of a special type of contract known as an instalment contract (Queensland) or terms contract (Victoria and Western Australia) in circumstances where the vendor accepts a deposit of more than 10%. These types of contracts

may result in the 'deposit' being automatically treated as an instalment towards the purchase price, which effectively gives the purchaser certain rights to have title transferred before the balance of the purchase price is paid to the vendor.

(c) **Post-contract, pre-completion matters**
Matters which are commonly dealt with in this period are:

1. satisfaction of any conditions to which the contract is subject, such as the obtaining of approval under the Foreign Acquisitions and Takeovers Act (1975) (commonly called FIRB approval);

2. obtaining statutory approvals such as development consent to permit the development of the property after completion or the subdivision of the title where required to create the particular title or envelope of property that the purchaser wishes to acquire;

3. enquiries of statutory authorities as to whether the property is affected by any proposal that may interfere with the purchaser's intended use;

4. the vendor arranges for a discharge of any existing mortgages on the property and any security interests affecting any personal property which may be included in the sale and puts itself in a position to transfer unencumbered title of all assets included in the sale to the purchaser on the agreed terms of the contract as at the date of completion.

1.3 On and after completion/closing

(a) Transfer of title
Title to the property in the condition required by the contract is transferred by the vendor to the purchaser on the day of completion, and the purchaser is bound to pay the balance of purchase money with adjustments made on a per diem basis for rates, taxes, rents and other outgoings and incomings of a periodic nature.

(b) Title by registration
Immediately following completion, the purchaser will be concerned to have its interest in the property registered in the appropriate state government register. In Australia, the bulk of real estate is held in what is known as the Torrens system by which the relevant state government guarantees to the person registered as holding a relevant interest (either of freehold or leasehold) that they hold the property with good title save only as to other interests such as mortgages and leases which are also entered on that register.

(c) Possession on Completion
Possession of the property or the benefit of rental income normally passes to the purchaser on the date of completion, from which date the purchaser assumes responsibility for periodic outgoings for the property.

1.4 Corporate or Trust interests in underlying real estate

The above summary relates to the transfer of a physical real estate title, but of course, where the

property is held either in a trust or corporate structure, shared interests in underlying real estate can be acquired by either acquisition of units in the relevant trust or shares in the relevant company where the trustee or corporation in turn holds title to the property. These transactions are generally structured and proceed in a manner more akin to a corporate acquisition, and the costs of acquisition and disposal can be considerably reduced where the land holding entity is listed on a recognised stock exchange.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Differing forms of ownership/interests in parcels of land in Australia

The following forms of ownership are generally available in all Australian states:

2.1 Conventional lots

Ownership of an identified parcel of land or area as a registered proprietor of land divided horizontally by cadastral boundaries on a registered plan of subdivision.

2.2 Strata lots

It is also possible to be registered on a government guaranteed title as the owner of an envelope of space defined both vertically and horizontally (commonly known as a strata or stratum title, depending upon the method of subdivision). Generally in the case of envelope-type subdivisions there will be shared property owned in common such as elevators, stairs, access ways, plant, equipment and the like. The various proprietors of lots in the overall strata subdivision will have proportionate entitlements to that common property depending on the respective values of the parcels in the strata. Normally owners of lots in strata forgo any ability to compel a redevelopment of the whole development, and they are also required to contribute on a unit entitlement basis towards various shared costs such as insurance and the maintenance of common facilities as required over time.

2.3 Cooperative or Company title

In some densely settled residential parts in major cities there are a limited number of cooperatives or what is known as company title structures, in which a unit 'owner' holds shares in a corporation which in turn owns the overall land and structures on it. Pursuant to the constitution of that corporation, the owner acquires by virtue of holding those shares a right to occupy a defined space or spaces within the building owned by the corporation. Such structures are usually reserved for residential accommodation and are often more difficult to finance as there is no defined and easily transferable legal title to an envelope of space such as is the case with strata subdivisions.

2.4 Sale of properties to be built 'off the plan'

It is possible to enter into a contract to acquire a strata or stratum lot which does not physically exist at the time the contract is entered into. The contract is subject to a condition requiring the construction of the relevant building required and the registration of a strata title plan of subdivision delineating the horizontal and vertical boundaries of the completed lot or unit.

3. Does the legal system of your country permit joint ownership of real property? Which kind of

entities can be owner of real property in your country?

3.1 Forms of Joint Ownership

There are two (2) commonly used forms of joint ownership in Australia, being:

(a) Tenants in Common, where either equal or differential interests on a percentage share basis are held by two or more owners and it is possible to transfer between those owners or to third parties those differential interests in the underlying real property; and

(b) Joint Tenancy, where real property is held in equal shares between two or more individual persons, the distinguishing feature with joint tenancy being that where one of the owners dies, then irrespective of any will or bequest the deceased person may have left, the surviving joint tenant will automatically by law be deemed to have acquired the deceased person's share of the real estate. Joint tenancy is commonly used for ownership of residential premises between persons in a committed relationship.

3.2 Entities that can own Real Property

Generally speaking, any entity having the legal capacity to enter into a contract can own real property in Australia, and the entities commonly holding real property are:

(a) individuals over the age of 18 years;

(b) corporations holding either on behalf of shareholders or as a trustee or responsible entity for beneficiaries, either being unit holders or discretionary beneficiaries;

(c) partnerships or joint ventures, usually as tenants in common in equal or differential shares.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

Title to land normally includes permanent structures on it.

(a) Ownership of the land normally implies ownership of all buildings and improvements erected or constructed on that land, but this is subject to specific provisions in lease documents dealing with ownership of tenants' fixtures, fittings and other property.

(b) Other than in the case of certain mobile or relocatable dwellings, and subject to specific contrary provisions in lease documents, generally speaking the proprietor of the land will also own all permanent improvements, buildings and structures erected on the land from time to time.

(c) In most Australian states it is possible by virtue of stratum (or building envelope forms of subdivision) to separate ownership of underlying land and differing envelopes of space or buildings erected on that land. For example, a multiuse development may be owned in separate parcels as between residential, commercial/offices and retail components, and it is also possible to then further subdivide interests within each of those separate parcels by an internal strata subdivision. The overall development is regulated by statutory instruments governing the legal

relationship between the owners for the time being of the land and the various separate parcels.

(d) It is also common that ground leases are held by an owner, with long-term leases (usually of, or in excess of, 99 years) being granted to legal entities or groups who then develop and hold a leasehold estate in improvements erected within defined leased areas on the land. On expiration of the long-term lease, the owner of the land by operation of law is deemed to have acquired by reversion any entitlement the former lessee may have held in the improvements erected, unless the lease permits or requires the removal of those improvements at the expiration of the lease.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

5.1 Most land in Australia is governed by Torrens Title concepts.

In all Australian states and territories the relevant property legislation implements a version of the Torrens system whereby an owner who becomes registered as proprietor of an estate or interest in land is deemed by statute and by virtue of registration an unchallengeable ('indefeasible') title free of any prior adverse interest (unless that interest is in turn registered on the register of title).

5.2 Exceptions to that situation occur where:

(a) land grants were made by Government prior to the implementation around 1900 of that Torrens system – such land is commonly called old system title; or

(b) the land is still owned by the Government but is subject to Crown leases to the tenants. These are often used for large-scale agricultural purposes where the interest held by the occupier of the land is leasehold and may require a renewal dependent on satisfaction of leasehold conditions.

5.3 Leasehold Title normal in Australian Territories

in both the Australian Capital Territory (in which the nation's capital, Canberra, is located) and the Northern Territory (in which Darwin is located), it is normally not possible to acquire freehold title – all titles are based on long-term leases from the Government. In practice, transfers of such leasehold interests are (unless the term of the lease is becoming unacceptably short) transacted in a similar manner, and for similar value, as freehold titles.

5.4 Exceptions to Indefeasible Title

Whilst the proprietor registered under a Torrens system holds an indefeasible title guaranteed by the relevant state government, it is important to understand that a number of exceptions to that principle exist, such as:

(a) compulsory acquisitions by Government authorities are permitted where the whole or some part of the land is required for a public purpose – normally compensation at market value is payable to the affected owner where any such compulsory acquisition of the whole or part of an interest in land occurs;

(b) ownership of land and registration under the Torrens system does not confer any interest in any

minerals, petroleum or gas as may be located in that land, as the title held by the owner is subject to an exception reserving all such rights in perpetuity to the Government. Owners of land may be affected by exploration and/or production activities by parties who acquire mining or petroleum titles in their land.

II .Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

Typically, the relevant property is used as security to assist with the acquisition, which will be secured by virtue of a registered mortgage which, more often than not, is registered over Torrens title land. A registered mortgage of Torrens title land takes effect as a charge; it confers an interest (but no estate) in the land, and it does not operate as a transfer of the land mortgaged or charged. The mortgagee does not become the legal owner of the land and the mortgagor retains legal ownership.

The lender may also require other forms of security in the form of personal guarantees from related third parties to the borrower, or security against other assets owned by the borrower or other guarantors. The form of security used by banks (and other financiers) will depend upon many factors including the parties involved, the commercial arrangements and the financial position of the purchaser.

Vendor finance may also be offered to assist a purchaser to acquire an asset (which will typically be secured by a mortgage).

In Australia, finance is provided by a range of financiers including banks (which are authorised deposit-taking institutions pursuant to the Banking Act 1959) and other non-bank lenders that are not subject to that Act.

If there are multiple mortgagees which have taken security over an asset, the mortgagees will typically enter into priority arrangements between themselves in relation to the lending arrangements and order of priority with respect to the distribution of proceeds following the realisation of the asset in the event of default by the borrower.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

The following matters would be relevant when considering external finance to fund an asset:

(a) the purchaser should ascertain the anticipated costs associated with the project, including the acquisition cost (which would include the purchase price (after adjustments), GST, registration costs, stamp duty, legal fees and costs associated with any other consultants involved in the acquisition) and development costs (including planning and construction costs and land division costs) to ensure that a sufficient amount is borrowed to fund the project;

(b) the value of the asset and the value of any other assets to be used as security will be relevant in determining

borrowing capacity (noting that banks and other financiers will have regard to the nature, locality and condition of the asset, the cash flow generated by the asset and economic conditions in determining the appropriate loan-to-value ratio to apply to the relevant loan);

(c) the borrower's ability to service the debt is crucial, with regard to be had to any yield and expected cash flow to be generated by the asset (whether in its current state or after completion of a refurbishment or redevelopment) and the holding costs associated with the asset, including the payment of rates and taxes;

(d) the timing associated with the completion of any redevelopment or refurbishment of an asset will be relevant in determining the feasibility of a project and the quantum of finance required to complete the project;

(e) lease incentives are often offered to prospective tenants to induce tenants to lease an asset, and often take the form of cash payments to be attributed to the tenant's fit-out or rent abatements – these incentives can be significant in value and should be taken into account in determining the feasibility of a project, the amount to be borrowed and the borrower's ability to service the debt.

III Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

8.1 Three tiers of Government in Australia

Irrespective of location in Australia, there will be three tiers or levels of Government able to impose differing taxes and charges on real estate and its transactions, being:

(a) the Federal or Commonwealth Government, which imposes income and capital gains taxes and a value added tax known as a Goods and Services Tax (GST);

(b) state Governments, which impose a property transfer tax (known as stamp duty) and a tax on the holding of income-producing land not used for agriculture or as a primary place of residence (known as land tax); and

(c) local councils, which have the ability to impose annual council and water/sewerage rates and impose and recover charges for works done on land adjacent to particular properties.

8.2 Federal/Commonwealth Taxes

Individuals and corporations deriving income from real estate holdings in Australia will normally be subject to the imposition of an income tax at varying rates (which can be as high as 45%) depending upon the amount of net income earned annually. The standard rate of the income tax payable by companies in Australia is 30%.

In addition, holders of real property in Australia who make a profit on the disposal of the same will be required to pay capital gains tax (at the same rates otherwise payable for income tax) on the difference

between the cost base for which the property was acquired (adjusted for inflation by reference to CPI increases) after deducting costs of improvements made. Capital losses on disposal can be carried forward and applied against subsequent capital gains.

In addition to income tax and capital gains tax, a goods and services tax (GST) is payable by a landholder making a taxable supply of real property, calculated at 10% of either the consideration paid or the unencumbered value of the property being transferred, whichever is the greater ('Dutiable Value'). Whilst the GST is payable by the supplier/vendor, most vendors will by contract require that the amount of the GST be reimbursed by the purchaser on the date of closing/completion, thereby increasing the acquisition cost of the property to the purchaser by the amount of the GST. However, there are a number of GST exemptions and GST refund entitlements which apply, and accordingly prudent purchasers of real estate will seek to attract one of these entitlements when entering into a contract to purchase real estate.

If the purchaser is registered for GST and carrying on a business, it will by return furnished to the Australian Taxation Office be entitled to claim by way of deduction from its other income tax liabilities the amount of GST paid by it in relation to such acquisitions, but note that acquiring parties not carrying on business in Australia and subject to Australian income tax will normally be able to claim such a refund of GST.

Generally speaking, holdings of real estate used as a primary place of residence for individuals are not subject to capital gains tax or GST (with the exception of newly constructed never-occupied residential real estate, which is the subject of GST). This particularly applies to sales of units or lots in strata plans which are brought into existence after a contract is entered into.

There have been some recent reforms to GST legislation in Australia. From 1st July 2018, purchasers of new residential premises or potential residential land are required to withhold an amount of the contract price equal to the GST payable in respect of the taxable supply and pay this directly to the Australian Taxation Office as part of the settlement process.

In addition, from 1st July 2016, a new withholding tax regime applies to purchases of certain types of Australian assets. It will have an impact on both vendors and purchasers of real property in Australia (including leasehold interests). For transactions caught by the new rules, the purchaser will be required to pay 10% of the purchase price (subject to some adjustments) to the Australian Taxation Office at or before settlement. The 10% withholding tax will not apply if a vendor provides a compliance certificate (in respect of direct real property interests) or a qualifying declaration (in respect of shares or units in a land-rich entity) that it is an Australian tax resident.

8.3 State Duties and Taxes

In each state and territory, acquisitions of real property are acquisitions which are liable to a tax known as a stamp duty that is calculated on the Dutiable Value of the property being acquired. Typically for the acquisition of a property in excess of AUS$1 million, depending on the state, the amount of that stamp duty will vary between approximately 5% and 6% of its Dutiable Value, with the payment of that duty usually being required to be paid by the purchaser after contract execution.

As an effective collection measure, each state will generally not permit registration of the transfer of title to real property without evidence of payment of the required stamp duty.

Whilst many states have abolished certain real estate stamp duties (for example, on leases and mortgages of real estate), it is likely, given the amount of revenue raised and importance of the same to each state for its budget purposes, that stamp duty on the acquisition of real property will remain very much in force and payable for the foreseeable future. However, South Australia is the first state to abolish stamp duty in relation to commercial property.

In addition to stamp duty, some states charge a land transfer registration fee, and each state and territory levies a land tax based on an aggregate of all taxable land values held by an individual land holder, varying between approximately 0.5% and 3.5% of the taxable value of that land. The tax is payable annually to the relevant State taxing authority. Affected owners of real estate are required to file an annual return aggregating all their taxable holdings and pay tax on an annual basis.

8.4 Local Government Rates and Charges

Local Governments in Australia, generally speaking, provide local-level services such as road works, garbage collection and control approvals for the grant of development on individual parcels of land. Councils will impose as a statutory charge, based on the unimproved value of the land in each case, annual rates (payable quarterly), and can in addition where particular works are carried out adjacent to the property (such as, for example, improving roads or clearing vegetation) require the payment of additional fees and charges by individual property owners.

Both local government rates and taxes and state land taxes constitute statutory charges or encumbrances on the title to real estate, meaning a vendor will be unable to complete a purchase and give good title to land sold unless, on or prior to settlement, all such land taxes, local government rates, taxes and charges are paid in full up to the date of completion.

8.5 Withholding Tax

Non-Australian-resident property owners will be subject to withholding tax on the income earned by them from the property in Australia. The standard rate of withholding tax is 10%, but that rate can vary and is subject to what are known as 'thin capitalisation rules'. Offshore entities and individuals who are paying the withholding tax would not normally be liable for income tax as well, but the tax laws of Australia are complex and it is important to obtain advice at an early stage.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

Though there is no minimum time imposed on owners before subsequently selling the property, certain concessions are made if the property has been held in excess of 12 months.

In some cases (depending on matters such as the identity of the owner and the period for which the property has been owned), certain concessions are allowed (up to 50% of the gain otherwise taxable) to be deducted from the gain otherwise taxable and subject to relevant marginal rates of income tax.

Exemptions up to the whole of the capital gains tax otherwise payable may be allowed where a real estate asset is held by a qualifying small business for over 15 years.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?
Generally speaking, there are no Government restrictions on transfer of funds into and out of Australia for real property purposes.

Some relevant qualifications to that general principle are:

(a) the Australian Government does from time to time impose sanctions on countries or regimes in accordance with United Nations Security Council resolutions;

(b) financial institutions need to ensure the Commonwealth statute seeking to eliminate money laundering and terrorism is complied with. As a consequence, foreign entities wishing to open accounts with Australian financial institutions will be required to go through certain identification procedures, and those institutions are required to report transactions which may be in breach of those statutory requirements.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

Where a person enters into a lease as a tenant, in addition to the interest in land created, the lease operates as a contract binding both the landlord and the tenant to observe the terms of the lease for the agreed term.
Normally it is not possible for a landlord to unilaterally terminate a lease prior to its expiry date, and the transfer of title to the property will not relieve the incoming landlord of that obligation. Where a property is sold subject to a lease, it is common to have assignment provisions incorporated into the sale contract providing for the assignment of the vendor's rights, obligations, title and interest in the lease from the vendor to purchaser on settlement.

12. Are you allowed to change the use of a building from residential use to office space or do you need official approval for doing so, or is it not allowed at all?

Most Australian land is subject to zoning restrictions. By a combination of planning instruments imposed by state and local government, only certain uses will be permitted on land located in designated zones as shown on maps and planning instruments held by those authorities. Changes in occupation or minor features of the same operation as between incoming occupants will generally either not require approval or permit the ready obtaining of approvals for such minor changes.

Changes of use of land normally will require development approval. However, a significant change of use of a building or premises within a building from one use to another will require examination and approval as to:

(a) whether the new use is in fact permitted under the existing zoning – if not, the proposed new use will be prohibited and will not be able to be implemented unless a rezoning is effected by the relevant state

Government; or

(b) if the zoning permits the intended use, a development approval or consent is obtained from the relevant consent authority (either local or state government) for the intended use.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly:

- Notarial costs?
- Land register?
- Real property transfer tax?
- Advising lawyer (due diligence)?
- Estate agent?
- Other?

13.2 Relevant additional costs of acquisition

As a checklist for a foreign investor seeking to acquire a significant (over AUS$1 million) property in Australia, the following budget items should be considered as additional costs on top of the agreed purchase price to be paid under the contract.

GST is payable by the vendor to the Australian Taxation Office. This will be required, as a term of the contract, to be reimbursed by the purchaser. Such GST is generally 10% of the Dutiable Value of the property. However, there are a number of GST exemptions and GST refund entitlements which apply, and accordingly prudent purchasers of real estate will seek to attract one of these entitlements when entering into a contract to purchase real estate. The amount will be required to be paid on closing/ completion of the transaction.

Stamp duty and other transfer taxes or charges of between approximately 5% and 6% of the dutiable value of the interest being acquired are payable to the relevant state government in which the property is located, unless the transaction is structured by way of acquisition of shares in company or units in a unit trust where the relevant company or trust is quoted on a recognised Australian stock exchange, in which event no such duty will be payable.

13.3 Adjustments on completion

In addition to the purchase price, an allowance should be made for the per diem calculation of land tax, local government rates and taxes, rentals and other reimbursable outgoings payable on the property.

13.4 Consultants' Fees

(a) due diligence - depending upon the nature of the property being acquired, investigation and reports may be required as to the condition of the building, its engineering services, inspection of the building by reference to its registered title boundaries (survey report); and

(b) legal and conveyancing fees – these fees can be negotiated with an appropriate practitioner in each location and will vary with the complexity, duration and amount of time required to be spent by the legal practitioner, first in negotiating the contract and thereafter attending to legal matters required between exchange and completion.

13.5 Insurances

A prudent purchaser will normally require that improvements on the property be insured for their replacement value with a suitable insurer from the date on which the purchaser goes on risk under the contract, should loss or damage occur to those improvements by reason of an insurable event. Such insurances normally include building repair or replacement insurance, public liability and workers' compensation for any employees engaged in a business acquired as part of the acquisition.

13.6 Disposal Costs

On disposing of Australian real estate, normally the vendor will engage a seller's agent who will, on completion of a sale effected through that agent, be entitled to a commission between 1% and 2% of the sale price in addition to expenses of advertising and the like.
The vendor may also be liable for goods and services tax if the property is a taxable supply but normally, pursuant to the contract, the amount of that GST is recovered from the purchaser.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

Typical costs of holding Australian real estate payable periodically are as follows:

(a) Land tax

Annual land tax where the property is used for income-tax-producing purposes and is not a principal place of residence or otherwise exempt; payable annually based on a return of aggregated total land value holdings held in the relevant state or territory each year. Note the amount of land tax can be increased if certain trust structures are used for the purposes of holding the same and in some states, such as Queensland and South Australia, recovery of such land tax from tenants of the property is prohibited by legislation.

(b) Rates and charges

Local government rates and taxes payable for the provision of council services – water, sewerage and drainage, and the like.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

Generally foreign investors will employ the services of a managing agent to handle tasks such as finding and securing on acceptable terms tenants for the property, collecting the rents and other monies under the lease, remitting net rentals less commission charged to the owner, arranging for regular property maintenance and repair services and reporting generally as to the state and condition of the property to a foreign owner and making recommendations as to how rentals or net returns from the property might be increased over time. Normally the rates of commission charged by those real estate agents are negotiable but are within a range of 3% to 7% (depending on the level of services provided) of the rental collected and charged on a commission basis against remissions of rents and other monies to the foreign investor.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
(a) directly in real estate?
(b) through real property funds, open or closed ones?
(c) through other clear and secure financial products?
(d) at the moment not because of the impacts of the worldwide financial crisis?

The answer to this question will depend upon the individual reasons and objectives of the foreign investors making an investment in Australian real estate, but the following might be provided by way of general commentary on the various alternatives open.

16.2 Direct investment in real estate
This alternative will suit a foreign investor needing to physically locate its operations in Australia or to have the benefit of actual use and operation of the property.

The on-costs of acquisition directly into real estate (in particular GST and stamp duty, totalling approximately 15% to 17% in addition to the purchase price payable for the real estate) are significant disincentives to that direct acquisition.

In addition, depending upon the state of the Australian real estate market at any time, disposal of the property may take time and may be subject to market vagaries depending upon the extent to which there is market demand for a particular class of property being marketed in the location where it is situated – i.e. the investment should be regarded as illiquid, and disposal at a satisfactory price may require a significant amount of time and the incurring of substantial disposal costs.

Generally speaking, an acquirer of a direct interest in Australian real estate would be an entity with the interest and ability of operating the same and have a longterm investment horizon as will be sufficient to amortise the acquisition and disposal costs over the length of term that the real estate is held.

16.3 Investment indirectly through property funds, trusts or corporations
These acquisitions tend to be viewed as a corporate or trust investment. They are based on the particular yield able to be achieved by the entity in whom title is vested and who is responsible, by appointment of managers or others, to secure the best possible return (by way of development of the property or by way of distribution of the passing yield).

Such funds (where listed on an Australian stock exchange) do have the advantage of substantially lower acquisition costs and the ability to dispose of the same with greater speed and with lower transaction costs than through direct property investment.
Because the nature of such invested funds more closely resemble those in listed companies or listed trusts, the share market or unit market as a whole can often have a greater effect on the pricing of those shares or units, irrespective of the particular performance of the underlying real estate.

Currently, foreign investors should be aware that, in particular in the retail sector, traditional retailers

in shopping centres (for example, books, recorded music, electronics and other similar businesses) are achieving significantly lesser profits and reduced ability to pay rentals because of competition from online sources of supply. This trend is likely to continue to diminish returns available from underlying retail investments in this country and elsewhere in the world.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office or legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

Foreign individuals and entities are, generally speaking, allowed to acquire Australian real estate subject to the following restrictions:

(a) FIRB approval under the Foreign Acquisitions and Takeovers Act (1975);
(b) avoidance of particular countries with foreign exchange sanctions provisions;
(c) recognition of foreign incorporated entities under relevant Australian corporations and securities law.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

Reference should be made to the current FIRB guidelines administered by Australian Treasury for acquisitions of Australian urban and agricultural real estate last published at http://www.firb.gov.au.

Where acquisitions are not exempt under those guidelines, notification and notice of non-objection will normally be required as a condition of contract. Note that US residents have the benefit of significantly greater value thresholds of exemption under the current FIRB policies.

19. Could your firm assist foreign investors in

- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

19.2 Identifying and evaluating real estate alternatives in Australia

Usually we would recommend that our clients engage appropriately qualified and experienced real estate specialist advisors depending upon the nature of the underlying real estate, be it agricultural, office, retail, residential or other specialist form of acquisition. These specialist services are provided by specialist consultants in each area and we can make recommendations as to suitable consultants clients might wish to consider or interview for that purpose.

19.3 Assistance from Piper Alderman

Piper Alderman has a national team of real estate lawyers who are devoted to the unique needs of clients active in the property sector. We represent a range of local and overseas investors and developers and Australian and overseas government instrumentalities.

Our team works in close partnership with our clients to design innovative, tailored legal solutions for infrastructure, development and construction projects and advises on the full range of legal issues impacting on the sale, ownership and management of commercial, retail, residential and industrial properties.

We draw on the specialist skills and solid experience of our team members across the country to deliver high-level commercial and legal support to organisations involved in property, transport, infrastructure, construction, mixed use, energy and public access projects around Australia and across the globe. Piper Alderman's Property and Projects division works closely with our corporate, tax and financial services lawyers to create balanced, comprehensive business solutions for our property clients. We have a team of dedicated employment relations professionals who understand the unique dynamics of property and project workforces and are expert in navigating the complex legislative environment.

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AUSTRIA
POLAK & PARTNER RECHTSANWÄLTE GMBH

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

In Austria, real estate transactions are governed by both federal law and state laws, which vary from province to province. It is also important to know that all properties in Austria are formally registered in the land register.
The land register is administrated regionally by the district courts. The land register contains (decisive) information regarding the property, i.e.

- location and size of the property
- legal owners
- encumbrances on the property, i.e. rights of way, rights of pipes, liens, pre-emption rights, options to repurchase, restraints on alienations.

In order to effect valid transfer of ownership of a property the transfer has to be formally recorded (registered) in the land register.

Contact and first negotiations
The parties of a property transaction often meet through real estate agents, but also through the internet or newspaper advertisements. The parties usually first negotiate the main economic aspects like the price of the property and the warranties that shall be given. If not explicitly stated as without prejudice, pre-contractual negotiations can attract culpa in contrahendo liability (for the cost of the negotiation) if then broken off without reason.

Formal Contract, Notarisation of Signatures and Handover
On basis of the negotiated price and warranties, a lawyer or a notary is assigned to draft a contract. In Austria it is very common that the buyer chooses the lawyer/notary, because it is legal custom that the buyer has to fully pay for the lawyer's/notary's work. This however can be, and sometimes is, agreed differently, certainly in larger transactions.

The contract includes terms such as the sales price, financing terms, the condition of the property, the handover date and any warranties. The contract normally states that the buyer has to transfer the purchase price to an escrow account of the lawyer/notary after signing of the contract and after notarisation of signatures by a notary public. It is the seller's duty to hand over all documents listed in the contract to the lawyer/notary which are necessary for the registration of the buyer's (unencumbered) ownership in the land register. Having received these documents, it is the duty of the lawyer/notary to forward the purchase price from the escrow account to the seller's bank account and to file an application with the land register for the registration of the buyer's ownership. Occasionally the parties agree that escrow is released only upon recording of title of the buyer in the registry.
In most of the nine Austrian provinces the transfer of property also requires a separate approval by the

provincial authorities according to the respective Land Transfer Acts of the provinces. An approval is, however, required only when the transaction entails (i) transfer of agricultural or forestry land or (ii) the acquisition of property by non EU/EEA residents or entities. Obtaining such an approval normally takes two to eight weeks. The approval for (ii) is usually obtained fairly easily; approval under (i) may sometimes prove more difficult, certainly if a secondary home is acquired in a tourist region in the provinces of Salzburg, Tirol or Vorarlberg.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Yes. The Austrian legal system permits ownership of the whole land and ownership of parts of the land (co-ownership). A special form of the co-ownership is the condominium-ownership. It is the primary form of co-ownership in which specified parts of a piece of real estate are separately and individually owned, combining partial ownership to the land with exclusive rights of use to certain parts of the land (e.g. a specific apartment) .

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Yes. The Austrian legal system permits joint ownership of real property. Physical persons and legal entities may hold property individually or jointly. Some exceptions with respect to condominium-ownership are made.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

Austrian real estate law is based on the principle that the owner of the land is also the owner of the non-independent parts that are erected on it. But there are two exceptions to this rule:

- Superstructures (‘Superädifikat’)
- Building Rights (‘Baurecht’)

Superstructures are constructions which are erected with the intention not to leave them on a permanent basis. The type of construction and the intent of the parties are relevant for this legal structure. The erection of a superstructure need not be registered in the land register, but the subsequent transfer of the ownership of the superstructure to a third party does. Superstructures can, therefore, not always be seen by consulting the land register.

A building right is the right to erect a building on a plot of land. This right becomes existent upon registration in the land register. The right lasts between ten and 100 years. Upon expiration of the building right, under the law the property owner must compensate the previous owner of the building right, if not agreed otherwise, with 25% of the residual value of the building.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

In Austria all properties are formally registered in the land register, and a buyer in good faith may rely on the accuracy and completeness of the information that is registered in the land register.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

The finance of the transaction depends on the investor. Public listed investors or larger entities collect money through (i) over-the-counter products or (ii) securities/bonds or (iii) bank loans or other financial instruments. Private individuals mostly use bank loans.

Yes, it is typical for banks to secure the real estate purchase price through a (first rank) mortgage. However, they usually also secure the repayment of the loan through assignment of the income from the property (rent) and other means (personal guarantees etc.).

7. What should be taken into account when thinking about the financing of a purchase project in your country?

One should at any rate consider (i) the taxes involved, (ii) zoning restrictions (iii) current changes in the legislation for building permits, (iv) maximum permissive rent for certain real estate objects according to the lease law, and (v) possible changes in the Austrian Rental Act.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

Real property transactions are subject to real estate transfer tax corresponding to basically 3.5% of the purchase price (§ 7 GrEStG). However, this does not apply in case of a purchase without consideration and for agricultural and forestry real estate.
When real property transfer tax is applicable, no additional VAT is payable. This rule does not apply when the parties choose to transfer the property with VAT (at a rate of 20%) in order to be entitled to deduct pre-tax.

Registration in the land title registry will attract additional cost of approximately 1.1% of the purchase price. Notary costs (that are negotiable) and lawyers' fees and real estate agents' finding fees, if any, come on top. A rule of thumb is to assume some aggregate 10% of the purchase price max (but certainly not more) overall in side costs.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

Before 2012 the sale was tax free if the real estate property was owned for more than ten years as of the signing of the contract.

For real estate property this legal situation changed as of 1st April 2012: basically, private and business property sales are subject to the real estate profit tax ('Immobilienertragsteuer') of 30% (since 1st January 2016).

Real property which was bought after **31st March 2002** is subject to the new real estate profit tax (in case of sale) of 30%, which is calculated from the difference between the sales price and the acquisition costs less an inflation allowance of 2% per year after ten years (max. 50%). This means that, in case the property is sold after e.g. 35 years, only 50% of gains on sale of property can be taxed with 30% (since 1st January 2016) so that effectively a real estate profit tax of 15% has to be paid.

Real property which was bought **before 31st March 2002** is subject to an effective tax-rate of 18% or 4.2% of the sales price (not the capital gain), depending on whether the property has been rededicated.

Exempted from taxation is the sale of private residential buildings/condominiums, if the seller has used them permanently for 2 years as main residence or if within the last ten years prior to the sale the seller used them at least 5 years permanently as main residence and in both cases the seller abandons the main residence and uses the money to purchase a new object.

If the sold building was constructed by the owner himself, any profits in context to the building itself are basically tax-free.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

There are no general restrictions on repatriation of funds from Austria. For exotic receiving locations, currency exchange control limitations or embargo rules may apply.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

In Austria, there is the general rule that the buyer of a real property has the right to terminate the lease agreement by observing the statutory notice period (Section 1120 of the Austrian Civil Code), unless there is a duty to take over any existing lease agreements and, therefore, the buyer is not free to terminate the existing lease agreements; this is the case if (i) the lease agreement is registered in the land register or (ii) the Austrian Rental Act applies (in whole or in part) to the lease agreement. In each such case the buyer automatically steps into the landlord's position under the lease agreement by operation of law. Given that the Austrian Rental Act applies (at least partially) to at least 90% of residential lease agreements and probably to 50% of commercial lease agreements in Austria, the general rule which allows the owner to terminate leases has less significance than one might initially think. If the buyer has the right to terminate the lease agreement, the lessee has the right to demand compensation for the time value of certain of his investments into the property.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

An official approval by the building authorities is needed for changing the use of a building. The building authorities may approve the change of the use of a building only if the intended use is permitted

according to the zoning plans. One may apply for a change of the zoning plans, but there is no statutory right to force the authorities to change such plans.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- notarial costs?
- land register?
- real property transfer tax?
- advising lawyer (due diligence)?
- estate agent?
- others?

- **Notarial costs:** €134.90 plus 20% VAT for the notarisation of the first signature and €67.50 plus 20% VAT for the notarisation of all further signatures on the purchase agreement
- **Land register:** €55,000 (1.1% of the purchase price) for the registration of the ownership
- **Real estate transfer tax:** €175,000 (3.5% of the purchase price)
- **Advising lawyer:** depending on the agreement with the lawyers. Usually lawyers charge by the hour (€250 to €450 plus 20% VAT), so that fees are dependent on the complexity of the transaction. It is also common to charge a percentage (1% to 3% plus 20% VAT) of the purchase price as a lump-sum fee, depending on the complexity and the value of the transaction.
- **Real estate agent:** up to 3% of the purchase price plus 20% VAT
- **Others:** about €100 to €300 for the approval by the provincial authorities, if required under the Land Transfer Act of the respective province; 1.2% of the amount of a registered mortgage as court fees for the registration in the land register.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

In Austria owners are subject to a yearly land tax ('Grundsteuer'). The tax rates are different in each municipality and range from approximately 0.2% to 2% of the (historic) value of the property ('Einheitswert'). The value for tax purposes is not the real value of the property, but significantly less. Therefore, the actual tax rate is about 0.05% to 0.3% of the real value of the object per year as land tax.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

The costs of a property manager differ from property to property, are normally calculated on the basis of the rentable space of the real property and range from €3.59 to €4.50 per square metre per year. The costs (at least parts of them) for the property management are usually charged to the lessees as part of the general operating costs.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country

- directly in real estate?
- through real property funds, open or closed ones?
- through other clear and secure financial products?
- In commercial real estate or in residential property?

We would definitely recommend investing in commercial and residential real estate in Austria, since the prices in Austria's cities are relatively low compared to other European cities and have been mounting over the last ten years; there is no end to such trend in sight. Furthermore, the interest rates obtainable from Austrian banks (who usually finance 50% of value of property, as evidence by an expert opinion, for periods of ten to 20 years against first-rank mortgage) are very low at the moment and may also be agreed at a fixed rate over the period of the loan.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

All nine Austrian provinces have different legal restrictions for the purchase of real estate by non-EU/EEA residents or entities. These restrictions are governed by the Land Transfer Acts (state law). These Land Transfer Acts require the buyer of a real property to have a connection with Austria either by nationality (for residents) or business location and shareholders (for entities). The specific requirements for the purchase of real property, however, are different in each of the nine Austrian provinces. The fulfilment of these requirements by the investor needs to be checked in the course of a due diligence.
Of all nine provinces, Vienna has the most liberal rules. The purchase of real estate in Vienna by non-EU/EEA residents or entities can be effected by establishing the right company structure for the acquisition.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

This depends on several criteria, including
A. nationality of the investor
B. type of activity
C. possible restriction according to zoning plan

Due to the European freedoms of services and establishment, there are practically no restrictions applying to EU member state citizens that would differ from Austrian inhabitants who want to run a business. Due to numerous treaties with other countries, the same principle applies to many non-EU citizens. Any remaining restrictions and any required approval are mostly depending on the envisaged type of business activity. As mentioned above, zoning plans will govern the specific use of a plot of land.

19. Could your firm assist foreign investors in
- Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?

- Developing construction projects?
- All legal aspects involved in these contexts?

We are capable of assisting clients in all aspects of real estate and construction projects.

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BULGARIA
VARADINOV & CO. ATTORNEYS-AT-LAW

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

According to Article 18 of the Bulgarian Obligations and Contracts Act (OCA), the agreement for real estate transaction should be done as a title deed, signed before and certified by a public notary. This legal stipulation is a mandatory one and the form set in the law is for the validity of the transaction. The sale-purchase agreement is envisaged in Article 183 and following of the OCA, as well as in Article 318 of the Commerce Act (in case the transaction is a commercial deal). Bulgarian legislation provides that a transaction shall not be deemed as a commercial deal when the object of the sale is for a personal usage and the buyer is an individual (not a company).

In order to perform the formalities related to the deal at the notary's office, the parties have to appear before the notary to sign the title deed. The notary public acting in the area where the property is located shall have the respective jurisdiction. The notary public may not execute notary actions outside his/her region. The issuance of notary acts which are subject to entry at the official property register shall be carried out only in the office of the notary public during the working hours. The seller must submit to the notary the original documents evidencing the ownership right over the property. The notary will verify whether the property is located within the area of his/her jurisdiction. He/she will also verify the identity, capacity and representative power of the persons appearing to him/her. The notary will verify that there are no legal impediments to the transfer of the property, that the presented draft title deed meets the legal requirements and that the seller is the actual owner of the real estate.
According to the Article 580 of the Civil Procedural Code (CPC) the notary act (title deed) shall contain:

- The year, month, day and, where it is necessary, also the hour and the place of its execution;
- The name of the notary public executing it;
- The full names and the personal identification numbers of the persons who participate in the procedure, as well as the number, date, place and authority which issued their identity documents;
- The content of the act;
- Short note of the documents, certifying the presence of the mandatory legal requirements of CPC (above described);
- The signatures and full names of the parties or their proxies in writing and a signature of the notary public.

The notary shall read to the participating persons the content of the act. If they approve it, the act shall be signed by them before the notary public, and if it has already been signed, they shall write their full names and confirm their signatures. In case any of the participating persons cannot sign because of illiteracy or any disability, the CPC envisages some special rules (Art. 189 CPC). The title deed shall be signed by the notary public too. When it is necessary to make any amendments, supplements or abbreviations in the act, an explicit note to that effect shall be made, that shall be signed as the act itself. On the day of the performance of the formalities related to the deal, the notary shall present the title deed

before a property registrar at the registry agency in the registry office where the real estate is located. The Judge of Registration shall order the registration of the deed in the property register at the registry agency, which ensures and protects the rights of the buyer in case of possible claims of third parties. Following the completion of the entry, the buyer shall have every right to dispose with mortgages, rentals, sales etc. The entry of the title deed at the property register shall bring the transaction to its end.

After completion of the real estate transaction, the buyer shall declare the new property, filing a tax declaration levying an annual state tax. The declaration shall be filed at the local taxes and fees department at the municipality where the property is located. In case of purchase of a building under construction, the owner shall also apply to obtain a use permission and then shall declare the property within two months.
Documents which should be presented at the notary office in order for the deal to be certified:

- A written request addressed to the notary public to initiate a notary procedure;
- Documents regarding the ownership rights of the seller, such as notary title deeds, sale and purchase agreements with respect to state or municipality property, court or voluntary partition, court resolutions etc.;
- Extract of the cadaster plan or scheme with regard to the property in sale;
- tax certificate of the property in sale, issued by the municipality where the estate is located;
- Written declaration signed by the seller for lack of public obligations for taxes and social security payments;
- Declaration regarding the citizenship and the civil status of the parties;
- Incumbency certificate with respect to the property in sale, issued by the registry agency;
- Document regarding paid local state tax;
- Other documents as the case may be – for example, an extract from the relevant architectural plan, an inheritors' certificate, a notary-signed authorisation in case the party is acting by a proxy, a civil marriage certificate, a marriage status certificate etc.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Bulgarian legislation regulates different sorts of ownership such as ownership of the whole land and the construction as well as ownership of only one unit or several units. The law envisages special rules for management of buildings in condominium ownership. Public relations related to the management of the common parts of such buildings and the rights and obligations of owners, users and occupants of individual units or parts thereof are regulated under the Condominium Ownership Management Act (COMA).

Special management regime of the common parts of buildings under condominium ownership arrangements is introduced for buildings constructed in closed-type residential complexes. The management may be arranged either under the COMA (general meeting of the owners), or by a written contract with notary-certified signatures entered into by and between the investor and the owners of the individual units. The contract shall be registered by the investor in the registry agency on the lot of each individual unit and is referenced to the subsequent purchasers. Exceptions to the management

of the common parts of building under condominium ownership arrangements are introduced for buildings containing up to three independent units belonging to more than one owner. In these cases, the provisions of the Ownership Act regarding the joint ownership shall be applicable.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Bulgarian legislation permits joint ownership of real property. The relevant legal act is the Ownership Act (Articles 30-36). The law envisages that the right of ownership may belong jointly to two or more persons – the state, municipalities and other corporate bodies and individuals. The shares of the persons shall be deemed equal until proven otherwise. Each joint owner shall participate in the benefits and burdens of the common property in proportion with his share.

Each joint owner may use the common property in accordance with its purpose and in such manner as not to interfere with the other owners' use according to their rights. When the common property is used personally only by some of the joint owners, they shall owe compensation to the other joint owners for the benefits of which the latter are deprived from the date of a written request.

The common property shall be used and managed in accordance with the decision of the joint owners owning more than half of the common property. If a majority cannot be formed or if the majority's decision is damaging to the common property the regional court, at the request of any of the joint owners, shall settle the issue and take the required measures and, if necessary, appoint an administrator of the common property.

A joint owner may sell his share of the immovable property to a third party only after presenting a proof in writing to the notary public that he has made an offer to the other joint owners to purchase the said share under the same conditions and declaring in writing that none of the said joint owners has accepted the offer. If the declaration is false or if the third party purchases the joint owner's share under conditions agreed fictitiously to the detriment of the other joint owners, the interested joint owners may purchase the said share under the really agreed conditions. The action must be brought within two months of the sale. Where a joint owner has not paid the due sale price within one month of the entry into force of the court decision, the said decision shall become null and void *ex lege* (Article 33 of the Ownership Act).

Each joint owner may, despite agreement to the contrary, ask for a partition of the common property, except where the law provides otherwise or if this is incompatible with the nature and purpose of the property.

According to the Bulgarian legislation, an owner of a real estate may be an individual, a legal entity (a company), the state, the municipality etc.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

The Bulgarian Ownership Act permits different owners of the land and the building on it to exist (Article

63). The owner may transfer to another person the right to construct a building on his land, whereby the other person becomes owner of the building. The owner of the land and the building on it may also transfer, independently from the land, the ownership of an already existing building. Ownership of a building independently from the relevant land under it may also be created by a voluntary partition.
The owner of a building may use the land to the extent that is necessary for the use of the building according to its purpose, unless the act with which the right is ceded contains another provision.
When the right of use of a building is created with a fixed time period, after the expiration of said period the ownership of the building shall pass gratuitously to the land owner.
The owner of the building (only) may sell it to a third party and the provisions of Article 33 regarding the joint ownership shall be applied *mutatis mutandis* (Article 66 of the Ownership Act).
The right to construct a building on another's land (Art. 63, para 1) shall be extinguished in favour of the owner of the land through limitation if it is not exercised within five years.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

In order to be completed, each real estate transaction shall be registered with the property registrar at the registry agency. Articles 112 and 113 of the Ownership Act shall be applied. The good-faith purchaser shall be protected upon entering of the transaction in this formal public register. Sale and purchase transaction title deeds, prior to their recording in the official property register, may be defeated by third parties who have earlier acquired from the same owner and recorded real rights over the same real estate.

II. Financing tools of the transaction

6. How do investors finance the transaction? Are mortgages the typical way of coverage for banks?

In the last two years (2017-2018) the usual way of financing a real estate purchase is on a cash basis and/or on bank credit for approximately 50% to 70% of the purchase price. The bank credit shall be very often secured by a mortgage over the real estate in sale, by pledge of company shares, receivables and/or equipment, by promissory note(s), personal guarantees etc. These bank securities shall be given by the buyer himself or by a third party, or both.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

First of all, it is very important that the ownership of the seller be researched in detail. This may be done by the notary public, but usually it is the lawyer who shall examine the property's history and current status. The next step is a financing of the transaction to be negotiated and provided. If the buyer will not pay the whole amount for the real estate's price at the moment of signing of the notary deed, it is very likely a preliminary sale purchase agreement to be signed. It should be in writing. No notary certification of the signatures of the parties is required. The preliminary sale purchase agreement provides all the core clauses of the notary deed to follow, but the preliminary agreement does not transfer any property/ownership rights. Each of the parties might claim before court the preliminary agreement to be announced as a final agreement and, if this is the case, the transfer of ownership shall be effective by the court ruling and not by a notary deed.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

The costs incurred during the sale of a real estate property under the provisions of Article 186 of the OCA shall be shared in equal parts between the parties, unless otherwise agreed in a written agreement. The following fees shall be paid upon the performance of the formalities of the deal at the notary's office:

- Notary fee calculated as per the Notary Fees Tariff on the certified pecuniary base of the deal (in case of difference between the tax evaluation and the sale price, the higher amount shall be applied). The maximum of this fee shall be to the amount of BGN 6,000 (€3,068) + 20% VAT;
- Fee for the registration of the title deed with the property registrar at the registry agency, amounting to 0.1% of the certified pecuniary base of the deal (not less than 0.1% of the tax evaluation of the property);
- Local state tax amounting to 3% of the certified pecuniary base of the deal. The specific tax rate for each municipality shall be determined by its municipal council. For example, the local state tax for Sofia for 2019 is to the amount of 2.5% of the deal price;
- As the case may be, some additional charges may be required to be paid, such as a remuneration to the real estate agent (determined by negotiations, usually up to 2% to 3% of the sale price; remunerations to lawyers or other consultants, for example construction consultants etc.);
- State fees with regard to check-ups of the property at the registry agency, certificates, etc. (under BGN 200/ €102);
- There may be some additional fees in case, for example, a mortgage shall be entered over the property in sale. If the deal price is up to €5 million, the fees for a legal mortgage shall be approximately up to BGN 13,700 (€7,005) and, for a voluntary mortgage, up to BGN 17,300 (€8,845).

9. Do you have to hold the property for a specific time with respect to tax reasons or is it in this context no problem to buy and sell property on a short-term basis, for example within a year?

Generally, no. According to the Bulgarian Income Taxes on Individuals Act, the state tax due by the seller of a real estate shall be to the amount of 10%. The law envisages some exceptions to the rule. In case the deal is for one real estate for residential usage, and provided that more than three years have passed since the date of the acquisition, then the income from the transaction shall be non-taxable. The same shall apply also for the income incurred from the sale of two real estates (possibly a house and the plot under it), as well as for agricultural and forest estates, regardless of their number, provided that at least five years have passed since the date of their acquisition.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Yes, the seller may get his money out of the country. Before that, he has to pay all his public duties and obligations due to the state and/or municipality, of course.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

The Obligations and Contracts Act provides that in case of a transfer of the leased real estate, the lease agreement shall remain valid with respect to the transferee if it has been registered with the property registrar at the registry agency.

A lease contract concluded before the transfer of the property which has an authentic date (for example, a notary-certified one) shall be binding upon the transferee for the term stated therein, but not for longer than one year from the date of transfer. If it does not have an authentic date and the lessee is in possession of the property, the contract shall be binding upon the transferee as a lease contract for an indefinite term.

The lessor shall be liable for compensation to the lessee if the latter is deprived of the use of the leased property prior to the expiration of the term of the lease agreement, this deprivation being due to the transfer of the property (Article 237 OCA).

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

In case the owner wishes to change the use of a building from residential to office space or vice versa, a special administrative procedure shall be carried out. The applicable legislative act shall be the Spatial Development Act (SDA). There are stronger requirements regarding change of use from residential to health service or dental centre. Special procedures shall be performed. The use of a real estate shall be important also with regard to the declaring of the property at the National Revenue Agency.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- notarial costs?
- land register?
- real property transfer tax?
- advising lawyer (due diligence)? – estate agent?
- others?

Generally, the market expert's advice is to think of 10% when it comes to total amount of costs related to a real estate transaction.
In case the real estate transfer price shall be to the amount of €5 million (BGN 9,779,150) and the property is located in Sofia, the costs shall be approximately as follows:

- Local state tax (2.5% of the price) – BGN 244,478.75 (€125,000.00)
- Registry Agency fee (0.1%) – BGN 9,779.15 (€5,000.00)
- Notary fee (maximum BGN 6,000) – BGN 6,000 (€3,067.75)
- VAT over the notary fee (20%) – BGN 1,200 (€613.55)
- Bank commissions – approximately BGN 2,542.58 (€1,300.00)
- Total: BGN 264,000.48 (€134,981.30)

The fees due to lawyers and/or a real estate agent/agency shall be determined by a mutual written agreement between the parties. They are approximately 2% to 3% of the transaction price for lawyers and the same for real estate agents.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

A property tax and a 'waste management' fee shall be due on annual basis. Taxable persons shall file a tax declaration within two months following the acquisition of the property. Later on, a declaration shall be filed only in case of changes in the circumstances declared – for example, when the building is partially or totally destroyed; the real estate has changed from taxable into non-taxable or vice versa; the property has become or ceased to be a primary residence; improvements have been made in the property that will alter the tax evaluation etc. The local state tax and the 'waste management' fee shall be paid to the account of the respective municipality, depending on the location of the property.

For 2019, the property tax rate in Sofia city is 1.875 pro mile from the tax evaluation of the property. The waste management fee for residential properties is 1.6 pro mile from the tax evaluation.

The amounts due for the property tax shall be notified to the taxable persons and shall be payable in two equal instalments within the following deadlines: first instalment from 1st March to 30th June, and the second one until 30th October of the year for which the tax is due.

The manner of payment of the 'waste management' fee shall be determined by the municipal council. The municipality shall notify the taxable persons of the respective period and payment deadlines. The fee may be paid in a different number of instalments, depending on the method adopted in the relevant municipality. It is usually acceptable to pay in two or four equal instalments within a year.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional caretaker for the purchased property? How does the caretaker normally charge for their work?

The costs shall be fixed in the individual agreement concluded by and between the owner of the real estate and the caretaker. The price shall depend on the property size and value, its location, the duration of the agreement, the liabilities of the caretaker etc.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
- **directly in real estate?**
- **through real property funds, open or closed ones?**
- **through other clear and secure financial products?**

In 2017-2018 Bulgaria registered a record high amount of investment deals. 70% of the total volume was attributable to the sale of shopping centres. International buyers outpaced Bulgarian investors in terms of share of all deals, with South African investors having 71% of the total volume of deals.

As of 2017, the Bulgarian real estate market is getting better and the property demand is gradually increasing. This is true especially for the city of Sofia and the region. We would advise a foreign investor to buy a real estate in our country directly or via a company. Of course, there are property funds and

other financial products acting on the real estate market.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

In Bulgaria, foreign citizens and foreign companies can directly acquire buildings, unit(s) within a building and limited property rights (for example construction right, right of use etc.). As a result of the accession of Bulgaria to the European Union (EU), specific rules related to acquisition of land were provided for EU citizens ('resident citizens') and entities registered in the member states of the EU and the European Economic Area ('EU residents and entities'). Relevant changes were implemented in the Bulgarian Ownership Act, Forestry Act, Protected Areas Act and Agricultural Land Ownership and Use Act.

According to the applicable legislation, EU residents and entities may acquire ownership title over land in Bulgaria in accordance with the requirements specified by law and in compliance with the provisions of the Accession Act of Bulgaria to the EU. The Accession Act provides that Bulgaria, upon its discretion, can keep the restrictions for acquisition of land by citizens and entities from the member states: (i) for five years starting from 1st January 2007 for the land provided for second residence, and (ii) for seven years starting from 1st January 2007 for agricultural land, forests and forest land.
The five-year transitional period (i) expired on 31st December 2011. Therefore, EU residents and entities can now acquire urban land in accordance with the requirements specified by law. Citizens ('non-resident citizens') and entities of countries not members of the EU and the EEA may acquire ownership title over land under the terms of an international agreement ratified under the terms provided for in the Constitution of the Republic of Bulgaria, which agreement has been promulgated and entered into legal force.
The seven-year period (ii) expired too. In the middle of 2014 some amendments were made in the Agricultural Land Ownership and Use Act (Article 3c). The law envisages that individuals and legal entities who have been resident or established in the Republic of Bulgaria for more than five years may acquire right of ownership over agricultural land.
The same legal act also provides that legal entities (companies) with registrations under Bulgarian law of less than five years may acquire right of ownership over agricultural land if the partners in the company meet the requirements under the previous paragraph.
Foreigners (non-resident or resident citizens) may acquire ownership title over land in case of legal succession. In case of inheritance through legal succession of agricultural land, forests or forest land, if the foreigners do not fulfil the conditions provided for in the Accession Act of Bulgaria to the EU, or when something else is not provided for in an international agreement, they shall be obliged, within three years following the revealing of the inheritance, to transfer the ownership to persons who have the right to acquire such estates.
Indirectly, foreign companies and foreign citizens may acquire any type of real estate, including urban land, by registering a Bulgarian company to act as a buyer. It is possible for such a company to be 100% owned by a foreign investor. Another possibility for an indirect acquisition of a real estate in Bulgaria by a foreign company or a foreign citizen is to buy the shares in the capital of an already existing Bulgarian

company, which then may act as a buyer of the real estate. Foreign companies and foreign citizens, furthermore, can acquire the shares in the capital of a Bulgarian company which already owns a real estate in Bulgaria.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

The terms and conditions under which nationals of other member states of the EU and their family members, as well as nationals of the member states under the EEA Agreement and the Swiss Confederation and their family members enter, stay and leave the country are governed by the EU Citizens and Member of Their Families Entry, Residence in and Departure from the Republic of Bulgaria Act (EU Citizens Act). EU citizens may enter and reside in the country up to three months without visa, with a valid identity card or passport. After that period, they have to obtain a certificate of long-term or permanent residence of EU citizen. In order to obtain such a certificate, they shall file an application to the Migration Department at the Ministry of Interior. The requirements of the EU Citizens Act shall be met.

The terms and conditions under which nationals of states that are not members of the EU (third states) may enter, stay and leave the country are stipulated in the Foreigners in the Republic of Bulgaria Act (The Foreigners Act). A foreigner may enter the country if he/she has a valid personal travel document and visa, if required. No visa is required where this is stipulated in Regulation (EC) 539/2001 of the Council, in other relevant EU acts, in international treaties to which Bulgaria is a party or in any act of the Council of Ministers. No visa is required where the foreigner is a holder of a valid permission for continuous, long-term or permanent residence in the Republic of Bulgaria. Foreigners who own property in the country and who wish to reside in the country may apply for a short-term visa for the purpose of intended stay of no more than three months in any six-month period from the date of their entry in the country. For more information and visa application procedures, please visit the website of the Bulgarian Ministry of Foreign Affairs on www.mfa.bg.

19. Could your firm assist foreign investors in

- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

Our firm, Varadinov & Co. Attorneys-at-law, may render to the client legal services regarding all legal aspects involved in investment and real estate transactions, starting from finding interesting real estates, consultations with respect to the appropriate investment products, structuring of the deal and assisting in construction projects, including assistance during the implementation of the whole procedure at the notary public's office and the transaction closing and advice on the respective tax effects.

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CHILE
GRASTY QUINTANA MAJLIS

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

First, a sales purchase agreement must be signed by the seller and the buyer through a public deed before a notary public. The agreement must contain certain specific information, such as a detailed description of the property, the price and how will it be paid.

However, the sole execution of the agreement does not transfer the ownership of the property. The ownership is legally transferred to the buyer only after the public deed that contains the sales purchase agreement is duly registered at the property register of the competent real estate registrar (i.e. the registrar who has jurisdiction over the territory where the property is located). The result of this process is a registration that declares that the purchaser is the owner of the property.

The registration process usually takes two to three weeks. Consequently, it is common that the parties also agree for the funds to be held in escrow by the notary before whom they signed the sales purchase agreement, with instructions to not release the payment until the seller proves that the registration process has been completed.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Yes, it does. The Chilean Civil Code allows owners – in broad terms – to dispose of their property arbitrarily, in accordance with the provisions of the law. Condominium is possible.

In practical terms, however, procedures to divide or build on a piece of land, for example, require authorisation and/or have to be performed under the supervision of different state entities (usually municipalities and the Chilean Tax Authority, but, under certain circumstances, institutions like the Ministry of National Assets and the National Council of the National Indigenous Development Corporation may also be involved).

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Joint ownership is permitted in Chile. Individuals and legal entities alike, such as corporations, can acquire and hold real estate.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

It is that way in Chile. Ownership of the land implies ownership of its buildings, although there are some legal exceptions. Under normal circumstances, it is not accepted for the land and the constructions erected on it to have different owners.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

Yes. The ownership of a real estate property in Chile is only determined by under whose name said property is registered at the property register of the competent real estate registrar. There cannot be transfer of real estate without its corresponding registration.

Usually, owners and purchasers are protected, since real estate registrars analyse the documentation of every registration request to make sure that they are in accordance with the law. Real estate registrars are legally obliged to refuse to perform a registration if, for any reason, they deem it is not legally admissible.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

Real estate transactions in Chile are usually financed through loans guaranteed with a mortgage, lease-to-purchase agreements and the purchase of shares of investment funds that own the properties.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

Foreign investors should seek professional tax advice in Chile before making any financing decision, as loan interests, for example, have different treatment depending on the nationality of the lender, if the loan has been agreed with a banking institution or not, and other variables.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

Under certain circumstances, the seller of real estate may be subject to pay Value Added Tax ('IVA'). This would be the case if the seller, for example, usually sells real estate. The VAT rate has to be calculated on a case-by-case basis, but it is usually 19% of the purchase price with deduction of the price of the land (proportionally).

Loan agreements in Chile are subject to a stamp tax. The rate of this tax is 0.066% over the amount of the loan, per month until the due date, with a cap of 0.8%. If the loan has to be paid on demand, the tax rate is 0.332%.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

It is not mandatory to hold the property for a specific amount of time to be able to sell it without having to pay VAT. However, if the owner sells more than one property during the same year, the Chilean Tax Authority may consider it a usual activity and, therefore, charge them with VAT.

If the owner receives income from the sale, it may also be subject to income tax accordingly. However, some deductions apply.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Yes. All the profits must pay tax before repatriation.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

The extinction of the ownership right of the lessor over the leased property is one of the legal causes that, under certain circumstances, can end a lease agreement.

However, the lease agreement will not be affected by the transfer of the ownership if it was signed before the sales purchase agreement through a public deed.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

Yes, but only as long as the municipality's zoning plan allows it. It needs to be duly authorised by the Chilean Tax Authority.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- **Notarial costs?** US $450 – 1,050 approximately.
- **Land register?** 0.2% of the purchase price, with a cap of US $380 approximately.
- **Real property transfer tax?** If applicable, VAT
- **Advising lawyer (due diligence)?** Development unit, it may vary depending on the circumstances.
- **Estate agent?** 2%

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

The Chilean real estate taxes are called 'contribuciones'. These are taxes applied to owners of real estate based on the tax assessment of a property. The tax rate varies depending on the condition of the property (of agricultural nature, such as farms for crops; or non-agricultural, such as housing, parking lots and warehouses) and the assessment value.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

It is usually a percentage of the total rent in case of management (usually 10% on the monthly rent), and of the price in case of a sale (usually 2% of the price for each party). The administration fees and commissions are subject to VAT.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country

- **directly in real estate?** Yes
- **through real property funds, open or closed ones?** Yes
- **through other clear and secure financial products?** Yes
- **In commercial real estate or in residential property** Yes

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

There are restrictions for foreigners of neighbouring countries (Argentina, Bolivia and Peru) to purchase properties in certain boroughs qualified as 'bordering municipalities'.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

Unless in the case explained above, there are generally no special restrictions established for foreigners to purchase land and run a business on it in Chile.

The time and effort needed will depend on the activities that will be performed on the purchased site. Initially, it will need approval by the municipality and the Chilean Tax Authority, but entities such as the Ministry of Environment and the Ministry of Health may also be involved.

19. Could your firm assist foreign investors in

- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

Yes.

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CYPRUS
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I. Procedure for a Real estate Transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

The Cyprus procedure for ownership of real estate is extremely efficient. Cyprus is in fact one of the few jurisdictions where it is possible to conclude a contract for the sale or lease of real estate and to have freehold or leasehold title registered in your name on the same day.

The Cyprus real estate procedure is based upon the fact that each piece of land has a plot number and a title deed.

All titles to real estate are recorded in the Land Registry. Each administrative district of Cyprus, based upon the major towns of Nicosia, Limassol, Famagusta, Pafos, Larnaca and Kyrenia has a record of all plots registered in the district, a title deed for each plot and the regime of ownership, either freehold title or leasehold title attached to the said plot as well as a record of all buildings, mortgages, rights of way, easements or other interests attached to the plot.

A prospective purchaser is therefore able to be fully aware of all rights and interests registered in respect of any plot of land in Cyprus.

The Land Registry is fully computerized and copies of title deeds are readily available to owners of plots or persons having an interest in any plot.

The conclusion of a transaction with respect to real estate requires the vendor and the purchaser to appear in person, or through their duly authorized attorneys (empowered by either a general or a special power of attorney) in order to file the written documents evidencing:

- The number the plot
- The present ownership structure of the plot, including all interests attached thereto,
- The nature of the transaction (freehold or leasehold)
- The consideration for the transaction

Once the above documents are filed and approved by the district officer the parties to the transaction are required to verbally confirm before an officer of the District Lands Office the terms of the transaction that is to be carried out.

If the real estate is mortgaged the parties to the mortgage must also appear in order to either lift the mortgage (if the debt relating to the mortgage will be settled – usually pay passing over a part of the purchase price for the real estate to the holder of the mortgage (the mortgagee), or to consent to an assignment of the mortgage to the new owner of the plot.

The procedure for purchasing real estate usually commences with the signing of contract of sale. This is commonly drafted by an advocate or by a real estate agent.

The contract of sale once signed by the Vendor and the Purchaser or their duly authorized attorneys is subsequently notarized, sealed and submitted to the District Land Registry according to the District in which the plot or building is situated. The process of sale and transfer is complete at the time when the Land Registry issues a title deed in the name of the Purchaser of Lessor.

It is very common for a proportion of the total payment to be withheld by the Purchaser pending the aforementioned issuing, thus ensuring simultaneous fulfillment of the parties' respective obligations which for the Vendor may amount to clearing any mortgage on the real estate, clearing all local / municipal and central government taxes due in respect of the real estate.

Written contracts are to be preferred The benefit of a written agreement however is that it binds the Seller to the promise to sell to the Buyer who has in turn given due consideration.

This promise is actionable and can be "specifically enforced". Specific enforcement of an agreement to sell or buy real estate is an equitable common law remedy entitling the plaintiff to apply to the court by way of legal action for the court to issue an order enforcing the defendant to do what he has agreed to do – to either purchase or sell at the price recorded in the contract of sale of the real estate.

It must however be noted that specific enforcement of the agreement to sell and transfer land in the name of the Purchaser can only be achieved under and subject to the provisions of the Sale of Immovable Property (Specific Performance) Law (see above), which demands that a contract of sale be deposited at the District Lands Registry of the District in which the real estate is located.

Additionally, the legal action for specific performance must be filed within two years of the breach of contract otherwise the right to specific performance will be lost and the remedy will sound only in damages, which damages are calculated with reference to the date of the breach of contract.

In cases where the contract of sale is not specifically enforceable the plaintiff will apply to the court in damages for breach of contract.

A verbal agreement to purchase or sell or lease is also permissible and is acceptable to the District Lands office provided that verbal confirmation of the transaction is made before a district lands officer. This being said, verbal sale agreements are extremely rare as they are not capable of being specifically enforced.

2. Does your legal system permit different sorts of ownership like ownership of the whole land and construction or ownership for example only of one unit or lots of units (condominium) of the improvements?

Cyprus land law recognizes multiple ownership of real estate. The Immovable Property Law (Cap.224) in conjunction with the Regulation of Roads Cyprus and Buildings Law (Cap. 103) comprise the legal

framework for the division and ownership of land into units.
In Cyprus it is permissible for units in a building to be owned individually or for a building to be horizontally divided with different owners of each floor.

3.Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

The Cyprus Immoveable Properties Law Cap 224 provides for joint ownership of real estate. The law is so flexible in terms of ownership that an olive tree can be the subject of a ownership separate to the real estate upon which it is located.

The most common form of joint ownership is however in apartments or condominiums or housing or tourism projects. In such cases it is usually the practice for the main (within the walls) unit to be individually owned and common areas such as passageways, stairs, storerooms, parking spaces the roof and the basement to be commonly owned in proportion to the size of the individual units. Storerooms, parking spaces and parts of the roof may however be individually owned and in such cases, these are specifically referred to in the contract of sale and subsequently on the title deed.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well and/or is it possible to have different owners of the land and the building erected on it?

With the exception of ownership of units, ownership of a building is implied in the ownership of the land. As mentioned above joint owners hold everything on the land, including buildings and fixtures. Trees however such as olive trees which are capable of having a separate title deed to that of the land itself may not be jointly owned.

It should however be noted, that there is a legal obligation to register buildings and other structures attached to land for the purposes of Immovable Property tax. A District Lands office may refuse to transfer a plot of land containing an unregistered existing structure which it known to exist. Satelite technology is used by the District Lands Office to detect the presence of buildings on real estate which is the subject of a transaction and the District Lands Office will invariably request that the said building is registered upon the title deed. The only exception to this usual mode of practice is where it is obvious that the building will be demolished.

5. Is the land and/or the building registered in a formal register and is a good faith purchaser protected with regard to the entries in this formal register?

As described above it is the practice for the District Lands Office to demand that all buildings that exist on the land are registered. This results in them being mentioned and described on the title deed. Additionally, a financier (see below) who lends money for a development of real estate will also insist that upon completion of the building for which he has lent money to be built will be registered on the title deed. This is a very common provision of mortgage agreements.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

Many real estate transactions are financed in Cyprus. The rights of a lender of money in a real estate are fully protected. The manner in which a financier is protected is by the registration of a mortgage on the land.

Further, Cyprus law and banking practice recognize and permit purchase and simultaneous mortgaging of the purchased real estate. More than one mortgage or charge can attach to a piece of real estate. Mortgages and charges take priority as of the date of their Registration. No sale or further charging or encumbrance of the piece of real estate can be registered without the prior written consent of all the previous mortgagees or chargees.

The rights of a mortgagee to have his loan repaid by enforcing a sale of the mortgaged property in order to repay a loan in the event of a loan repayment default are fully secured under Cyprus law. Legislation exists for a speedy resale procedure.

This legislation was passed as a result of the Cyprus banking and financial crisis of 2013 in which almost all the country's banks were burdened with a very high ration of non-performing property loans that they could not effectively enforce due to lengthy and antiquated procedures relating to enforced sales of mortgaged property.

Since the passing of the above mentioned legislation a great proportion of the non-performing loans has been purchased by funds specializing in the acquisition and resale of mortgaged assets, thereby reducing the amount of non-performing loans in bank portfolios.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

In the past banks in Cyprus over lent and owners of real estate over leveraged (over borrowed) in order to develop real estate. In times of financial crisis or political upheaval resulting in a reduction in the value of real estate this lead to situations of negative equity, in which the value of the land fell below the value of the financial obligations attaching to the land. In such a situation both the lender and the borrower lose out and they feed the financial crisis that they have helped create. Therefore, before contemplating lending or borrowing money against real estate it is it is important for both the borrower and the lender to have an accurate professional valuation of the real estate, its ownership regime and all prior obligations attaching to the real estate.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property, for example real property transfer tax and what is the percentage of it?

It is the legal liability if the Purchaser or real estate to pay Transfer tax.
Transfer tax is proportional to the sale value of the land and is payable at the time of transfer of real estate in the Purchaser's name.
The transfer tax bands are as follows:
For transactions up to €85.430,10 there is a 3% transfer tax,
for transactions between €85.430,10 and €170.860,14 transfer tax is at 5% and finally for transactions over €170.860,14 it rises to 8%.
VAT at 15% is also payable on the transaction.

9. Do you have to hold the property for a specific time with respect to tax reasons or is it in this context no problem to buy and sell property on a short term basis, for example within a year?

There is no minimum holding time currently in force in Cyprus and therefore short term investments are possible.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Cyprus does not have any form of exchange control. Therefore it is possible to freely repatriate the proceeds of the sale of real estate.

11. If you buy real estate that is leased to one or more persons are you allowed to terminate the lease contract(s) or which restrictions have to be taken into account?

The rights of leasehold tenants are fully protected in Cyprus. Therefore, merely because on is a new owner one does not have the right to evict a sitting tenant.

However there is an exception to this general rule which allows a new owner of property may apply for a court order to evict the lessee so that the property can be used by the new owner. Such an order will however only be granted for re-development purposes. In such a case it is not unusual for the Court to either oblige the owner/ landlord to offer a similar space to the tenant in the new development or to order the payment of compensation, up to a maximum of one year's current rental.

12. mAre you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so or is it not allowed at all?

Cyprus planning legislation is based on zones. These are flexible but are in strictly enforced in certain zones. For example national parks and industrial areas where there is a very strict regime on what may be built and how it may be used.

In zones of mixed development, such as residential, commercial and retail it is very common to have mixed use buildings and provided that a building has or can achieve the specification required for example fire escapes, sufficient parking etc changes of use are permitted. The procedure for change of use is a relatively simple one. An architect and structural engineer are employed to prepare revised plans, these obtain building permit approval and are there implemented. One important point to note is that where a building is residential the permission of all owners of the units in the building is required in order to change its use into non – residential for example a doctor's or dentist's surgery.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of EUR 5 Million, particularly

– notarial costs?

Notarial costs are insignificant. They are under € 200 (two hundred).

– land register?

There is not land register fee. The only registration fee payable is the real property transfer tax (see above and below)

– real property transfer tax?

The transfer tax bands are as follows:

For transactions up to €85.430,10 there is a 3% transfer tax,

for transactions between €85.430,10 and €170.860,14 transfer tax is at 5% and finally for transactions over €170.860,14 it rises to 8%.

VAT at 15% is also payable on the transaction.

– advising lawyer (due diligence)?

– estate agent?

The estate agent's fee is usually around 3% of the value of a transaction. For very large transactions this can be negotiated. The estate agents fee is usually paid by the Seller.

– others?

Stamp duty is also payable in Cyprus on all contracts involving consideration as follows:

From €5.000 to €170.000 – 0,15%

Above €170.000 0,20% to a maximum of €20.000.

There are no other fees of any significance in a real estate transaction. One may employ a clerk to prepare the documents to be filed at the District Lands Office this is a minor cost amounting to € 200 at the most.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property, for example yearly land tax after the transfer of ownership and what is the percentage of it?

Property tax is paid in the following bands according to the value of the property:

Up to €85.000 3%
from €85.000
to €170.000 5%
Above €170.000 8%

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

Professional property managers vary in price and in quality of service provided. Developers who sell and to foreign investors usually offer a service that includes renting out the property for most of the year whilst reserving it for the owners for certain periods of the year. They usually charge a percentage

of the rental yield ranging from 5% to 10% depending upon the value of the property.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
– directly in real estate?
– through real property funds, open or closed ones?
– through other clear and secure financial products?
– In commercial real estate or in residential property?

Our advice would be to purchase directly in real estate in prime tourist or city locations. Location is the most important aspect of property in Cyprus. When contemplating purchasing constructed property of any nature the reputation and build quality of the projects previously completed by the developer are of primary importance. A very professional and thourough due diligence exercise is required for this.

17. Is any individual person and legal entity allowed to buy property in your country or are there restrictions with regard for example to nationality or registered office of legal entities? If there are restrictions are there ways to organize a domestic entity for the purchase on a valid legal structure notwithstanding?

Cyprus is a member of the EU. Accordingly, EU physical and legal persons have equal rights with Cypriots. There are no restrictions to them owning land in Cyprus.

Foreign nationals and companies, (that is non-EU national and companies controlled by non EU nationals), can own real estate with some restriction as to the size of the plot and permission from the Council of Ministers is required. This is a straightforward procedure and does not take more than one month to conclude.

Residence and Nationality
The Residence and Citizenship schemes offered by Cyprus are a very important and interesting aspect of Cypriot Real Estate law.

Residence Scheme
A non- EU national may acquire residence in Cyprus, meaning the right to indefinitely reside in Cyprus (but not to work or acquire Cypriot Citizenship) with an investment of at least € 300.000 (three hundred thousand) in Real Estate. There are no restrictions on the type or location of the Real Estate although there are restrictions in size for which Council of Ministers permission is required. This is readily granted for large commercial, residential or touristic developments.
Cyprus Citizenship by Investment Scheme
It is possible through investment to acquire Cypriot and by extension EU citizenship for an applicant and his dependents by way of investment.

The following link sets out the official government policy on citizenship by way of investment as set out by the Ministry of the Interior:
http://www.moi.gov.cy/moi/moi.nsf/All/36DB428D50A58C00C2257C1B00218CAB

In summary, the main provisions of the Cyprus Citizenship by Investment Scheme are as follows:
The investment must be of a minimum value of €2.500.000 (two and a half million) and must include a private residence with a minimum value of €500.000 (five hundred thousand).
There is a broad range of permissible investments, ranging from pure Real Estate, investments in Cypriot Businesses, investment in Government Bonds and the Cyprus stock market.

Collective investments are also permitted by groups of foreign investors.

The Cyprus citizenship by investment policy has the following key advantages over other EU country citizenship schemes:

- The only investment that is bound to remain in Cyprus is the residence costing €500.000 or more. This must stay with the applicant and his heirs but may be rented out thereby be income producing.
- The remainder of the investment may be repatriated after three years.
- Citizenship is conferred to the applicant and his family. This includes dependent children (under 18 years old or over 18 if they remain dependent due to a special need) and dependent parents living with the applicant.
- Cypriot citizenship confers full EU rights to all who acquire it.
- The granting of Citizenship is not dependent on any period of residence prior to the application being made.
- No language or assimilation tests are required.
- The whole Citizenship process may be concluded in as little as six months.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed and what time and effort are needed normally to get it?

In order for a foreign investor, that is non-EU nationals and companies, to run a business in the Republic there are some eligibility criteria which have to be met with regard to firstly the foreign investing company itself and secondly to any foreign employees intended to operate in the business. These criteria are largely concentrated on transparency as well as financial and operational soundness.

19. Could your firm assist foreign investors in

– Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?
– Developing construction projects?
– All legal aspects involved in these contexts?

Ioannides Demetriou LLC has the extensive contacts and experience with landowners, developers, contractors and potential Joint Venture Partners and is happy and able to assist persons from any location wishing to invest in Cyprus real estate.

NOTE: It should be noted that all information given above relates to the part of Cyprus under the control and administration of the government of the Republic of Cyprus. All transactions relating to land in the occupied sector of Cyprus, the part of Cyprus occupied since 1974 by Turkish troops, the so called "Turkish Republic of Northern Cyprus" an entity which is not a member of the UN and is recognized

only by Turkey are to be avoided as such transactions are subject to claims and legal actions by the original dispossessed Greek Cypriot owners.

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CZECH REPUBLIC
FELIX A SPOL.ATTORNEYS AT LAW

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

Real Estate Register

The real estate register contains information regarding all real estate property (except for small structures) in the Czech Republic. The registered and publicly accessible information includes:

- size of the land;
- evidence number of the land;
- manner of use of the land (arable land, pasture, orchard, built-up land etc.);
- evidence number of the building;
- if the building is divided into units (flats);
- owner(s) of the land, building or unit;
- exact location of the property in the cadaster map;
- encumbrances of the property;
- evidence of the titles on the basis of which changes to the registration of the property were done in the past;
- details regarding changes of ownership or other rights to the property.

All information in the real estate cadaster is held in the electronic form, and data is accessible to the general public via internet access (http://nahlizenidokn.cuzk.cz/) free of charge. Access is possible also via Google maps application (http://www.katastr2.cz/). Notaries and attorneys at law can conduct an extended search in the cadaster which includes search of all properties owned by certain individuals, details of encumbrances etc.

Purchase Agreement

Despite the fact that the agreement can be drafted without any legal assistance, it is highly recommended to seek legal advice as the whole process of transferring a real estate property and registering its title into the real estate register (cadaster) is quite complex.

The purchase agreement must include precise specification of the property as it is submitted to the real estate register, and the identification of land or buildings is crucial for cadastral proceedings.

The purchase agreement shall also include expression of the will of the parties to transfer the property and the agreed purchase price. The signed purchase agreement shall be submitted to the real estate register together with the petition for title registration and other documents if required; therefore, each purchase agreement must be executed at least in three counterparts as one must always be submitted to the real estate register.

The agreement must be made in writing and signatures must be officially certified by a notary or attorney or at the Post Office (Czech Point).

It is recommendable that a buyer completes a legal due diligence before the purchase of the targeted real estate. Depending on the size of the deal, the facts listed below can be checked either via online search in the real estate register (only up-to-date information is available online) or through a more time- and money-demanding search in the cadastral archive where all prior title documents can be reviewed by any prospective buyer, a check with the Land Authority which deals with restitution claims (requests by former owners for returning of nationalised property), insolvency registry etc.

- The seller holds a free and clear, valid and marketable ownership title. In order to avoid any risk of rescinding the transaction, the buyer shall verify that the seller and his predecessors have been the valid owners of the respective real estate;
- There are no registered or unregistered or contractual mortgages, encumbrances, possession, easements and other liens on the targeted real estate. The law provides that liens and encumbrances, once registered and valid as in rem rights, can be enforced against the new owner of the real estate if the sale transaction has been accomplished after the registration of the liens or the encumbrances with the land register;
- There are no lease agreements, pending court restitutions, enterprise pledges, limited property rights established in favour of third parties, injunctions or claims against the real estate and complaints before court or the competent cadaster body (such as pending execution proceedings or insolvency proceedings).

Escrow Agreement

Parties often decide to transfer money into escrow accounts first (either attorney´s or notarial escrow) to ensure the purchase price is paid as agreed. The escrow agreement is usually signed before or at the same time as the purchase agreement. The escrow agent's fee is mostly paid 50/50 by the parties. The purchase price is paid from the escrow either after the purchase agreement is filed with the real estate register and priority notice is marked in the real estate register or (if the buyer insist on safer procedure) after the title registration proceeding is completed by the real estate register.

Registration, Cadastral Proceedings

Transferring real estate in the Czech Republic is formally bound with registration of each transfer (or change) into the real estate register. Each petition costs CZK 1,000 (approximately €40).

The cadastral proceeding takes at least 20 days as of the day the petition for title registration is filed with the real estate register office (within this 20-day statutory period the real estate register office is not allowed to make the registration). However, the proceeding usually takes approximately 30 days, depending on how busy the real estate register office is.

When registration is completed, the real estate register sends the official confirmation. The title is transferred by registration of the purchase agreement in the real estate cadaster with an effect as of the date of filing the purchase agreement with the real estate register office. As from the date of filing of the petition, a priority notice is marked in the real estate register showing the parties of the purchase agreement and the date of filing (which in case of completion of the registration will become the date of title transfer). The same rule applies also for registration of encumbrances, which means any prospective buyer can check before filing the purchase agreement with the real estate register whether there is any pending proceeding concerning registration of encumbrance.

If you wish to access the online database in order to check the status of your application, you may do so through the online system of the real estate register (http://nahlizenidokn.cuzk.cz/), which is free of charge.

2. Does your legal system permit different sort of ownership like ownership of the whole land and construction or ownership for example only of one unit or lots of units (condominium) of the improvements?

There can be multiple owners of any property. A participation of each co-owner is registered in the real estate cadaster and is freely transferable, but subject to pre-emption right of other co-owners.
The Czech law knows condominiums (apartments). Every single unit may get a special deed in the real estate register and then it is treated as an individual property which can be subject to co-ownership, transfers, encumbrances etc.
A special type of ownership is the ownership of spouses that originates from marriage and, unless stated otherwise in a prenup agreement, the spouses own everything jointly and inseparably.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Legal entities as well as individuals can become the owners of a real estate. Joint ownership is allowed. Except for the ownership of spouses, the property is divided into shares and each share is marked in the real estate register.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

Under the new Civil Code (which is in effect from 2014) a building is part of the land, which means that the building and the land shall have the same owner(s). There is an exception to the above rule which applies to (i) buildings which have been constructed before 2014 and on 1st January 2014 the owner of such building was not also the owner of the land plot, and (ii) buildings constructed or completed in 2014 or later, provided the right to construct such building on a third party's land plot has been established before 2014. The relationship between the owner of the land and the owner of the building is similar to the relationship of co-owners, as they must notify each other with the highest priority when intending to transfer the building or land, as the other co-owner has a pre-emption right.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

Any and all lands, units or constructions of 16 m^2 (provided they are not part of the land as described herein) must be registered and transferred only through registration process in the real estate register. Generally speaking, due to a complicated history of ownership in the Czech Republic, even a duly registered ownership in the real estate register can be disputed.
Although anyone can rely on the information published in the real estate register in a good faith, the information obtained from the registry is not always perfectly accurate; therefore all titles are, to a certain extent, subject to challenge. Even though the new Civil Code protects bona fide purchasers, good faith may not be enough, depending on the circumstances of the case. These particular situations

are mostly connected with restitution claims of the real owners whose properties were somehow confiscated during the communist era (between 1948 and 1989), when such property was privatised regardless of who the real owners entitled to the property were, and ownership title was often acquired from illegitimate owners.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

Mortgages or pledges are the most typical instruments used by banks to secure their loan facilities relating to acquisition of a real estate property.
If the purchase price is financed by a bank, it usually requires a registration of its pledge over the subject of the purchase. The pledge agreement is typically signed by the seller prior to signing of the purchase agreement and filed with the real estate register shortly before the purchase agreement. The loan facility is typically released by the bank after the priority notice in respect of the pledge and the priority notice in respect of the title transfer is marked in the real estate register.
Period of transaction
The standard period of transaction depends on the deal itself and what properties or units are being transferred.
Apartment (unit) purchase usually takes less than purchasing a land or set of lands. It is very common for the parties to enter a future contract, which provides the buyer with a better negotiation position when applying for a mortgage or other bank loan.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

Here are key ingredients to a successful purchase of a real estate, all of which should be considered by anyone who intends to buy a property.

- Location.
- Credit history.
- Type of property.
- Buy or build. This aspect does not only represent the aspect of money, but also time as a currency. Construction of a new building requires a complex of various documents and permits. The project manager/owner/builder must be prepared for a rocky road and waiting time up to several months until the project is finally approved by the building authority.
- Restrictions which might limit the use of the property or impose special obligations on the owner.
- Content of the lease agreements provided the property is leased out, including rental income.
- Fully refurbished or reconstruction needed. The overall state of the property should reflect its market price. It may be mentioned in the purchase agreement.
- Cash or loan, considering individual financial options.
- Date of purchase (and economic situation).
- Due diligence and necessary costs (legal advisor, real estate agent etc.).

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

a. Transfer tax is a one-time payment. The percentage rate is either 4% of the agreed purchase price or 75% of the property value as determined by an expert valuation of the property, whichever is higher. Such a tax must be paid by the buyer by the end of the third month after the month the transaction is registered in the real estate register.
b. Property tax on real estate is an annual fee. The owner registered in the real estate register is considered to be the actual owner and therefore the person responsible to pay the property tax. When selling a property, you must notify the real estate register, as the person registered is legally obliged to ensure the tax is paid even though he or she is not the actual owner any longer.

c. The sale of land is a subject to VAT, with the exception of (i) land which does not form a unit with a building, and (ii) land which is not intended for construction. Buildings are subject to VAT if sold less than five years after completion.

d. Income tax. Income from a sale of real estate property is subject to income tax. The difference between the income and costs is taxable by 15% (individuals) or, in the case of legal entities, such income forms part of the company's total income which, after deductions, is taxable by 19%, but several exemptions apply. Individuals who hold the property for more than five years (two years if they used the property for their accommodation) are tax-exempt.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

It is perfectly fine to buy and sell property on a short-term basis and therefore you do not have to hold it for a specific period of time. You do, however, have to comply with standard legislation and pay annual property tax and the income tax for the particular year, and perhaps even the transfer tax, unless agreed otherwise. Individuals who hold (own) the property for more than five years are tax-exempt (please see paragraph 8 herein).

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

There are no general rules or restrictions on repatriation of funds from the Czech Republic under normal circumstances involving a sale of real property.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

Unless agreed otherwise under the original agreement between tenant and landlord, a lease agreement cannot be terminated upon the change of the ownership.
According to the Civil Code, rights and obligations pass on to the new landlord from the old one. Different rules apply for lease agreements concluded before 2004.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

Change of use of a building could be quite difficult to achieve but not impossible. The relevant building authority may issue an official permit based on an application that meets all formal, technical and health requirements. Please note that such a procedure might take up to three months to complete.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- notarial costs?

Although the notarial services are not necessary, the notarial escrow is often used when purchasing a property. €1,000 to €3,000 per transaction

- land register?

€40 per petition.

- real property transfer tax?

The transfer tax rate amounts to 4%. While purchasing property worth €5 million, you end up paying €200,000 of transfer tax.

- advising lawyer (due diligence)?

depending on the arrangement with the lawyers. Normally they act with international clients on hourly rates. Most specialised law firms have a range of rates between €150 and €200. The time needed for the transaction depends on how the negotiation is complicated, but it should be somewhere in the region of 50 hours, plus 50-100 hours to carry out the due diligence (if requested).

- estate agent?

between 2% and 4% of the property price (plus 21% VAT)

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

The owner is obliged to pay the annual property tax. The property tax is generally quite low, and it is based on location, size and type of property. The municipalities may set different multipliers. Generally the property tax is quite low in the Czech Republic and does not exceed 0.5% of the market value of the property even if there are the highest multipliers.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

For those who have no experience in managing property (neither residential nor commercial) in the Czech Republic, considering the services of a professional property management agency is appropriate. The costs vary according to the location, number of services you wish to use, and size of the property. You can calculate between 1.5% and 3% of the net rent per unit/object per month.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country directly in real estate?

- through real property funds, open or closed ones?
- through other clear and secure financial products?
- In commercial real estate or in residential property?

We would advise to invest in commercial properties in the Czech Republic. The prices went down (yields of 9%-10% compared to 6.5%-7.5% in mid-2008), mortgage rates are down under 4% p.a. and unemployment is stable at 2.8%.

Realistically, further development of the real estate market is, because of a number of predictable and unpredictable factors, hard to predict. However, due to the rapid price increase and low mortgage rates, investing in real estate in the Czech Republic could be a great opportunity, mainly from the long-term view.

Direct investments into commercial properties are advisable if the value of the property or portfolio is €5 million or more. Individual investment into residential properties may work if the value of the property/portfolio is €500,000 or more.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

There are no restrictions regarding nationality or registered office of legal entity.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

The same rules apply to Czech national and foreigners, and the same permits or approvals must be obtained. Investors from EU member states mostly need only to notify the authorities about their business activity in the Czech Republic and to submit evidence of their licence from the country of their registration. Investors from third countries must comply with specific requirements. In general, any investor may establish a company in the Czech Republic (the process takes circa four weeks, but can be completed also in a few hours if an investor purchases a readymade SPV) which is then treated as a Czech entity to which no restrictions apply.

19. Could your firm assist foreign investors in

- Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?
- Developing construction projects?
- All legal aspects involved in these contexts?

Yes, we can assist foreign investors in all legal aspects regarding real estate. AKF deals with numerous and diverse real estate transactions, including construction projects and organising legal and corporate structures.

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FRANCE
BERSAY & ASSOCIÉS

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

There are two main purchasing structures of real estate assets in France:

- direct real estate asset purchase: a notary has to be involved for the drafting and the registering of the deed of sale with the mortgage registry and the recovery and payment of transfer taxes (around 5% of the purchase price);
- indirect purchase through the purchase of the company owning the asset: the use of a notary is not mandatory, and the basis of the transfer taxes will be decreased from the company's debts.

For both types of purchase structure, the procedure has the same main phases.

1.1 Negotiation phase

The starting point for a real estate transaction is usually the sending by the prospective purchaser of a letter of intent or indicative offer. This letter has to be carefully drafted in order not to be qualified as a final agreement on main terms and conditions of the sale, which would then be binding for the parties, notwithstanding the result of the due diligence.

This phase triggers, for structured investments, the due diligence phase and negotiations on the main terms of the transaction.

Apart from a few mandatory technical documents for asset deals (notably asbestos inspection report, energetic performance tests, presence of lead paint for residential premises), the content of the information to be provided by the seller is free.

Article 1112 *et seq.* of the French Civil Code provides that each party has to negotiate in good faith. This includes an obligation to (i) provide the other party with information that each party can presume to be of importance for its counterpart and (ii) keep the content of the negotiation confidential.

1.2 Preliminary agreements

Once the terms of the transaction are agreed, the transaction is usually split in two phases: (i) a preliminary agreement (signing) followed by (ii) a final deed of purchase (closing). The preliminary agreements can take various forms:

- call option: the parties can choose to enter into a call option ('*promesse unilatérale*') pursuant to which the seller undertakes to sell and the purchaser benefits from an option to purchase;
- undertaking to sale and purchase ('*promesse synallagmatique*') pursuant to which both parties are bound to complete the transaction.

Such contracts, even in the case of direct asset sale, do not require to be notarised. Their content usually covers:

- the price (or price determination formula, in the case of share sale);
- list of condition precedents to be fulfilled prior to closing (financing, building permit, absence of

pollution etc.) and procedure (condition precedents latest fulfilment date etc.);
- deposit guaranteeing indemnification of the seller in case the purchaser fails to complete the sale, despite all condition precedents being fulfilled (usually 5% to 10% of the property value);
- transfer of shareholders' loans (in the case of share sale);
- representations and warranties of the seller (with or without caps, deductibles and claims periods limitations);
- obligations to properly manage the asset during the interim period and material adverse change clauses.

1.3 Deed of sale

For direct real estate asset purchase, once the option is exercised or the conditions precedent are met, a notary is involved for the drafting and the registration of the deed of sale with the mortgage registry. The notary collects all appropriate documents with respect to the real estate.
The notary collects the purchase price, which will be deposited on his account before its transfer to the seller.
In case of purchase of the company owning the asset, the use of notaries is not mandatory. Should the company be considered as having its assets mainly composed of real estate assets, the basis for the determination of the transfer taxes will be the value of the real estate properties, minus the company's debts on closing date.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

There are indeed various systems of shared ownership under French law.

2.1 Co-ownership ('*Copropriété*')

Co-ownership is used to manage common areas of large buildings.
Each owner of private units in the building is deemed to own a fraction of the common areas (entrance halls, staircases, roofs etc.) and buildings equipment (elevators, boilers etc.).
The voting rights of each co-owner at co-owners' meetings, and the split of the charges between the different owners is set by law.
Co-ownership regulations ('*réglement de copropriété*') define the authorised uses of the co-ownership and potential prohibitions.

2.2 Allotment ('*Lotissement*')

A subdivision is the split of a plot of land into one or more lots for construction purposes.
Regulations applicable to each plot (including authorised constructability) and management of common areas and equipment (if any, such as access roads, mains etc.) are set out in the '*cahier des charges du lotissement*'.
In case common areas need to be managed, the various owners usually create an owners' association ('*Association Syndicale Libre (ASL)*').

2.3 Division into volumes ('*Division en volume*')

Division into volumes applies to a three dimensionally defined property. In a division into volumes, the

property is divided into units of different shapes and size, delimited horizontally and vertically.
The right of ownership grants the owner the right to build only within the limit of the latter's unit. Under this structure, there are no common areas or equipment, and legal relations between the various volumes are dealt with by using easements (such as, for example, a support easement benefiting to the volume on top of another one). This type of ownership is used for complex projects, mostly when the ground or underground belongs to the public domain (such as the La Défense business district, for example).
There is no specific legislation applicable. In order to manage this type of ownership, the parties have to:

- define the features of each unit in the division-into-volumes deed; and
- create a management entity ('*Association Foncière Urbaine Libre (AFUL)*') in order to manage the service charges generated by common facilities (if any).

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Under French law, ownership can be jointly owned through various modes.

3.1 Joint ownership ('*indivision*')
Under this system, each joint owner owns a percentage of a property.
Joint ownership is governed by the Civil Code. The parties can (and are usually advised to) enter into a contractual agreement ('*convention d'indivision*') regulating the property's management and the decision process.
The main aspects of this regime are the following:

- joint owners cannot be forced to remain joint owner and can always ask for the property to be split (or auctioned, if split is not physically feasible);
- each joint owner may use and enjoy freely the jointly owned property in proportion of its rights and in accordance with the other joint owners' rights;
- where no joint ownership rules exist the decision process is complex, as every decision requires a unanimous agreement of the joint owners.

This form of ownership is not commonly used in the framework of a real estate investment.

3.2 Joint venture
Joint ventures are commonly used when two or more parties wish to combine their resources to develop real estate projects.
Although a joint venture could be made through a joint ownership, it is in most cases structured through a special purpose company (either limited or unlimited). Setting out the rights and obligations of each partner will then be determined in the company's by-laws and, in most cases, a shareholders' agreement.
The parties have to particularly focus on the following aspects:

- distribution of profits between parties;
- capital contribution expected from each party;
- governance;
- exit rights and obligations (put and call options, pre-emption rights, drags and tags along clauses).

3.3 Division of ownership ('*démembrement de propriété*')

The ownership is a right in rem. It is an absolute right under French law. However, the freehold can be divided between:

- the right to use the asset ('*usus*');
- the right to receive the fruits of the asset ('*fructus*');
- the right to dispose of the asset ('*abusus*').

These various rights can be split between a freeholder ('*nu-propriétaire*') which will remain the *abusus* beneficiary, and a beneficial owner ('*usufruitier*'), which will temporarily benefit from the *usus* and *fructus* rights.

The *usufruitier* is entitled to use the asset. It can lease the property and receive the rent but needs the approval of the bare titleholder to do any action that can permanently affect the value and nature of the property. Division of ownership is usually used for inheritance or tax purposes.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

The French Civil Code provides for a general presumption according to which ownership of the ground involves ownership of what is above and below it. In addition, all constructions, plantings and works on or inside a plot of land are presumed made by the owner, at his expenses and belonging to him, unless the contrary is proved.

Some alternative forms of real estate may grant an in rem right ('*droit réel*') in favour of the lessee over the property upon several conditions.

4.1 Construction lease ('*Bail à construction*')

Pursuant to the construction lease regime, the tenant undertakes to erect and/or refurbish and maintain specified constructions on a determined site, in exchange for the right to use the property for a specified term.

The main aspects of the construction lease are the following:

- the lease's term is mandatorily between 18 and 99 years;
- the lessee has the right to assign its rights on the land and/or the buildings to a third party, or to mortgage or sublease the construction for the duration of the lease;
- the landlord is entitled to the payment of a rent freely determined in the lease;
- the tenant can have either the obligation to demolish the construction or to transfer it to the landlord at the end of the lease's term.

The construction lease has to be notarised and is subject to registration duties.

4.2 Long-term lease ('*Bail emphytéotique*')

Pursuant to the long-term lease regime, the tenant is entitled to use a property for a specified term.

The main aspects of the long-term lease are the following:

- the lease's term is mandatorily between 18 and 99 years;
- the lessee has the right to assign its rights on the land and/or the buildings to a third party, or to mortgage or sublease the property for the duration of the lease;
- the rent is usually split between a first substantial rental instalment and small instalments during the term;
- the lessee has to properly maintain the property and pay its related taxes throughout the term.

The long-term lease has to be notarised and is subject to registration duties. The main difference with the construction lease regime is that the tenant has no obligation to build or refurbish any constructions on the land.

4.3 Ownership by division into volumes ('*Division en volume*')

As explained in paragraph 2.3 above, ownership by division into volumes is also a possibility that allows for different owners of the land and of the building erected on it.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

Ownership of every real estate asset is registered in the mortgage registry ('*service de la publicité foncière*').

Under French law, the publication of a valid deed of sale confers a presumption of ownership but does not in itself constitute an unchallengeable right. Should a third party challenge the validity of a publication, the good-faith purchaser must evidence its ownership by other concordant means such as possession of the property, title of transfer of ownership, any relevant documents such as those evidencing the payment of any tax and duties related to the property etc.

In order for a property right to be unchallengeable, the claimant must be in a position to evidence an uninterrupted chain of ownership over a 30-year period. Such chains of ownership is checked during pre-transaction due diligence.

Occupation of an asset and acting as rightful owner can in some cases enable an occupier to be recognised by the courts as legal owner. This procedure (called '*usucapion*') can be successful if occupation lasted for 30 years (ten years if the occupier can evidence good faith).

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

6.1 Financing a real estate transaction

The main tools for financing a real estate transaction are:

- facility agreements (junior/senior or mezzanine debt);
- financial leases; or
- trust ('*fiducie*').

In addition, some transactions occur with a deferred price payment, the seller being then considered a lender.

6.1.1 Facility agreements

Real estate investments are usually financed via structured debts which comply with international market practice.

Facility agreements can occur at various levels with different levels of risk and, as a result, different levels of profitability for the lender:

- a senior debt is reimbursed in priority, with a lower interest rate;
- a junior debt or mezzanine debt (subordinated debts) are a complement to the senior debt, reimbursed after (and therefore riskier in case of default of the borrower), with a higher interest rate.

Facility agreements in France are usually subject to international standards in terms of representations and warranties on the real estate asset or on the corporate vehicle, covenants and ratios.

6.1.2.Financial leases *('Crédit-Bail')*

Financial leases are long-term lease agreements containing an option to purchase the property of the asset at the end of the lease's term. The rent covers two types of costs: (i) a payment of a fraction of the purchase price, and (ii) interests benefiting to the lender/landlord. The financial lease can either be fully amortisable (i.e. the property is purchased for a symbolic amount at the end of the lease's term) or partially amortisable (i.e. the cost of the option to purchase is substantial).

As the lender retains ownership of the asset and therefore has a very strong security, this type of financing can be granted for 100% of the property value (including transaction costs).

6.1.3 Trust *('fiducie')*

Fiducie can be used as a way to secure a loan. In this system, the borrower will transfer ownership of the property to a trustee ('*fiduciaire*') who will manage it for the benefit of the lender.

The advantage of this system is that it avoids having to file a foreclosure, which is a complex procedure.

6.2. Securities

The main securities usually granted to banks in the context of a real estate financing are:

- contractual mortgage ('*hypothèque conventionnelle*');
- lender's lien ('*privilège de prêteur de deniers*') ;
- seller's lien ('*privilège de vendeur*') ;
- share pledges ('*nantissement de parts sociales*').

6.2.1 Contractual mortgage (*'hypothèque conventionnelle'*)

Contractual mortgages are governed by articles 2413 *et seq*. of the French Civil Code. A mortgage deed enables the lender, in case of default of the borrower, to either (i) have the property sold by judicial auction or (ii) if the deed enables the lender to do so, become the owner of the property.

The contractual mortgage can result from an obligation included in a facility agreement. The mortgage deed must state:

- the obligation secured, and
- the amount of the secured debt.

A mortgage will guarantee (i) the repayment of the principal amount secured, (ii) payment of the interests at the contractual rate and (iii) additional expenses. It must be notarised and registered with the mortgage registry. Execution of a mortgage over a property requires a lengthy and complex procedure, thus favouring alternative types of securities.

6.2.2 Lender's lien (*'privilège de prêteur de deniers'*)

Lender's liens are governed by articles 2374 *et seq*. of the French Civil Code.

This privilege allows the lender, in case of default of the borrower, (i) to have priority over other beneficiaries of other securities granted on the property and (ii) to force the judicial sale of the property and be paid in priority.
The lender's lien will guarantee (i) the repayment of the principal amount secured, (ii) payment of the interests at the contractual rate and (iii) additional expenses. It must be notarised and registered with the mortgage registry within two months following the date it is granted. Such registration is less expensive than a mortgage, as the land registration tax is not applicable.

6.2.3 Seller's lien (*'privilège de vendeur'*)
Some sales provide for a deferred payment of all or part of the purchase price.
In such a case, the seller usually benefits from a seller's lien registered at the mortgage registry. If a seller's lien is granted, the seller of a property will have the ability to judicially ask for the sale to be cancelled and will then regain ownership of the sold asset.

6.2.4 Share pledges (*'nantissement de titres'*)
When a structured financing is being granted, the shareholders of the borrower are often required to guarantee the borrower's obligations pursuant to the loan and to secure such guarantee by pledging the borrower's shares.
Should the debtor fail to repay the loan, the lender could, by executing the pledge, become the rightful owner of the borrower and thus, indirectly, of the property. Share pledges shall preferably be registered with the commercial court.
The advantage of this security is the absence of requirement to use a notary and have the guarantee registered at the mortgage registry for it to be efficient, and its easy enforceability.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

The following aspects will need to be taken into account when structuring a project's financing:
- due diligence process to be carried out by the bank or on its behalf;
- the type of corporate structure to be used, depending on the strategy and the purpose of the investment;
- types of debts to be used (structured debt (senior, junior or mezzanine), finance lease, fiducie etc.), costs of the type of financing and securities used;
- content of the security package to be granted and the ability to execute the securities;
- need to have real securities registered at the mortgage registry, and costs deriving thereof.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

8.1 Direct asset purchase
Unless otherwise provided by the parties, the purchaser shall pay the transfer duties (*'droit de mutation'*).
The amount of said transfer duties shall be paid to the notary together with the amount of his fees.
The purchase of real property located in France is subject to registration duties at a rate of 5.09%,

although most French *départments* apply a rate of 5.80%, and to a land registration fee of 0.1% ('*frais de publication*') based on the purchase price. A reduced rate of 0.715% shall apply to specific cases (newly built properties or sale in state of future completion).
The fixed notary's fees amount is calculated on the basis of 0.814% (above €60,000). The transfer of real property may also be subject to VAT (20%) upon specific conditions.

8.2 Share deal
The purchase of companies the majority of the assets of which are composed of real estate properties is subject to a 5% transfer tax.
The basis of the tax is (i) the value of the properties owned by the company and other assets, minus (ii) its debts.
As a result, share deals are, from a purchaser's perspective, usually favourable to a direct asset purchase. However, when choosing to purchase an asset or the company owning it, the potential capital gains existing in the company should be taken into account.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

9.1. Asset sale by individuals
The individual tax regime generally favours long-term investments. Capital gains made by individuals (or tax-transparent entities) resulting from the sale of real estate assets are taxed at a rate of 19%. Capital gains are also subject to social security contributions at a rate of 17.2%.

However, article 26 of the Finance Bill for 2019 brings the French social security contributions in compliance with EU law as regards non-residents benefiting from the social security regime of a member state or another country from the EEA. In this regard, the non-resident will only be liable to the '*prélèvement de solidarité*' at a rate of 7.5%.

Capital gains tax is reduced in proportion to the duration of retention of the real estate asset. Capital gains will be totally exempted (i) of income tax after 22 years and (ii) of social contributions after 30 years. If the real estate is sold within the first five years following its purchase, there will not be any tax reduction. An additional tax is due when capital gains are superior to €50,000.
The French Tax Code provides for complete capital gains tax exemptions: sale of the main residence or of a real estate asset which value does not exceed €15,000, property of a non-resident in France upon specific conditions, etc.

9.2 Asset sale by corporate entities
Excepting tax-favoured entities, such as some real estate funds, capital gains made by companies subject to corporate tax are subject to 28% taxation (please note that this rate will decrease progressively until 2022, to 25%).

The basis of the capital gains tax is the purchase price of the property plus some of the purchase expenses. Such value will be decreased by the amortization of the property in the company accounts. As a result, a quick turnover of the properties in a company's assets is more interesting from a tax perspective.

In addition to capital gains tax, the sale of real estate assets will be subject to a social contribution of 3.3% if the company's turnover exceeds €7,630,000 and if the amount of corporate tax it pays exceeds €763,000.
Please note that tax-favoured structures enable reduction of transfer taxes and capital gains taxes. The rules described above are general, and each individual situation should be analysed in detail by a tax advisor.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Free movement of capital is one of the fundamental principles of freedom under European Community law. Article 63 of the Treaty on the Functioning of the European Union (TFEU) provides that: 'all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited'. According to its paragraph 2, the same rule applies to 'payments'. These provisions are directly applicable in France. Therefore, the seller can repatriate funds after the transaction to both an EU member state and a third country.
However, there are several exceptions to limit this principle. First of all, the EU Treaty allows for a certain degree of fiscal differentiation of taxpayers according to their place of residence. But French case law seems to hold that freedom of capital movement does not allow capital gains on real estate sales which are earned by third-country residents to be taxed more heavily than those earned by French citizens.
There are also restrictions related to prudential rules, public policy and security policy considerations (such as administrative measures and financial sanctions imposed by the European Parliament and the Council to prevent terrorism and related activities (article 75 TFEU) but also related to general interest considerations.
In addition, Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26th October 2005 on controls of cash entering or leaving the Community provides within its article 3 that 'any natural person entering or leaving the Community and carrying cash of a value of €10,000 or more shall declare that sum to the competent authorities of the Member State through which he is entering or leaving the Community in accordance with this Regulation'. These provisions aim to fight against international money laundering.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

Under French law, commercial as well as residential leases cannot be terminated unless specific conditions are met.

11.1 Residential lease

Under the French Law of 6th July 1989, the regime of residential leases is very protective for the tenant. The landlord can only terminate the lease (i) as at its expiration date, and (ii) for cause.
For unfurnished residential premises, the landlord can only terminate the lease every three years if the landlord is an individual (or a civil family company) or six years should the landlord be a corporate entity.
The landlord must give to the lessee a notice of termination either by registered letter or by bailiff within a six-month notice period for unfurnished premises or three-month notice period for furnished premises prior to the expiry date of the lease.
The lessor is only entitled to terminate the lease in case of resumption of possession, sale of the property

or serious grounds (such as default of payment of the rent).

11.2 Commercial lease

Under the provisions of the French Commercial Code (articles L.145-1 *et seq*.), the landlord can only terminate a commercial lease:

- before the end of the term, either (a) in case of major default of the tenant or (b) every three years, only in the case that major construction works (reconstruction, restoration, substantial modification of use) are to be carried out in the premises;
- at the lease's term, if the landlord pays an eviction indemnity to the tenant to compensate the latter for the loss of its business.

The termination notice must be served by bailiff with a six-month prior notice.

12. Are you allowed to change the use of a building from residential use to office space or do you need official approval for doing so, or is it not allowed at all?

The transformation of a property from residential use into office or professional space is strictly regulated and requires one or more procedures to be complied with:

12.1 Co-ownership

If the property is located in a co-ownership, changing the use of a co-ownership lot might be (i) prohibited under the co-ownership rules, (ii) free or (iii) subject to the co-owner's authorisation.

12.2 Change of use authorisation ('*changement d'usage*')

If the residential property is located in a town with more than 200,000 inhabitants and/or in specific *départments* (92, 93, 94), the change of use needs to be authorised by the town council.

12.3 Change of purpose authorisation ('*changement de destination*')

This authorisation is based on the town planning rules, which could prohibit office use in some areas of the city.

If office use is possible in the area where the premises are located, the change of purpose of the premises needs to be (i) declared, without opposition from the town council within one to three months, in case no works are to be carried out in the property, or (ii) authorised by a building permit if works are to be carried out.

12.4 Office premises authorisation in the Ile de France area

Creation of office premises of a surface exceeding 1,000 m^2 of net surface area in the Ile de France area (including Paris, and excepting some specific cities), requires (i) the authorisation of the representatives of the state (which can only refuse it for cause) and (ii) the payment of an office creation tax.

The amount of the tax differs from one city to another, ranging between €0 to €431.35 per m^2 (in Paris and the Hauts de Seine area). The office creation authorisation needs to be granted prior to filing a building permit request.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

Asset deal	Share deal
- **notary fees and expenses (if no loan is used)**: €50,886 (taxes included) - **mortgage registration**: €5,000 - **real property transfer tax:** €290,332 - **estate agent (if any):** on average between €150,000 and €250,000.	- **lawyer (due diligence and SPA):** freely determined by the parties - **mortgage registration:** €0 - **commercial court registry:** around €500 - **transfer taxes:** between €0 and €250,000 - **estate agent (if any):** on average between €150,000 to €250,000.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

A property is subject to three main taxes in France besides the local taxes due from companies on business premises (‘*contributions économiques territoriales*’) which are capped at 3% of the company’s added value.

14.1 The property ownership tax (‘*taxe foncière*’)

This local tax is due on property owned on 1st January each year, by each owner (natural or legal person), irrespective of whether the premises is actually occupied or rented out.

The amount to be paid depends on the general assessment, i.e. the land registry rental value, which is mainly determined by reference to the size, condition and location of the property (minus some reduction if applicable). Then this general assessment is multiplied by the rates decided upon by the local authorities (local, departmental and regional councils). Therefore the amount of the tax may vary according to the location of the premises. Besides, many property ownership tax exemptions exist.

14.2 The residence tax (‘*taxe d’habitation*’)

This tax is due for the entire year by the individual having on 1st January of each year the premises at his/her disposal for occupation, providing that the property is habitable and irrespective of whether it is actually occupied (e.g. secondary residence).

As for the property ownership tax, the amount of this tax varies largely as it is calculated by multiplying the general assessment (mainly based on the size, condition and location of the property) by the local rate. This tax is also subject to exemptions. The residence tax due for secondary residences can be,

depending on location, increased by 60%.
Since January 2018, the residence tax is progressively abolished for most households depending on their income.

14.3. Tax on empty properties

Empty properties located in cities with more than 50,000 inhabitants can be taxed if they have been willingly left empty for more than a year on 1st January of the first taxable year.
The taxable basis of this tax is the same as the residence tax. The applicable tax rate amounts to 12.5% in the first year and 25% from the second year on.

14.4 The real estate wealth tax (*'impôt sur la fortune immobilière'*)

This French specificity is to be paid annually, and only by individuals with personal real estate assets reaching at least the threshold of €800,000 on 1st January.
According to article 964 of the French Tax Code, and subject to any specific regulation such as a tax treaty on wealth which could be enforceable, French tax-resident individuals are liable for French real estate wealth tax on their worldwide wealth (subject to some exceptions), whereas non-French tax-resident individuals are subject to this tax only for their wealth located in France.
The assessment basis for the calculation of the tax's amount depends on the disposable value of the taxable personal real estate assets.

Assets value	Applicable rate (%)
Inferior to €800,000	0
Between €800,000 and €1,300,000	0.50
Between €1,300,000 and €2,570,000	0.70
Between €2,570,000 and €5,000,000	1
Between €5,000,000 and €10,000,000	1.25
Superior to €10,000,000	1.50

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional caretaker for the purchased property? How does the caretaker normally charge for their work?

In general, the commission of a professional caretaker ranges between 3% and 10% (VAT excluded), depending on the value of the real estate.

V Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
- **directly in real estate?**
- **through real property funds, open or closed ones?**

- through other clear and secure financial products?
- at the moment not because of the impacts of the worldwide financial crisis?

The French real estate market has always been attractive for foreign investors. Economically, the French real estate market has demonstrated its unusual strength and resilience during the last financial crisis. The French real estate market is seen globally as one of the safest investment environments, and this is so for all types of assets.
Legally, although real estate investments and asset management are heavily and strictly regulated, the legal environment is particularly safe and stable.
The decision to invest directly in real estate assets or through the purchase of a company will depend on various factors, such as tax interest, ability to analyse the company's past activity, ability of the seller to give guarantees and timeframe for the operation. Both options are always to be considered.
Real property funds, both open and closed, could be a good investment option, since a large number of these funds benefit from tax-favoured regimes. However, the management fees and costs need to be taken into account.
French REITS have proved over the past a good investment in the long term. However, once again, the subscription fees and management fees need to be assessed.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office or legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

Foreign investors are allowed to purchase property in France without restrictions. However, a certain numbers of points must be highlighted:
- in real estate matters, applicable law and rules are attached to the location of the land and/or building;
- in the event of the purchaser's death, the building is subject to the law relating to inheritance matters from the purchaser's country;
- the origin of funds is checked in order to prevent money laundering operations.

For statistical purposes, real estate investments made in France by a non-resident must be declared to the Treasury if the amount exceeds €1,500,000 and to the *Banque de France* if the amount exceeds €15,000,000. Specific real estate investments (such as rural land dedicated to wine growing) must also be declared to the Treasury.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

Running a business in France for foreign individuals implies various administrative steps that differ depending on the nationality and the proposed business:
- EU nationals are exempted from these formalities;
- non-EU nationals must either obtain a temporary resident card or declare their activity at the *prefecture*, depending on the location of their residence;
- specific authorisations are required for restricted, sensitive and regulated activities.

19. Could your firm assist foreign investors in

- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

Our law firm works with important real estate groups, brokers, developers, notaries and investors, both in the public and private real estate sector. We can therefore advise good practitioners at any stage of a real estate project and carry out the legal assistance required by any type of project.
The intervention of a lawyer also presents many advantages, such as the application of our professional rules, which guarantee confidentiality during the negotiation's steps, and the guarantee of the representation of client funds via our professional accounts on which the funds are transferred.
We also assist our clients for all legal aspects of construction projects (bid invitation, legal advice, negotiation and drafting of the contracts and subcontracts etc.).

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GERMANY
JAKOBY RECHTSANWÄLTE

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

In Germany, real estate transactions are governed by state law. In order to understand the German law in this field, it is important to see that all properties in Germany are formally registered in land registers.

Land register
Land registers are in most areas administrated by the local courts. The land register contains information regarding all private law aspects of the property, i.e.

- size of the property,
- if it is open area or landed property,
- where exactly it is located according to special field cards that authorities in Germany provide for,
- who the owner is, and
- what encumbrances are on the property, e.g. rights of way, rights of pipes and very important land charges as securities for loans.

In order to transfer ownership of a property from the seller to the buyer, the transfer of ownership has to be formally entered into the land register. This entry of transfer of title is constitutive for getting the ownership. Communication with the land register is held by notaries, who in Germany are specialised lawyers in this field of law. In some areas of Germany they act only as notaries; in other areas, like for example in Berlin, some lawyers get the privilege to act as lawyer and as notary. The notaries normally draft the contracts for property transactions, but it is possible as well that the parties draft contracts through their lawyers and send it to the notary, who has to check them from a notarial point of view, meaning the notary has to take into account both sides of the deal, since the notary has to be neutral in between the parties of the deal.

Contact and first negotiations of the parties
The parties of a property transaction may meet through contacts within networks, real estate platforms in the internet or newspaper or other advertisements published by the owner himself or, often, through specialised real estate agents. The parties usually first negotiate the main economic aspects like the price of the property, if movables are to be sold as well (for example, kitchen or other furniture) or the warranties that shall be given by the seller to the buyer as to the status quo of the object. The latter may vary highly depending on, for example, the age or stage of the property and its site.

Due diligence
On bigger deals regarding bigger commercial or residential properties, the negotiations are often more complex, since a lot of aspects have to be clarified and taken into account for the deal itself and finding the price agreement. The purchaser is interested in avoiding superfluous costs of research into aspects of the object when the owner might in between his research sell to another party, and

therefore often tries to agree with the owner on a specific price, if the due diligence still to be taken within an agreed time slot will not bring evidence to negative aspects. The parties then often agree on a so-called non-disclosure agreement (NDA) and the owner side brings all details as to the property or properties in question (e.g. lease contracts, building permits, construction loads, insurance contracts and maintenance agreements) into a special data room (today this is a virtual data room) so that the side of the purchaser can prepare through his lawyers a due diligence on all important related law aspects of the object(s), beside other technical due diligence that may be organised in parallel through engineers and other technical specialists organised by the purchaser. The agreed time slot differs on the complexity of the object(s) and the pressure in the market. In projects worth more than €10 million, a time slot in Germany may be two to three weeks.

Notarisation and further realisation of the deal

Recording of the contract

After the parties have decided, with or without special due diligence, to agree on the deal, the parties give this information to a chosen notary public in Germany. Every notary public in Germany may record any real estate in Germany, means a Berlin notary public may record a deal regarding an object in Berlin or Munich and vice versa. The only rule is that the notary should not travel for the recording, which means the recording itself should take place in his office or somewhere in the town where the notary is located. In most areas of Germany the purchaser has the unwritten right to choose the notary, because in most areas of Germany it is at least legal custom that the buyer has to fully pay for the notary's work. The notary who records the deal has to take care of the interests of both parties. He drafts the purchase contract or checks and revises a draft if the lawyer of a party has drafted the contract. The contract should cover all rights and obligations of the parties and the rules of the execution of the deal.

When to pay the purchase price?

Both parties of course are in particular interested in when to pay/get the purchase price. In Germany most deals are organised with direct payment from the purchaser to the seller. Only on specific aspects is it allowed to organise the payment through a notarial escrow account. Direct payment to the purchaser does not mean that the purchase price has to be paid before the recording or at or straight after the recording. In normal transactions, the average time to pay the purchase price is around seven to eight weeks after the day of the notarial recording of the purchase contract.

In real estate transactions in Germany you cannot normally exactly name the relevant day when the purchaser has to pay the purchase price, since payment shall only be done after specific aspects of the deal are, from a notarial point of view, secured, and these aspects can take some time and cannot exactly be calculated by the notary. The acting notary has in particular to secure in every case that the purchaser only pays after it is secured that he will later really get the ownership of the object and, on the other hand, the notary has to take care that the seller will get safely the money before the purchaser gets the title of ownership. The parties can relax a bit after recording of the purchase contract, since the notary will file a formal letter to the parties ('notarielle Kaufpreisfälligkeitsmitteilung') and confirm therein when all prerequisites for paying the purchase price he has to take care of have been fulfilled.

The system works as follows:

- After the recording, the notary sends the signed contract:

- not only to the parties but to the municipal county to confirm that they will not exercise their (under specific circumstances) existing pre-emption right ('Vorkaufsrecht der Gemeinde'), which, if existing, has to be exercised formally within a two-month period after formal information of the deal through copy of the contract. In 99.9% of cases this right either does not exist and you get the negative clearance ('Negativattest') or, if yes, the municipal county has not the money and the interest to buy the plot of real estate in question and gives you the pre-emptive right waiver ('Vorkausfrechtsverzicht'), but in the last few years in specific booming areas like Berlin the authorities are interested to take care in particular of the milieus of tenants and in specific cases make use of the pre-emption right if the purchaser does not agree on some terms with the authorities to preclude excessive raising of rents;

- to the land register to ask for the entrance of a so-called priority notice ('Eigentumsvormerkung'). After the priority notice is entered in the land register the buyer gets security, as long as no pre-emption right of the municipal authorities is exercised, that he will become the owner if he further complies 100% with the notarial contract;

- to banks and other mortgagees the seller has financed the property with so far and which have to release the real estate of the pledge after they are paid their loans. The mortgagees send to the notary a settlement of the loans in question and deletion papers regarding the mortgage in case the trust requirements of repayment of the loans of the seller are fulfilled; and

- to the tax authorities, since the transfer of title is only allowed for purchasers who have paid the real property transfer tax ('Grunderwerbsteuer'), to ask for the tax clearance certificate ('Unbedenklichkeitsbescheinigung'), which the notary gets sent by the tax authorities after payment of tax has occurred.

Change of use and costs of the object

After payment of the full purchase price the buyer gets the possession of the property and all benefits and costs of it, but not yet the full title in law.

Transfer of title

After payment of the purchase price and the real property transfer tax, the notary organises the formal transfer of title in the land register to the buyer. The entrance of the transfer of title happens in normal cases around five months after recording of the purchase agreement. As already said, the purchaser gets nevertheless the keys long before, normally around seven to eight weeks after the recording of the purchase contract.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Yes, in Germany we know the normal property of land which includes usually by law the ownership of any buildings erected on the concerned land (see further two questions below). You can check in the

land register (notaries can check online) who the owner is and if there is a building on the property. Furthermore, the German law knows condominiums. Every single condominium gets a special deed in the land register and you can see on the name of the land register if the object is only a condominium or if the whole land is owned by a specific person.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Yes, the German system knows joint ownership. There can be couples or friends or almost all kinds of companies holding property alone or jointly by percentages they can freely choose. Foreigners and foreign companies are permitted to directly have ownership in all real estate in Germany.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

Yes, in Germany usually the owner of the land owns all buildings erected on it. This may differ in cases where the land is, for example, divided into condominiums or if there is a so-called hereditary building right ('Erbbaurecht'). This can be checked easily by having a look into the land register. The hereditary building right is the right to have a whole building in ownership on the land that is in ownership of another natural person or company. We see this hereditary building right in Germany often in areas where the big churches, i.e. the Roman Catholic and the Protestant church, own land. The churches often do not sell the land to people but give hereditary building rights to have a building on the property for, for example, 50 or 100 or even more years. The hereditary building right is entered formally in the land register, and the land register opens a further land register for the hereditary building right since this is handled like a property, which means that it can be used as security for land charges on this right and so on.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

Yes, as mentioned above almost all (some property in ownership of the state has not to be registered) properties in Germany are registered in the land register that is organised by, in real estate matters, special educated persons ('Rechtspfleger'), and good faith in the correctness of the civil rights entered in the land register (not to the size and use of the buildings erected on it) is protected. If the land register was false and a land charge was deleted by mistake and the buyer buys it on first sight free of charges, he is protected in his good faith (sec. 892 German Civil Code). The bank in the given example would have a claim against the Federal Land in Germany where the court of the land register is located for the damages suffered because of the false land register.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

In many cases buyer need to finance all or at least a big part of the purchase price and usually banks

or insurance companies lend the money to these customers and in return ask for land charges ('Grundschulden') or, in law aspects quite similar but in Germany seldom used, mortgages ('Hypotheken') to be placed on the property their clients intend to buy. Therefore the notaries include in the purchase contract corresponding clauses that allow the purchaser to place one or more land charges/mortgages for financing the purchase price on the related property.

Financing through cession of claims from other real estate purchase contracts is very complicated, since the notary has to take care that the seller only loses his title after he has got the purchase price.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

If the purchaser is a foreign person or company one should discuss whether the financing is done with a bank accredited in Germany or a foreign bank. It is most times easier to finance with a bank accredited in Germany since the system to safeguard the bank is a land charge/mortgage according to German law. Of course, there might be the chance that the foreign investor finances the object of purchase though another real estate located abroad. Then it might be easier to finance with a bank of that country.

It further should be taken into account what the plans are with the real estate in question. Shall it be sold soon after acquisition, or shall it stay with the purchaser for longer? Tax aspects may have an impact on the answer to this. Furthermore, foreign investors should think of creating a company in Germany, which is easily done, which then will be formally the purchaser as a German entity.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

Real property transfer tax has to be paid on real property transactions, and in most areas of Germany the percentage of this tax is dependent on the location you buy. It ranges from 3.5% to 6.5% of the purchase price; in Berlin it amounts actually to 6%. According to tax rules in general, when real property transfer tax is applicable no further turnover tax (at the moment 19%) is due in parallel. This rule does not apply when both seller and buyer are companies or businesspersons and the seller waives the right of buying the property without turnover tax. This waiver can be good for the seller if, for example, he had paid pre-tax for erecting a building on this land in recent years. Then he can count up the part of the turnover tax against his pre-tax. The buyer can count up the turnover tax against his pre-taxes as well, so that he has often no negative result out of this tax aspect. However, this requires that the buyer has pre-taxes in Germany, which foreign investors usually only have if the building is or will be rented to entities or businesspersons who have to pay turnover tax on the rents. These tax aspects need to be checked before the purchase contract is notarised.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

In Germany, one normally has to hold the property for ten years calculated from the notarial purchase contract to avoid speculation tax that can occur if the selling price (including costs) of the property

is higher than the purchase price has been. If speculation tax is applicable, the amount depends on the income tax rate of the seller of the property. Foreign investors should check possible further tax aspects of their home country in this respect.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

In Germany this aspect is no problem at all.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

We have the rule that the purchase of a property does not break the lease contract (sec. 566 German Civil Code), which means that the purchaser by law enters into the lease contract, and normally a commercial lease contract cannot be terminated prior to the contractual term neither by the new owner nor by the lessee. For example, if the commercial lease has a term of ten years and the purchase takes place after one year, the purchaser cannot terminate the lease at an earlier date than ten years after start of the lease term. This is different when you acquire property in a sale by court order or from the insolvency administrator in insolvency cases. In these cases the purchaser has a special right to terminate the lease contract ('Sonderkündigungsrecht') under sec. 57a of the Compulsory Auction of Immovable Property Act ('Zwangsversteigerungsgesetz') and sec. 111 of the Insolvency Act ('Insolvenzordnung').

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

You have to check for every case separately. Two aspects have to be taken into account:
- if the building permit allows the intended use of the purchaser; and
- if in the area in question the local authorities have set a development freeze ('Veränderungsperre'). Local authorities do this sometimes in areas with too little residential property.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- notarial costs?
- land register?
- real estate transfer tax?
- advising lawyer (due diligence)?
- estate agent?
- others?

- Notarial costs:
  - about €25,000 plus 19% turnover tax for German entities,
  - normally no turnover tax for foreign entities;
  - if financed, for example, with a land charge, amounting to €4 million, further costs of about €6,100 occur plus VAT depending as outlined before.

- Land register:
  - about €12,500;
  - if financed, for example, with a land charge amounting to €4 million, further costs of about €6,100

- Real estate transfer tax:
  - €300,000 (6% in Berlin)

- advising lawyer (due diligence):
  - depending on the agreement with the lawyers. Normally they act for international clients on hourly rates. Most specialised law firms have ranges of rates between €250 and €450 or more. Legal assistance from day one of the deal until transfer of title would take about 50 hours plus time for due diligence, if a due diligence is requested by the client.

- estate agent:
  - between 4% and 6% net of the purchase price, depending on the market situation and the specific plot of land. If the purchase price is higher, it might be possible to get the estate agent a bit down with his costs. VAT (19%) for German entities, normally no turnover tax for foreign entities

- others?
  - if you do a technical due diligence, these costs have to been added

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

This part of the law is under discussion to be changed with respect to a decision of the Federal Constitutional Court. Actually, you have to pay in Germany land tax ('Grundsteuer') as owner of property. The rates are different depending on the area where the object is located. Three factors are relevant for the costs:

- first you have to check the rateable value of the object ('Einheitswert'),
- then multiply this amount with the base value for tax purposes ('Steuermessbetrag') and
- multiply this amount with the multiplier ruled by the local authorities ('Hebesatz').

For example, in Berlin the base value for tax purposes is 0.0035 and the multiplier is 810%. The rateable value for tax purposes is not the real value, but much less, because it is a calculated value the object had in the year 1964 for objects in western parts of Germany and the year 1935 for objects in the former GDR. If the rateable value would be €900,000, the outcome would be €25,515 per year. You have to calculate, depending on the kind of property and the area, about 0.3% to 0.4% of the real value of the object per year.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

This depends on the property and the number of tenants. In commercial real estate you can roughly calculate about 2% of the net rent of the object per month.

IV. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
- **directly in real estate?**
- **through real property funds, open or closed ones?**
- **through other clear and secure financial products?**
- **at the moment not because of the impacts of the worldwide financial crisis?**

Prices for commercial and non-commercial real estate in Germany have gone up within the last two years about 15% on average; in good locations, even more. Nevertheless, we think that this is no big blow, sometimes perhaps a bit, but compared to other countries like France, Netherlands, Belgium or Great Britain you will still have good value in the German market. It is very stable, and we do not see panic on a longer view. Therefore I would advise to invest in commercial (and non-commercial) real estate in Germany in very good or upcoming areas.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

There are no restrictions in Germany. You can buy property as private or businessperson, or as an entity with no seat or branch office in Germany.

18 If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

It depends whether the investor is from
- an EU member state, or
- a country Germany has conventions in this respect with, like US or Canada, or
- a country where no convention is applicable.

In cases (i) and (ii) the official approvals are practically no big deal; in case (iii) one has to check precisely what is needed.

19. Could your firm assist foreign investors in
- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

Yes, we would be pleased to assist foreign investors in all these aspects, since this field of law is the key specialisation of our firm and we have many contacts into the real estate market in Germany. Please contact Markus Jakoby or Lotte Herwig.

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HUNGARY
SZECSKAY ATTORNEYS AT LAW

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

After signing of the purchase agreement, it shall be submitted to the land registry immediately and it shall be automatically forwarded to the tax authority. Submission constitutes a protection for the respective person, since any later requests for registration of rights or facts on the same property will be ranked behind the purchase agreement.

At the signing of the purchase agreement, up to the parties' decision, a collateral is usually also provided, most often a 10% to 15% earnest by the purchaser. It should be highlighted that a sum of cash deposited with the other party shall be construed as earnest money if provided to evidence commitment and if this intention is expressly indicated in the contract. If the contract is performed, the earnest money shall be credited to the amount payable. If the contract falls through for reasons attributable to neither or both of the parties, the earnest money shall be returned. The person responsible for the failure of performance shall forfeit the earnest money that he/she has given, or he/she shall refund twice the amount of the earnest money he/she has received.

After signing, the parties have time to prepare the transfer of title, thus to vacate the property, free it from encumbrances (e.g. mortgage) and to collect the remaining instalments of the purchase price. The transfer of the last instalment of the purchase price, transfer of possession of the property and transfer of the seller's declaration of consent for the registration of the purchaser's ownership title take place generally simultaneously. Finally, the purchaser files the seller's declaration of consent with the land registry, and once the land registry issues its registering decision, the purchaser will be registered as owner of the real estate as of the date of filing the declaration of consent, along with the application form for the registration of the new owner's title.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Under Hungarian law multiple entities can be owners of the same real property to different proportions (joint ownership of real estates).

Furthermore, the land and the building erected on it can be owned by different owners as well. In that latter case, the building forms a separate real estate. The owner of the building may use the land to the extent necessary and has a pre-emption right over the land, while the owner of the land has a pre-emption right over the building. These rights are attached to the ownership of the land/building, and not to the person who owns them.

Condominiums may also be founded in buildings where at least two independent units for residential or non-residential purposes exist, or are technically eligible to be divided. In this case, technically separated parts pass into the private and separated ownership of the condominium owners, while land, structural parts and equipment of the building form joint property of the owners. The condominium owners' association may acquire rights and undertake commitments under the common name in respect of the maintenance and renovation of the building and attending to matters related to common property. The association may sue and be sued and shall exercise ownership rights related to common property and bear the burdens associated with such.

A less popular formation, the so-called 'residential cooperative societies' (*'lakásszövetkezet'*). also exists. In this case the structural parts are not in joint ownership, but owned by the cooperative society (which shall be considered a legal person) in which all or some of the flat owners are members.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Two or more persons may be owners of the same real property by specific shares. Joint ownership does not mean that the real property is either physically or legally divided, although the joint owners may agree on the division of the use of the property.

In case of joint ownership, the provisions of the Civil Code shall apply. Each co-owner has the right to possess and use the real estate, but none of them shall exercise this right if it adversely affects the rights and relevant interests of the others. Furthermore, each of them is entitled to alienate or encumber its share, but the other owners have a pre-emption right if one of them wishes to sell its share to a third party. Proceeds from a thing shall be claimed by the co-owners in proportion to their ownership shares; costs and expenses related to the thing, as well as obligations originating from co-ownership, and any damage to the thing shall be borne by the co-owners in the same proportion. Any of the co-owners is entitled to carry out works that are essential for the preservation and maintenance of the thing, and each co-owner shall be obliged to bear his share of such costs. If possible, the co-owners shall be notified before such expenses are incurred.

Unless there is an agreement to the contrary, the co-owners shall adopt decisions on issues of relevance to the joint property by simple majority. Each owner shall have voting rights in accordance with his ownership share. However, decisions related to expenses exceeding the scope of standard operating procedures and to the transfer of ownership of the entire thing (or any commitment relating to the entire thing) require unanimity. If one of the joint owners deceases (dissolves), its share is inherited by its heirs (acquired by its successor) and the shares of the other joint owners remain unchanged.

Generally, all entities that are subjects of the law (natural persons, legal persons and business associations without legal personality) can be owner of a real property. Nevertheless, there are certain limitations on the acquisition of real property if it is qualified as agricultural land or if the purchaser is a foreign entity.

Acquisition of agricultural land:

- Domestic citizens may not acquire more than 300 hectares of agricultural land.
- The prospective owner must declare that he/she will cultivate the land himself/herself, i.e. he/she will not allow the land to be used by others. In other words, this provision prohibits the leasing of land.
- Farmers must file a request for registration, which merely means that they are obliged to provide the authority with the related data.
- Domestic legal persons may not acquire any agricultural land in Hungary. The Hungarian state and local governments are fully exempt from this limitation, while churches and mortgage banks enjoy a specific partial exemption.
- Foreign citizens and foreign legal persons may not acquire any agricultural land in Hungary. Citizens of EU member states, EEA member states and other states who enjoy the same rights as EU citizens as a result of an international treaty enjoy an exemption if they meet certain conditions (mainly that they have lived and pursued agricultural activity in Hungary for a minimum of three years before the acquisition).

Acquisition of non-agricultural real property by foreign entities:

- If the foreign entity is a citizen/legal person from a state that is not a member of the EU or EEA or a state whose citizens/entities receive the same treatment as EU citizens, the acquisition shall be authorised by the competent administrative office. The authority decides on the basis of whether the acquisition would violate public interest or a local government's interest. This does not apply to foreign individual entrepreneurs, if the real property is necessary for their business activity.
- Public interest shall be considered injured if the applicant natural person has been expelled or excluded from the territory of Hungary, has been subject to an arrest warrant or has a criminal record; or if injury to public interest is considered to exist for reasons of public security, public order or public health.
- If the applicant is a legal person, public interest shall in particular be considered injured if: the state tax authority suspended or withdrew the tax number of the branch or commercial representation; the activities of the branch or commercial representation have been restricted pursuant to the Act on Criminal Sanctions; or the branch or commercial representation is undergoing liquidation or winding-up proceedings.
- Citizens of EU member states and legal persons registered in such states may acquire ownership of a non-agricultural real property under the same rules as domestic citizens (i.e. without any authorisation).

The above limitations apply not only to purchase but to gift and swap transactions as well. Notwithstanding the above, it is not prohibited to own a real property, the ownership of which is against the above restrictions, if the ownership title was lawfully acquired prior to the effective date of the above prohibitions.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

Pursuant to Section 97 of the Hungarian Civil Code, ownership of the building belongs to the owner of the land, based on the principle of *aedificium solo cedit*. Nevertheless, when a new building is built on a

site, the constructing party and the owner of the land may agree that the constructing party will become the owner of the land. (Please see the response to the second question in Part I above.) Nevertheless, it is not possible to separate building from land when the building already exists.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

In Hungary, a national land registry contains all real properties, including condominium apartments and buildings detached from land. Not just the ownership rights, but several property-related rights (and the holders of such) may be recorded in the real estate register, e.g. usufruct and the right of use, easement rights, mortgage, right of execution, option to buy and the right to sell etc. The property-related legally significant facts may be recorded in the real estate register as well. Registration requests submitted to the land registry office are also indicated in the form of marginal notes.

The land registry is authentic towards all acquirers in good faith in respect of the rights and facts registered (but not the features of the property or the personal data of the persons registered). If someone has acquired a right on a real property in good faith based on the land registry, it is protected against claims based on the invalidity of the previous registry entry. Nevertheless, a lawsuit for the deletion of the newly acquired and registered right may be initiated if a previous registry entry was invalid. If the deletion claim is filed against the person who acquired the right directly by an invalid transaction, the deadline for filing the claim is the deadline for filing a claim for declaration of invalidity of the transaction. If the deletion claim is filed against someone who acquired in good faith based on the invalid registry entry, it shall be filed within three years from the invalid registration. Only those persons whose registered right is violated by the contested registration entry are entitled to file this claim (e.g. the previous owner).

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

The most typical way of financing a real property purchase is to ask for a loan from a financial and credit institution. According to the current statutory regulations, up to 80% of the value of the real property can be financed from loans, so at least 20% own contribution is necessary in all cases. It should be highlighted that not the purchase price, but the turnover value determined by the bank, is the basis of the calculation, and of course the value of the property is not necessarily equal (and it is actually not equal in most cases) to the purchase price.
It may occur that an investor can purchase a real property much cheaper than its real turnover value. In this case, the bank's valuation will include a higher turnover value than the purchase price, and then the 80% of the turnover value may be equal to the 100% of the purchase price (or even more).

Generally, the claim of the bank is secured by mortgage on the real property. There are several types of mortgage loans, and purchasers should assess what is best for their own situation before entering into one. Types of loans are characterised by their term dates, interest rates (these may be fixed or variable) and the amount of payments per period. Mortgages are not always easy to secure, however, as rates

and terms are often dependent on an individual's credit score and job status. Failure to repay allows a bank to legally foreclose and auction off the property to cover its losses.

It should be highlighted that mortgages have to be properly registered into the land register within the applicable deadline prescribed by law.
It is worth noting that, if a mortgage is established on more than one real property to secure the same claim, the land register shall indicate that the mortgage is universal. If the mortgage is universal, all of the real properties shall serve as security for the entire claim. The bank shall have the right to determine the order of enforcement. However, the right to satisfaction covers only as many real properties as necessary to provide satisfaction.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

The statutory conditions of mortgage agreements must be taken into consideration.

In case of the conclusion of a mortgage agreement the purchaser (i.e. the security provider) may represent and warrant that:

- there subsists no fact, event and/or circumstance (including any breach of applicable law) which might have a material adverse effect;
- no priority position has been reserved in respect of the real property (with or without naming a beneficiary);
- the real property is freely transferable and can be encumbered pursuant to the terms of the mortgage agreement without any restriction;
- subject to the registration of the respective mortgage into the land register, the mortgage agreement creates a valid, binding and enforceable first-ranking mortgage over the respective real property.

Furthermore, the purchaser (security provider) shall undertake to:

- not take or omit to take any action the taking or omission of which would adversely affect any rights of the bank;
- immediately inform the bank of any event or circumstance which jeopardises the right of satisfaction;
- keep the real property in a good state of repair and in good working order and condition, in addition to taking all steps to protect the real property from any reduction in value (other than usual wear and tear resulting from the use of the real property for its ordinary intended purpose) and any and all damage which has or might have a material adverse effect.

In addition, the purchaser should unconditionally and irrevocably undertake to execute and do all such acts and measures as may be required by the applicable law or as the bank may reasonably require from time to time, to create, maintain and enforce the mortgage or to facilitate any actions of the bank.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

In the case of a purchase of a real property in Hungary, the purchaser shall pay an acquisition duty. The duty is payable within 30 days from the notification of the tax authority. 4% of the real property's full value shall be paid if the value of the real estate does not exceed HUF 1 billion (approximately €3,125,000,000), and 2% shall be paid of the part of the value that exceeds HUF 1 billion. However, the total amount may not exceed HUF 200 million (approximately €625,000). This duty shall also apply if the purchaser acquires a share in a company that directly or indirectly holds real property.

However, if the purchaser sells a real property less than three years before the respective sale, the difference between the purchase price of the newly purchased property and the old property is the basis of the duty. If the value of sold real property is higher than the value of the purchased real property, no duty shall be paid. It is worth noting that in case of the purchase of a newly built real property (built by a company for the purpose of sale) with a sales value not exceeding HUF 15 million the purchaser shall be exempt from the obligation to pay duty. In the case of purchase of land, no duty shall be paid if the construction of the residential building starts within four years.

The seller of the real property shall also pay tax after the transaction. In this regard, all proceeds received in connection with the sale of real property shall be considered as income from the transfer of real property. This covers, in particular, the selling price, the fair market value (effective on the day of transfer) of an asset received in exchange, and also the value of the real property if it is furnished in the place of a capital contribution to a business association or other firm (contribution in kind). Certain expenses shall be subtracted from the income (e.g. the cost of acquisition, value-increasing investments, expenditures incurred in connection with the transfer etc.) in order to get the 'calculated amount'. After the subtraction the amount of the income tax shall be determined as follows (provided that the transfer takes place in the year of acquisition or within the following five years):

- 100% of the calculated amount in the year of acquisition and in the following year
- 90% of the calculated amount in the second year following the year of acquisition
- 60% of the calculated amount in the third year following the year of acquisition
- 30% of the calculated amount in the fourth year following the year of acquisition
- 0% of the calculated amount in the fifth year following the year of acquisition and in subsequent years.

If not the real property itself is sold, but a share in a company more than 75% of the assets of which are Hungarian real properties, the person alienating the share shall also pay tax, if it is a tax subject of a foreign country with which Hungary has no conventions against double taxation. This rule was adopted to stop the practice that valuable real properties were sold through special purpose companies without paying tax. The rate of the tax is 19%, and it has to be paid by the person alienating the share, not the company. The tax base is the income received from the alienation, i.e. the difference between the price received and the costs incurred in acquiring and keeping the share. The rule does not apply to publicly listed companies, but it applies to income received through capital decrease in the company.

Between business parties, the purchase of a real property may also be subject to Value Added Tax (VAT). Whether VAT is payable depends on many factors, including the type of the property and the legal status of the parties. In certain cases, the taxpayer may decide whether it wishes to pay (and deduct) VAT or not. In certain cases, it is not the seller but the purchaser who shall pay the VAT. The rate of VAT is 27% of the purchase price.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

As already indicated, the longer the period between the purchase and the sale, the smaller the tax rate. The tax rate reaches 0% in the fifth year. No such tax rules exist for companies.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Under Hungarian law there are currently no restrictions on moving foreign currency in and out of the country.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

If the lease is for an undetermined period, the purchaser may terminate the lease, and also require the seller to terminate the lease contract and have the lessee move out. Based on the law, the deadline for leaving the property is 15 days, unless otherwise provided by the lease agreement. In case of flat rent, the deadline shall be the end of the month, but cannot be less than 15 days. In case of a lease for a fixed period, the purchaser is not entitled to terminate the lease, unless the purchaser was misled by the lessee in respect of the existence or significant terms of the lease agreement.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

Yes, it is possible to change the use of a building or a part of it. If the change of use does not affect the structure or the face of the building, no approval is necessary; the applicant shall only notify the construction division of the local municipality. If the structure or the face is affected (thus the change also necessitates construction works) a request for a construction permit shall be filed with the same authority.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- notarial costs?

In Hungary, attorneys-at-law are entitled to draft and countersign real property sale and purchase agreements. Therefore, there is no need for a notary public. If the parties nevertheless wish to have the sale and purchase agreement in a notarial deed, the fee would be around HUF 780,000 (approximately €2,438), unless the case is more complicated.

- land register?

The land registry registration fee is HUF 6,600 (approximately €21) for each real property. Registration of a mortgage (if necessary) costs HUF 12,600 (approximately €39). If several rights are registered to the same real estate in the same proceeding, the fees are not accumulated; only the highest fee shall be paid. If there are different registration proceedings, the fees must be paid in each proceeding. The number of sellers or buyers does not affect the amount of the costs. In addition, if the parties are corporate entities, a signature specimen and a certified company registry extract is required for the procedure for each of them. These costs are HUF 3,000 (approximately €9) for a company registry extract, and HUF 1,000 (approximately €3) for each notarial signature specimen of the corporate representatives.

- real property transfer tax?

The duty payable by the purchaser is HUF 48 million (approximately €168,000) if no exemptions and allowances apply and there is only one property. If there are more real properties, each with an individual price less than HUF 1,000 million, the full amount of the duty is HUF 56 million (approximately €196,000). If VAT is payable after the transaction, its amount is €1.35 million, calculated with the 27% rate.

- advising lawyer (due diligence)?

A real property transaction with a few parties and a few real properties would cost in our practice €5,000 to €7,000, or 1% to 3% of the value of the transaction. If the transaction is more complicated (e.g. there is a mortgage on the property, corporate changes or public administrative procedures must be conducted) the costs may rise

- estate agent?

Estate agent costs are generally between 2% and 5% of the real property, plus 27% VAT.

- others?

No other costs have to be incurred by the parties in a simple case.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

The person which is the owner of the real property shall pay a yearly building tax or a yearly land tax. The tax is payable to the local municipality and its rate is also determined by each local municipality on its own. The law only determines the highest rate of the tax (local municipalities are likely to apply this highest rate).

In case of buildings, the maximum rate of the building tax is HUF 1,100/m^2 (approximately €3.40/m^2) or 3.6% of the fair market value of the property. The local municipality is entitled to decide which calculation method shall be applicable.

In case of real properties within the city border of a local municipality (i.e. close to the inhabited area), land tax is payable if construction is possible on the property. As with the building tax rate, two calculation

methods exist: HUF 200/m^2 (€0.60/m^2) or 3% of the fair market value. Again, the local municipality is entitled to choose the method. Local municipalities decide on the tax rate and the calculation methods in their local municipality decrees.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

These costs largely depend on the type of the property (e.g. residential, office, industrial etc.) and the services required. Professional caretakers offer a wide variety of services in Hungary.
According to the general practice of a significant market participant, costs of employing the personnel have to be paid, and besides this, they apply a so-called 'open-book' invoicing structure, where the invoices received from the service providers (repairmen) are forwarded to the owner of the property with an additional 8% to 10% handling fee. Typically, property owners need for their office building one to two persons who check the maintenance status and tasks of the building two or three times a week.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
- **directly in real estate?**
- **through real property funds, open or closed ones?**
- **through other clear and secure financial products?**
- **In commercial real estate or in residential property?**

In Hungary the purchase prices of real properties increase rapidly. In 2018 Budapest showed the highest 12-month residential property price growth in Europe (average square metre price of new homes in the capital exceeded HUF 700,000). However, the properties are still more affordable compared to Austria, Germany, Italy, France or other western European countries.

Hungarian housing market developments are still marked by strong regional heterogeneity, but the focus is tending to shift to an increasing degree from the capital to rural settlements. According to expert analyses the number of sales may tend to rise in those – typically smaller – settlements, where the price level is still lower, while on the other hand in Budapest the number of transactions may start to decline due in part to the substantially increased price level.

Currently there are three types of investments which may provide high returns:
- With a booming tourism industry, short-term letting is the number-one choice among investors on the Hungarian (especially Budapest) market. However, related regulations (becoming more and more stringent) must be taken into consideration in such cases.
- It may also be worthwhile to purchase a real property to let on a long-term basis. Currently, long-term letting is demanded in every size and price in Hungary.
- Purchasing buildings/flats in a poor state then renovating them could mean high returns as well.

Thus, we would definitely recommend investing in real estate, either directly or through real property funds.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

Please see the answer to the third question of section I above. Of course, where purchase by domestic legal persons is not restricted (non-agricultural property) it is possible to create a Hungarian company for the purchase of the real estate.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

The kinds and time frames of official approvals vary greatly and depend on the intended business activity. It is also an important question whether the foreign investor is registered (and if necessary, licensed) in an EU member state. If the foreign investor is not registered in an EU member state, it may pursue business activities in Hungary in the following forms:
- by way of a branch office or a representative office;
- by way of a Hungarian company of which it is an owner/shareholder;
- through provision of cross-border services, if permitted by a Hungarian law or an international treaty.
A representative office does not possess legal personality. Foundation of a branch office or of a company generally takes a month, but a simple limited liability company can be registered within three to four business days, if 'default' clauses are acceptable for the investor. Investors registered in EU member states may provide cross-border services as prescribed by Directive 2006/123/EC on services on the internal market.

Otherwise, the investor needs to acquire the same permits as domestic entities have to.

The general deadline for the issuance of a building permit is two months. Architectural and technical planning documentation must be attached, in accordance with the detailed statutory regulation. If an environmental permit is required, that shall also be attached.

19. Could your firm assist foreign investors in
- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

Our law firm has a wide and long-standing practice in advising foreign investors on matters related to commercial real estate. Our practice embraces sale and purchase of real estate, collateral agreements, zoning agreements with local municipalities, administrative procedures related to plot formation and zoning requirements, all kinds of construction permits, matters related to archaeological excavations on real properties, expropriation for investment purposes and obtaining all kinds of permits and approvals for construction, use, reclassification or the operation of a business in the energy sectors, project finances, M&A transactions and many other fields of business. For this reason, we would be pleased to assist foreign investors in all these aspects involved.

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INDIA
DUA ASSOCIATES

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

The following aspects need to be remembered to understand the ensuing response to this question:

- India has a federal structure and consists of 29 states and 7 union territories.
- The Constitution of India prescribes certain matters which are in the Union List, i.e. the exclusive domain of the Central legislature or the Indian Parliament; some which are in the state List, i.e. the exclusive domain of the state legislature; and some which are in the Concurrent List, i.e. within the domain of both the centre and the state.
- Land, registration of instruments and laws relating to stamp duty payable on instruments evidencing land transactions are all matters in the Concurrent List, while rates of stamp duty and recording of data with respect to agricultural land are in the state list.
- All instruments or documents by which rights in immovable property are transferred are compulsorily registrable with the concerned sub-registrar in whose jurisdiction the property is located, under the Indian Registration Act, 1908. All such instruments also require stamp duty under the Indian Stamp Act, 1899 at rates prescribed in the said Act, which is normally a percentage of the consideration, i.e. in the case of a sale it is a percentage of the sale consideration, in the case of a lease it is a percentage of the annual rent, and in the case of a mortgage it is a percentage of the amount secured. A document which is compulsorily registrable and is not registered has no effect. If no stamp duty is paid on a document that attracts stamp duty, it is not admissible in evidence before a court or any quasi-judicial authority. Such a document is also liable to be impounded by the court or authority before whom it is filed or tendered, with liberty in such court or authority to levy a penalty of up to ten times the duty payable, and the parties responsible for payment of stamp duty are also liable to criminal prosecution.
- The law relating to transfer of immovable property is enshrined in the Transfer of Property Act, 1882; the law relating to registration or recording of instruments including those relating to immovable property is enshrined in the Indian Registration Act, 1908; and the law relating to stamp duty payable on instruments is enshrined in the Indian Stamp Act, 1899; which are enactments made by the centre/ Indian Parliament and adopted, with or without modification, by the legislature of each state.
- Essentially, in every state, there are three broad categories of land:

- Freehold, which means that the owner is the absolute owner and free to transfer or deal with it without seeking any prior approval.
- Leasehold, which is land granted by the centre or state Government to the owner under a grant or a perpetual lease (which is generally up to 99 years), or under the terms of a special grant in the case of land which is compulsorily acquired by the Government and handed over to a grantee for a particular purpose, such as for setting up an industry. Each grant has its terms and conditions through which the Government controls not only the manner and conditions under which the land can be transferred but also the use to which it can be put.
- Special category land, which is held by charities and religious bodies as endowment, defence

establishments and such like, which are governed by special statutory and other law and rules applicable to such institutions and could either be freehold or leasehold.

- In each of the above three categories there could generally be the following types of land:
  - Agricultural (generally freehold); and
  - Urban, which for the purpose of this discussion can be residential, commercial or industrial or otherwise non-agricultural.

- Agricultural land in every state is generally governed by special statutes predominantly designed to protect the small farmer and which seek to protect against fragmentation of cultivable land and the consolidation of large tracts in the hands of a few by prescribing a ceiling on industrial land holdings, the recording of ownership and transfers (both inter vivos and testamentary), crop yields and related data, as well as the establishment of judicial and quasi-judicial forums for redress of grievances.

- Urban land, in most urban agglomerations, is subject matter of planned development. In other words, the state supervises the development of urban land through development plans and master plans which are issued and monitored through state agencies with statutory sanction from state legislature. A master plan of a particular city would divide the city into zones and prescribe the use to which land in each zone can be put, areas to be dedicated to roads and services, areas to be maintained as green areas, areas to be maintained for utilities like banks, schools, hospitals etc., areas to be exclusively used for industrial purposes and so on.

- Title to land is a complex issue, especially in the case of inherited title. The law of inheritance is in the nature of 'family law' and differs from community to community, i.e. the Muslim law of inheritance is vastly different from the Hindu law of inheritance. In some cases, and specifically in the case of Hindus, which constitute the majority in India, the law is codified in so far as concerns intestate succession. For testate succession, i.e. matters governing wills etc., there is a central law known as the Indian Succession Act, 1925 which, inter alia, deals with interpretation of wills, probates and letters of administration etc., with some provisions dealing separately with Hindus, Muslims, Christians, Buddhists etc.

- In view of the above, a real estate transaction in India is very property-specific in as much as two properties in the same town could be governed by a completely different set of norms, rules, laws and issues relating to title.

- Any property transaction therefore could typically go through the following stages:

  (a) A pre-contract Stage I: in which the purchaser would make preliminary enquiries on the exact location of the property, seek preliminary information on whether the property is freehold or leasehold or governed by any statutory or other conditions restricting transfer, the expected market value, land use, a prima facie view on title, and if vacant land, the extent to which construction is permissible under applicable building bye-laws and, if constructed, a prima facie view on whether the construction was permissible at the time it took place and whether there were any deviations from the sanctions and approvals that were granted for such construction. Most of this is achieved either through a property agent or from a desktop diligence of a photocopied set

of the title documents and the site plan and building plan of the property which are made available to a purchaser by the property agent or the seller himself.

(b) A pre-contract Stage II: in which, having made the preliminary decision to go ahead with the possible transaction on the basis of what was learnt during the previous stage, the purchaser would essentially carry out a comprehensive check on title and encumbrance, if any, of the property, at the office of the concerned sub-registrar in whose offices, under the Indian Registration Act, each transfer of the property in the title sequence and each encumbrance that was created through a registered instrument is recorded. In a more detailed due diligence, the purchaser will also endeavour to, inter alia, verify the validity of construction that may exist on the land by going through the files relating to the property at the office of the authority entrusted with granting building permits and conduct a study of the applicable master plan (in case of only urban property) to verify the use to which the property was allowed to be put. For agricultural property he will carry out a scrutiny of all recordings in the office of the concerned authorities where such record is maintained with a view to establishing title, encumbrance, mutation and possession, and a study of the local laws to determine whether there is any restriction on transfer. The above due diligence exercise is sometimes carried out as a pre-closing condition to a binding or a non-binding document that is signed after the pre-contract Stage I, which could be either in the nature of a binding agreement for sale or a non-binding term sheet, depending on how the transaction is negotiated. During this stage also, the purchaser takes advice on how to best structure the transaction, the predominant consideration being to either enter into a deferred sale, i.e. subject to pre-closing conditions or, in the case of freehold property that is freely transferable, to go directly for the transfer in a one-time deal.

(c) Contract Stage 1: subject to satisfaction with the outcome of the due diligence exercise and the commercials being agreed between the buyer and the seller, the transaction takes place either in one step or in two steps. In a one-step transaction, which is possible for a freehold property, it is open to the parties to agree for the seller to execute and sign a sale deed or a conveyance for the said property in favour of the purchaser without any prior agreement, term sheet etc. In a two-step transaction, when either the purchaser needs time to liquidate assets to generate the funds to pay the seller or the seller needs time to vacate the property, parties generally enter into a binding agreement for sale, which is essentially an agreement where the seller promises to sell the property to the purchaser, who agrees to purchase the same for a specific consideration and pays the seller an upfront advance or part-sale consideration and promises to pay the balance within a specified time limit which is the essence of the contract. Under Indian law this is an enforceable agreement. In other words, if the seller reneges on his commitment to sell in spite of the purchaser being ready with the money, the purchaser can go to court and ask for a decree of specific enforcement forcing the seller to transfer the property as agreed. A sale deed and agreement for sale need to be duly stamped, and the sale deed is required to be registered with the concerned sub- registrar. In some states in India, even an agreement for sale is required to be registered with the concerned sub-registrar.

(d) Contract Stage 2: Assuming there is no dispute under the agreement for sale and all pre-closing conditions are satisfied, the transaction is consummated on or before the due date by the seller

executing a sale deed or conveyance in favour of the purchaser and granting the purchaser physical possession of the property, against which the purchaser pays the seller the balance sale consideration. By law this document needs to be registered with the concerned sub-registrar, for which both the seller and the purchaser have to personally present themselves before the sub-registrar and admit their signatures. The document also requires stamp duty, which is payable at a rate which is a percentage of the sale consideration and differs from state to state in the range of 4% to 8% of the sale consideration.

- In a leasehold property, the terms of the grant or the perpetual lease normally contain a provision governing the mode of transferring leasehold rights further. A standard condition is that no transfers will be permitted for part of the property and, even for transferring the full property, prior permission of the paramount lessor would have to be obtained, which may be granted with or without condition. A transfer charge may also be imposed by the paramount lessor. In some cases the paramount lessor reserves the right of pre-emption as a first option to purchase the property at the intended value. For a transaction of sale of leasehold property, therefore, the transaction is necessarily split into two stages, the first being an agreement for sale with pre-closing conditions including the obligation on the seller to obtain the requisite sale permission from the paramount lessor (the Government) and then closure by a sale deed or a conveyance for transfer of the leasehold rights.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Although Indian law recognises that the owner of the land and the owner of the building on the land could be different, instances of this are rare. Generally, the land and structures thereon are owned by the same entity/person. Indian law also recognises sale of different units in a multi-storied building by its owners, and in most states the sale of an apartment or unit in a multi-storied building or condominium includes, by law, a proportionate indivisible share in the land. Therefore, each time a unit is transferred or sold, the original owner's share in the land get diluted. Most states in India have statutes that govern the transfer of units/apartments in multi-storied buildings, management of such complexes and the maintenance of facilities therein, rights of individual apartment/unit owners inter se and the setting up of maintenance organisations. In some states where there is a predominance of 'leasehold land', i.e. where land is granted to the owner by the state Government or any of its agencies, such grant is typically in the nature of a long-term lease (99 years), and the paramount lessor's real estate policies sometimes allow the owner to 'sell' apartments/units in a multi-storied building constructed on such land through a sub-lease deed which is subject to terms of the aforesaid lease deed.

The Real Estate (Regulation and Development) Act, 2016 and corresponding state rules ('RERA') have been recently implemented by the states in India. RERA has been enacted primarily to regulate activities of real estate developers and protect their customers. To go into the details of this enactment is deemed unnecessary for this note.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Under the Indian legal system, joint ownership or co-ownership of property is recognized as a 'tenancy-in-common' and not as 'joint tenancy' sometimes recognised by English law. A co-owner holds a share in property in accordance with his share of contribution in the purchase price. If such share cannot be determined or there is no evidence as to the manner in which the purchase consideration has been shared, the law will presume 'equal ownership'. In other words, in a property owned by two owners where there is no evidence of how the consideration was shared, each will be presumed to have a 50% undivided share. This has statutory sanction under the Transfer of Property Act, 1882.

All juristic persons and entities can own immovable property. These include individuals, companies incorporated under the Companies Act, 1956/Companies Act, 2013, limited liability partnerships, statutory bodies and institutions, societies (both co-operative and others) under their respective statutes, trusts etc.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

In India, except in unusual circumstances where it is possible for the owner of the building and for the owner of the land to be two different persons, generally the ownership of the land presumes the ownership of all structures and buildings on the land.

In case of real estate projects such as multi-storey buildings (or condominiums as they are known in the West) to which RERA is applicable, the developer must execute a registered conveyance deed in favour of the allottee of the unit/apartment along with the undivided proportionate title in the common areas to the association of the allottees. In terms of RERA, the promoter/developer of a real estate project is required to enable formation of an association or society or co-operative society, of the allottees, under the applicable laws. In the absence of local laws, the association of allottees must be formed within 3 months of majority of allottees having booked their unit/apartment in the project.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

Section 17 of the Indian Registration Act, 1908 requires compulsory registration of all documents or instruments evidencing transfer of rights in immovable property. Once the instrument or document is registered, it becomes a public document and is open to inspection in accordance with the said law and state-specific rules made thereunder. Every district in every state in India has a Registrar of Assurances, with sub-registrars for different parts of the district, which are statutory appointments under the Indian Registration Act, 1908. Transfers of immovable property must be registered with the sub-registrar having territorial jurisdiction over the area in which the property is situated. Registration requires personal appearance of all signatories (including witnesses) before the concerned sub-registrar to identify themselves and admit their signatures and affirm that the instrument has been executed of their own free will. Every sub-registrar's office maintains an index of registered documents and a copy

of the document itself to facilitate public inspection. A registration fee is payable for every registration and differs from state to state. In some states it is a fixed fee depending on the nature of the document and in some states it is a small percentage of the specified consideration of the instrument. Purchasers can rely upon the information in the entries in the maintained records of the sub-registrar. However, there are some crucial questions for which an intending purchaser has to independently seek answers and secure himself for which the records of the sub-registrar are not enough:

- Whether the seller has priorly entered into an unregistered arrangement for the property with someone else and is concealing this from the purchaser?

- Whether there is any pending litigation involving the property which the seller has not disclosed? There is no central database for such litigation.

- Whether the seller (being an individual) has created an equitable mortgage, i.e. by deposit of title deeds of the property? Because there is no instrument evidencing transfer of rights in property in an equitable mortgage, this fact does not show up in the records of the sub-registrar, and precaution needs to be taken to ensure that the original title deed is in the possession of the seller, which is an indication that no equitable mortgage has been created.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

As stated in more detail in answer to question 17 below, foreigners are not allowed to buy immovable property in India except with prior permission of the Reserve Bank of India. Foreigners are however allowed to invest 100% in construction development projects in the real estate sector, i.e. development of township, construction of residential/commercial premises, roads, bridges, hotel, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure and township. Typically, such transactions are funded through raising loans from banks and other non-banking financial institutions in India. Funding also comes from sale of units prior to completion of construction thereof, i.e. during construction period or prior to commencement of construction. For raising funds from abroad, the end use of such funds must be allowed under the External Commercial Borrowings (ECB) Policy issued by the Reserve Bank of India. In this regard, the negative end use list in the ECB Policy includes investment in real estate or purchase of land except when used for affordable housing as defined in the harmonised master list of infrastructure sub-sectors notified by Government of India, construction and development of special economic zones and industrial parks/integrated townships.

Additionally, investment may be made through a foreign portfolio investor registered with the Securities Exchange Board of India (SEBI), the market regulator, in accordance with the provisions of the Securities Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014. Such foreign portfolio investors are allowed to invest in corporate bonds in India subject to certain limits and thresholds prescribed by the Reserve Bank of India.
Yes, mortgage of immovable property along with hypothecation of all receivables from such property

is a very typical means of coverage for banks in India. However, for those real estate development projects to which RERA applies, there are certain restrictions on the mortgage of such a project/ hypothecation of its receivables. For example, RERA provides that 70% of amounts realised from the real estate projects that are covered by RERA from allottees from time to time, must be deposited by the developer in a separate account to cover cost of construction and land cost of the project only. RERA also provides that after the developer executes an agreement for sale for any apartment, plot or building, as the case may be, with the allottee, he must not mortgage or create a charge on such apartment, plot or building and, if any such mortgage or charge is created, such mortgage will not affect the right and interest of the allottee.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

Foreign exchange laws envisaged in the Foreign Direct Investment (FDI) Policy announced by the Government of India from time to time; the Foreign Exchange Management Act, 1999 including rules, regulations, directions and circulars issued pursuant thereto; and the ECB Policy should be taken into account whilst ascertaining the most effective manner for financing of a purchase project in India.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

There is an element of direct taxes for the seller in every transaction of sale of immovable property which is discussed in response to question 7 below.

Additionally, generally, in every state in India a document or instrument by which rights in immovable property are transferred attracts the following duties/charges:

- Stamp duty (including municipal tax) which is a percentage of the sale consideration or market value of the property, depending on the nature of the document, and differs from state to state in the range of 4% to 9%. In some states there is a discount of approximately 2% if the purchaser is a female, and there are exemptions in some cases where the seller or the transferor is the central Government or state Government.
- Registration charges, which in most states are fixed and nominal and in some states are a small percentage of sale consideration, say 1% to 2%.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

Under the Indian Income Tax Act, 1961, generally the profit or gain arising from the transfer of a capital asset arrived at in the manner provided under the Act is subject to tax. In other words, for a seller of immovable property, the difference between the sale price and the seller's original acquisition cost plus the cost of improvement thereto (indexed further for inflation according to a prescribed formula) is taxable under the head 'capital gains'. If immovable property (land or building) has been held by the

seller for less than 24 months, it qualifies as a short-term capital asset. The gain/profit earned by sale thereof (also known as 'short-term capital gain') is taxed at the same rate as the seller's taxable income. Immovable property (land or building) held for more than 24 months qualifies as a long-term capital asset. The gain/profit earned by sale thereof ('long-term capital gain') is taxed at a lesser rate. For a domestic company, the rate for taxing short-term capital gain in India is 30% (plus health and education cess and surcharge) and the prescribed rate for taxing a long-term capital gain is 20% (plus health and education cess and surcharge). In India, the announcement of the fiscal policy is an annual event, and therefore rates for taxing income, long-term capital gain etc. are prescribed through the relevant provisions of the Finance Act passed by the Indian parliament annually, and accordingly may vary from year to year. The fiscal policy also prescribes exemptions from long-term capital gain by providing gateways for investment in tax-saving modes. For example, in the case of individuals, it is possible to deploy the gain in a residential property under construction or purchasing a residential property for personal residence to avail of such exemption.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Outflow of foreign exchange from India is undertaken in terms of ability provided under the relevant provisions of the Foreign Exchange Management Act, 1999 and the Regulations made thereunder (FEMA Regulations).

If the seller is a resident Indian he cannot repatriate the sale proceeds outside India unless (i) he is covered under any general permission granted by the Reserve Bank of India for repatriation for specific prescribed purposes, such general permission being subject to a capped amount in each fiscal year (depending on the purpose); or (ii) he seeks prior permission from the Reserve Bank of India, for which he has to make out a case under the relevant FEMA Regulations.

As per FEMA Regulations, a person resident outside India can hold, own, transfer or invest in any immovable property situated in India if such property was acquired, held or owned by him/her when he/she was resident in India or inherited from a person resident in India. Such person cannot repatriate outside India the sale proceeds of the said immovable property without the prior permission of the Reserve Bank of India. A person resident outside India who has acquired any immovable property in India in accordance with foreign exchange laws in force at the time of such acquisition or with the general or specific permission of the Reserve Bank of India may transfer such property to a person resident in India, provided the transaction takes place through banking channels in India and provided that the resident is not otherwise prohibited from such acquisition.

Foreign nationals of non-Indian origin resident outside India can acquire or transfer immovable property in India on a lease not exceeding five years without the prior permission of the Reserve Bank.

Foreigners are not allowed to buy immovable property in India except with prior permission of the Reserve Bank of India which, for purely residential or commercial property, is rarely granted. Foreigners are, however, allowed to invest 100% in construction development projects in the real estate sector, i.e. development of township, construction of residential/commercial premises, roads, bridges, hotel, resorts, hospitals, educational institutions, recreational facilities, city and regional level

infrastructure and township in accordance with the FDI Policy. The investor will be permitted to exit and repatriate foreign investment before completion of project under an automatic route, provided that a lock-in period of three years, calculated with reference to each tranche of foreign investment, has been completed. Further, transfer of stake from one non-resident to another non-resident without repatriation of investment is subject neither to any lock-in period nor to any Government approval.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

Purchasing a property which is already let out to someone else is a common occurrence. There are two types of tenancies. In one, eviction of the tenant is protected by statute under rent control legislation which exists in most states. In such a case, and notwithstanding the terms of the lease, the landlord has to approach the controller appointed, or a special tribunal constituted, under the rent control legislation for eviction of the tenant and must bring his case within one of the grounds prescribed in the statute for eviction, like non-payment of rent, unauthorised subletting or use of premises, unauthorised construction by the tenant, landlord requiring the premises for his own bona fide requirements etc. For a landlord to evict a protected tenant through the courts is a long and tedious process. However, some tenancies are outside the purview of rent control legislation, and the common yardstick that determines whether the tenancy is protected or outside the purview of such protection is the monthly rent being paid by the tenant. In some states tenants paying more than a specified amount of rent per month are not protected by rent control legislation and, in such cases, the contract of lease determines the relationship between such tenant and the landlord. Therefore, while purchasing a rented property, the first thing to examine would be whether the tenant is protected by statute or by the terms of the lease. In the former case, the said tenancy is treated as a serious encumbrance which ultimately would have an effect on the sale price. In the latter case, the terms of the lease have to be seen to ascertain whether and under what circumstances the lease is prematurely terminable by the landlord or the tenure of the lease to determine the vulnerability of the tenant and therefore the discount, if any, that the purchaser will expect on the sale price.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

Once the building is constructed and put to use, it is almost impossible for the owner to get the designated use changed to an alternative use. This is relevant only in urban areas where there is planned development governed by the applicable master plan/zonal plan, which is mostly the case in India.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- **notarial costs?**
- **land register?**
- **real property transfer tax?**
- **advising lawyer (due diligence)?**
- **estate agent?**
- **others?**

As stated earlier, foreigners who are not resident in India are not allowed to buy property in India or deal in real estate unless they seek prior permission of the Reserve Bank of India, but are, however, allowed to invest in developing real estate in India subject to conditions of minimum capitalisation, project size etc. Hypothetically, if a foreigner with prior permission of the Reserve Bank of India were to buy a property worth €5 million, the standard direct cost on the sale transaction would be approximately in the following range as it differs from state to state:

- Stamp duty (inclusive of municipal tax): 4% to 8% of €5 million;
- Registration charges which can go up to 1% to 2% of €5 million;
- Estate agent: 0.5% to 2% of €5 million, subject to negotiation.

Legal cost if involved in the transaction from inception (including due diligence) and if handled by a law firm like ours: in the range of €35,000 to €45,000 at a conversion rate of INR 80:€1.

We may add that in purchasing leasehold property there could be additional charges that are payable to the paramount lessor as a precondition to the grant of sale, payable according to a prescribed formula set out in the lease or document of grant, and different from case to case.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

For holding urban property the only possible recurring charges would be property tax, which is levied by the local municipality or council and which is calculated in accordance with a formula which is either based on the rental value of the property if the same is actually rented, or on a deemed rental value if it is self-occupied, and which is calculated in accordance with the formula linked to the cost of land and the cost of construction, and in some states based on the open area, covered area and age of the structure, and really has no nexus to market value. The others are minimum electricity and water charges that would be payable even if the property is vacant and there is no consumption of electricity and water but there are electricity and water connections in the property.
In agricultural property (which foreigners are not allowed to buy in India under any circumstances) there is annual land revenue or cess which differs from state to state.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional caretaker for the purchased property? How does the caretaker normally charge for their work?

There is no organised system in India for appointing professional caretakers. In some high-value residential and commercial complexes (which means multi-storied buildings with residential or commercial apartments and parking facilities, swimming pool, recreation etc.) and gated communities, multinational real estate firms like C.B. Richard Ellis do undertake caretaker responsibility for the whole development under contract but not for individual units. In individual-owned properties, the only recourse is to hire a professional security agency for rotational security services. Security agency guards can also be asked to pay electricity, water and gas bills and to report any damage to the property.

VI. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
- directly in real estate?
- through real property funds, open or closed ones?
- through other clear and secure financial products?
- in commercial real estate or residential property?

'Investment in real estate' can have two meanings in the Indian context. It could mean buying immovable property in India with a view to speculation on capital appreciation. For foreigners not resident in India, this activity, i.e. buying and selling real estate in India, is not permitted. It could also mean investment in real estate construction development (refer to answer to question 10). Under the FDI Policy of India, foreigners are permitted to invest in real estate development. In other words, foreigners can, either through wholly owned subsidiaries established in India or directly in joint ventures with Indian entities, undertake projects for development of real estate and establishing housing, commercial, industrial or other complexes, with a lock-in period of three years amongst other terms prescribed in the said policy. For a foreign investor, it is always worthwhile to invest in real estate construction development projects in India, although we recommend that he does so with an Indian property owner who has an FDI- and RERA-compliant project which is ready to start, having received necessary permissions and approvals. In India, this normally takes time and sometimes leads to indefinite delays in the commencement of the project. For this the foreign investor will have to carry out a detailed due diligence of project approvals and title to the land, although his entry cost will be higher than investing in a greenfield project on its own, which could also be susceptible to delays on account of procuring change in land use and other approvals necessary for the purpose of undertaking construction /development of the project. At the moment, and because of the complexity of land laws, zoning regulations and uncertainty on the time frame of project approvals, we would not advise a foreign investor to undertake a greenfield project completely on its own and commencing from the first stage of scouting for the requisite land.

In relation to investment through real property funds (open or closed), although not many options are available, the SEBI has put in place The SEBI (Alternative Investment Funds) Regulations, 2012 (AIF Regulations) on 21st May 2012 and has required all alternative investment funds (AIF) operating as private equity funds, real estate funds, hedge funds etc. to register with the SEBI. The AIF Regulations provide that the AIF may raise funds from any investor, whether Indian, foreign or non-resident Indians, by way of issue of units. The AIF Regulations also provide that existing schemes will be allowed to complete their agreed tenure and such funds shall not raise any fresh monies other than commitments already made until registration is granted under the AIF Regulations. In view of this investment in financial products issued by SEBI, registered AIF could be considered after having gone through the terms and conditions of such products.
A new emerging option for commercial real estate assets is a real estate investment trust (REIT). A REIT resembles a mutual fund wherein several investors pool in funds with real estate as the underlying asset. Currently, in terms of the SEBI (Real Estate Investment Trusts) Regulations, 2014, the minimum unit size and trading lot size of a REIT is INR 100,000 (approximately €1,235). However, the minimum subscription amount per investor (upon public offer) is INR 200,000 (approximately €2,500). Foreign investors are permitted to invest in a REIT, subject to regulations of the Reserve Bank of India.

There is not much of a difference in restrictions/applicable permissions and approvals required for investment in commercial and residential property in India.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office or legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

Foreigners not resident in India are not allowed to purchase immovable property in India except with prior permission of the Reserve Bank of India, save as if immovable property was acquired, held or owned by such person when he/she was resident in India or inherited from a person who was resident in India. A foreigner who is residing in India for more than 182 days during the course of the preceding financial year for taking up employment or carrying on business/vocation or for any other purpose indicating his intention to stay for an uncertain period can acquire immovable property in India as he would be a 'person resident in India'. To be treated as a person resident in India under foreign exchange laws in India, a person has not only to satisfy the condition of the period of stay but also his/her purpose of staya and type of Indian visa granted to clearly indicate the intention to stay in India for an uncertain period. A company incorporated in India and wholly owned by foreign shareholders is not allowed to engage in the activity of buying and selling of real estate. A foreign entity which has established in India its branch office or other place of business in accordance with applicable Indian laws for carrying on in India any activity (except a liaison office), may acquire immovable property in India which is necessary for or incidental to carrying on such activity. An Indian company having foreign shareholders can also purchase real estate to pursue its objects for which foreign investment is otherwise permitted under the FDI Policy of the Government of India (as stated hereafter). It may also be mentioned that citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau or Democratic People's Republic of Korea are not allowed to purchase immovable property in India even if they are resident in India without prior permission of Reserve Bank of India, other than by a lease not exceeding five years. For an Indian there are no such restrictions. Property can be bought by an Indian individually or by a company having Indian shareholders or LLPs comprised of Indian partners or Indian trusts etc.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

As already mentioned, there is no direct ability available to a foreign investor to buy a plot of land in its name to run a business in India. For this, firstly he must organise his presence in India for undertaking a line of business in which foreign investment is permissible under the FDI Policy, and this could be done through an Indian company incorporated under the Indian Companies Act, 2013. Such a company could raise share capital from foreigners to the extent FDI is permissible under the FDI Policy for that specific sector. For undertaking its business, such a company could purchase real estate to set up its manufacturing unit/offices, and for this it will not require any approval for the purchase of land/building. There will, however, be a requirement for such a company to obtain operational business licenses and registrations depending upon the line of activity to be pursued, e.g. retail, services or manufacturing sector. India's FDI Policy prohibits foreign investment in certain kinds of businesses, allows investment in certain kinds of business with prior approval, sets sectoral caps for foreign investment in certain kinds

of business and allows 100% investment without prior approval in certain kinds of business. On the operational front and depending on the size of the project, permissions and approvals are needed which could include industrial licenses, environment clearances and registration for undertaking imports and exports apart from setting-up permissions such as building permits, electricity load sanctions etc.

19. Could your firm assist foreign investors in

- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

Yes. Our firm has a robust real estate practice team and, with eight offices in different parts of the country, the firm's spread and reach in this practice area is immense and well known in the real estate market in India. In assignments involving foreign investment in the real estate sector, the real estate team works in tandem with partners who specialise in regulatory issues and transaction structuring related thereto to provide comprehensive solutions under one roof. Our firm also regularly assists and provides advisory support to development/construction companies across India to ensure compliances with various applicable laws including licenses/permissions under environmental, operational and labour laws and drafting construction, development and maintenance contracts.

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ISLE OF MAN
LAURENCE KEENAN ADVOCATES & SOLICITORS

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

Real estate in the Isle of Man ('IOM') is typically marketed by estate agents who will negotiate and broker a deal between the vendor and purchaser. Once a purchase price and terms of the purchase have been agreed, advocates will be instructed to conduct the conveyance. It is only advocates or a purchaser themselves who can formally undertake a property purchase or sale in the IOM. Paralegals or experienced but unqualified conveyancers are often employed by law firms and used to assist in this process, but advocates are required to oversee the work and certify any land registry applications.

Once advocates have been engaged, both sides of the transaction are provided with the heads of terms, and the vendor's advocate will draft the sale documentation. This will be provided to the purchaser's advocate, who will review and approve the same along with the abstract of title (being an extract of deeds forming the title which are retained at a public records registry). In the usual course, a property must have good root of title, which means evidencing at least 21 years of the sale history of the property, or as far back as necessary to establish the real estate being sold for valuable consideration. Any covenants, restrictions, provisos, rights or easements relating to the property must also be tracked through this potted history of the property to their root.

Searches are often undertaken in relation to real estate and provide information pertaining to the government district the property is in, any rates applicable, the services to and from the property and compliance with various legislation and byelaws.

Once the necessary investigations have been conducted, contracts will either be exchanged with a deposit typically of 10%, with completion set thereafter, or exchange and completion will be undertaken on the same date.

The IOM is in the process of creating a thorough land registry system mapping all property on a register. Consequently, it is a requirement that an application to the Isle of Man land registry is made for first registration of an unregistered property within three months following date of completion.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Land and real estate in the IOM can be held as freehold or leasehold.

Freehold property is absolute ownership of land and buildings thereon. In the case of leasehold property, this typically applies to apartments but does include commercial, retail and agricultural properties. The

freehold of the property is owned by a developer or management company and each individual unit is leased for what is typically a term of 999 years (usually 999 years) to the party obtaining the lease. A leasehold title can be assigned on in the same way a freehold title can be sold on.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Real property can be held solely by individuals or companies. In cases where real estate is being purchased by more than one person or legal entity it can be held as either joint tenants or tenants in common.

In the case of joint tenants, real estate is held jointly and, in the event either party dies, the property vests automatically in their survivor. Equally, both parties are jointly responsible for the whole of the property.

Where property is held as tenants in common the property is divided into shares, equal or otherwise, owned individually by each party. Consequently, each party could sell their share in the property and, in the event of the death of an owner, the property falls to their estate.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

Where freehold title is held it is typical that the owner owns both the land and any buildings thereon erected. It is not possible for there to be different owners of land and buildings thereon. However, buildings or units (in the case of apartments or flats) can be leased for either a long period (as in the case of apartments that are bought or sold) or for shorter terms, which often applies in commercial situations or with commercial property.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

The IOM land registry compiles a formal register of property and a good-faith purchaser is protected with regard to the entries in this formal register in so far as a conveyance is conducted by an advocate and any application to the register must be certified to an advocate.

In the event of any discrepancy or dispute, the relevant recourse would be dependent upon the issue itself.

In the case that the property is unregistered, the documentation is maintained in the Isle of Man deeds registry. Similarly, in the case of a conveyance of real estate an advocate is required to conduct the transaction and the deeds contain a covenant as to good title. The recourse for any dispute or issue that arises in relation to the title of a property again will be dependent upon its nature and the party responsible.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

Typically, property transactions are financed by mortgages. In the IOM, this means that funds are advanced directly from a bank to the advocate's client account and used to finance the property purchase.

Typically, a purchaser has to provide between 10% and 40% of the purchase price as a deposit (depending on whether it is a residential or commercial transaction). The banks require a charge to be taken against the property in return. This is recorded in either the Isle of Man deeds or land registry (as applicable). In practice this means that, whilst a party may own a freehold or leasehold title, that title is subject to a charge and, in the event of the sale of the property or non-payment of the mortgage, the bank has an interest in the property.

However, unlike in other jurisdictions the bank cannot simply repossess a property. In the event that the party defaults on their mortgage arrangement, the bank must obtain a judgement in their favour in relation to the debt owed and in turn make an application for possession of the property to the IOM courts. If this is granted the property may then be sold by coroner's auction or private treaty and the bank will reclaim the debt from those funds. The coroner is a process server and debt enforcement public officer.

A mortgage charge will usually be a first charge over the property and any subsequent charges should only be granted with permission of the bank and, indeed, rank pari passu.

There is nothing to prevent the purchaser from financing a transaction with cash or by private arrangement. However, any purchase funds will need to be transferred through an advocate's client account and, as such, must comply with all anti-money laundering and countering the financing of terrorism legislation and requirements. In practice this means suitable evidence of source of the wealth used must be produced and accepted by an advocate/firm before the funds can be received.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

It is extremely uncommon for banks or other financial institutions outside the jurisdiction to lend finance for a property purchase in the Isle of Man. Due to the peculiar nature of the way banks obtain and secure their interest in a property in relation to a mortgage, it is usually only offshore financial institutions in the Isle of Man that will provide a financing facility.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

There is no stamp duty or capital gains tax in the IOM.

There are fees due and payable to the Isle of Man Government as recordal fees that relate directly to the purchase price of real estate. At present, these are £5.70 per £1,000 of the purchase price.

All real estate in the Isle of Man is subject to rates which are set by the Isle of Man Treasury and/or the local government district in which the property is located. These are calculated on the size and designation of a property and are due annually.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

There are no restrictions on how long a property must be owned for or how soon and when a property can be sold on the IOM. Matters relating to ownership and sale of a property are at the discretion of the owner.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

In the same way that funds must be received into an advocate's client account when purchasing a property, an advocate acting for a vendor in a transaction will receive the purchase funds directly from the purchaser's advocate. Funds can then be transferred (subject to the relevant deductions, such as fees and disbursements) to the client outside of the Isle of Man (by way of repatriation) providing that transferring funds to said destination complies with all anti-money laundering and countering the financing of terrorism requirements. There is no withholding tax or capital gains tax in respect of the sale of property for nin-resident owners.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

In the event that real estate is purchased subject to a lease or tenancy agreement, it is expected that the contractual terms in the lease or tenancy are required to be honoured. A purchaser may only terminate a lease or tenancy in accordance with the terms of the contract and any relevant legislation governing landlord and tenant relationships.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

Any change of use to a building must be approved by the Department of Infrastructure and the Planning Department. To obtain the necessary approvals an application must be submitted to the Planning Department and/or the Department for Building Regulations. Additionally, if the real estate is in a conservation area or is a registered building, further restrictions may apply.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- **Notarial costs?**
- **Land register?**
- **Real property transfer tax?**
- **Advising lawyer (due diligence)?**
- **Estate agent?**
- **Others?**

There is a Tynwald Scale of conveyancing fees in the Isle of Man based on the purchase price of a property in £GBP. The legal fees for purchasing a property at the value of £5,000,000 per the Tynwald Scale would be £10,750 plus value added tax (VAT) (if applicable to the purchaser) and disbursements.

The recordal fees due and payable on a property with a purchase price of £5,000,000 would be £28,500.

There may be miscellaneous fees payable in relation to charges over the property, additional deeds and the registering of a foreign company, among other things, but these would be circumstance-specific.

Estate agents typically charge the vendor between 0.99% and 2% of the sale price, together with disbursements and VAT.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?
The only taxes due in relation to real estate on the IOM are rates which are set by the Isle of Man treasury and/or the local government district in which the property is located. These are calculated on the size and designation of a property and are due annually.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

This depends entirely on the type of property and the type of management required. With individual leases and tenancies, a management company will typically take a percentage of the rent as a fee. If management of a whole apartment block is required, fee structures will differ. There are not usually additional charges because the investor is not resident in or not a citizen of the Isle of Man or United Kingdom.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
- Directly in real estate?
- Through real property funds, open or closed ones?
- Through other clear and secure financial products?
- in commercial real estate or in residential property?

A financial advisor should be contacted to provide this kind of advice.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

There are no restrictions on who can own property in the IOM. In the case of foreign companies, they

must register as such with the Isle of Man companies registry within one month of purchasing a property.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

This is entirely dependent on the nature of both the land and type of business. There is legislation governing all industries in the IOM and, as such, legal advice should always be sought when considering conducting a business from the IOM.

19. Could your firm assist foreign investors in

- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

CONTACT

The Laurence Keenan Advocates & Solicitors team can assist with all aspects of real estate and business transactions in the Isle of Man. Please contact info@lklaw.co.im for more information or to arrange to discuss your needs with one of our Advocates.

ITALY
COCUZZA E ASSOCIATI STUDIO LEGALE

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

Sales of real estate have effect starting from when a written agreement in entered into by the seller and the purchaser. Normally, the agreement is entered into before a notary Public who will register the sale in the land registry. Registration protects the purchaser from sales of the same real estate to other prospective purchasers.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Yes, it does. You may be owner of the entire construction or of only portions of it.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Yes, it does: this is called '***comunione***' (i.e. joint ownership), which is the object of a specific set of provisions of the civil code Which kind of entities can be owner of real property in your country? Any kind of entities.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

Yes, it is. Normally the construction belongs to the owner of the land, but this latter may grant someone else a '*diritto di superficie*', i.e. the right to build a construction and being the owner of the construction. Therefore the land belongs to X and the construction belongs to Y who has previously acquired the '*diritto di superficie*' on the land.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

The ownership of parcels of lands and of buildings has to be registered in the land registry ('*registro dei beni immobili*'). The purchaser is protected with regards to entries in the '*registro dei beni immobili*'.

II. Financing tools of the transaction

6. How do investors finance the transaction? With loans granted by banks. Can purchases be financed through real estate purchase contracts?

This is not the practice in Italy. Are mortgages the typical way of coverage for banks? Yes, they are.

7. What should be taken into account when thinking about the financing of a purchase project in your country?
The interest rate demanded by the bank, and the term to return the financed amount. A new provision has been recently entered into allowing the banks to become owner of the financed real estate if the debtor is in breach.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

Taxes vary depending on the destination of the real estate and on the nature of the seller (natural person, construction company, a different company etc.).

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?
Yes. For instance, the purchaser of a real estate for living purposes who has obtained tax breaks loses them if (i) he does not start using the real estate within 18 months, or (ii) he sells the real estate within five years (unless he purchases a new real estate within one year)

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Yes, repatriation is possible and legal.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

The purchaser is bound to previous leases which have a so-called 'sure date' prior to the sale. According to the law, 'sure date' is granted by registration or notarisation of the lease.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

It depends on urbanistic plans. For instance, if the real estate is placed in an area destined to production purposes, you are not allowed to change the destination of a construction (or a portion thereof) to living purposes.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly
- **notarial costs?**
- **land register?**
- **real property transfer tax?**
- **advising lawyer (due diligence)?**
- **estate agent?**
- **others?**

Notarial costs vary depending on the consideration paid by purchaser. As for taxes, we revert to what

is written above. Lawyers' fees depend on the effective activity carried out (i.e. due diligence, drafting and negotiation). The real estate agent's fees depend on the paid consideration.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

Taxes are due to the municipality where the real estate is placed. The percentage is decided locally.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property?

How does the property management normally charge for their work? There is no rule on this, and therefore fees vary from case to case.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
- **directly in real estate?**
- **through real property funds, open or closed ones?**
- **through other clear and secure financial products?**
- **In commercial real estate or in residential property?**

It really depends on what is the 'business' purpose of the investor (fund, family office, private real estate company, individual) and on its corporate structure and the size of the transaction.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

Foreigners are entitled to purchase real estate only if an Italian person/entity is entitled to purchase a real estate in their homeland. From a tax viewpoint the incorporation of an Italian entity is advisable if the prospective purchaser is a company.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

It depends on the purpose of the business. Running a productive activity requires different public permits than, for instance, running a retail store.

19. Could your firm assist foreign investors in
- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

We normally handle these kind of deals from a legal viewpoint. Although we do not normally carry out any activity related to finding properties, we are in constant touch with outstanding brokers and real estate agent companies, and we can therefore address prospective investors to primary-level research counsel.

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JAPAN
URYU & ITOGA

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

1) The seller and the purchaser execute the sell and purchase agreement (SPA). The purchaser is sometimes required to pay a down payment to the seller at the time of execution of the SPA. A down payment usually amounts to 10% to 20% of the purchase price.
2) When the purchaser has confirmed that the conditions precedent have been fulfilled on the closing date, it pays the purchase price in full (usually by bank transfer). Escrow is not commonly used in Japan.
3) Formal title (ownership) of the real estate property transfers from the seller to the purchaser concurrently with such payment, which is usually so stipulated in the SPA.
4) After the closing procedures (but by the closing date), the purchaser's judicial scrivener files with the Legal Affairs Bureau an application for registration of ownership transfer of the property.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Yes, unit ownership is a type of ownership recognised for a multi-unit building under the Unit Ownership Law. A multiple-unit building consists of (i) private-use units of the building, each of which is owned exclusively by a unit owner and can be independently transferred, and (ii) common-use units (such as the stairs and elevators of the building), which are owned jointly and may be jointly used by all the unit owners of the building.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Yes, co-ownership is a type of ownership where one party owns a certain proportion of interest in the entire property and other owners own the remaining proportions of interest. Any entity, regardless of whether an individual person or a legal one, can be the owner of real property under Japanese law.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

It is possible to have different owners of the land and the building erected on it. Under Japanese law, land and buildings are independent real properties and can be separately traded, and thus the owner of the land and the owner of the building standing on that land can be different persons.

5. Is the land and/or the building registered in a formal register, and is a good faith purchaser protected with regard to the entries in this formal register?

Generally, no.
In practice, the registration is usually relied upon by parties to a real estate transaction, as it is generally the best indication of the true owner of the real estate-related title or interest. However, the real estate registration does not necessarily reflect the true holder of the title or interest.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

Purchases are not necessarily able to be financed through the SPA in itself. If the subject of sales and purchase is the actual real estate, mortgages are the typical way of coverage for banks for the purpose of securities in financing.
On the other hand, if the subject of sales and purchase is a TBI (see question 16 below), a pledge on the TBI is popular because of the nature of the assets.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

There are a lot of things to be taken into account when thinking about project financing. For example, coverage of securities, enforceability, taxation, marketability of the real estate etc are some of the important considerations.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

Registration and licence tax: The seller and the purchaser are required to file an application for registration at the Legal Affairs Bureau. The Legal Affairs Bureau will register the title (ownership) under the name of the new owner. The registration and licence tax must be paid at the Legal Affairs Bureau. The amount of tax payment is calculated as follows:

2% of building value + 1.5% of land value evaluated for fixed asset tax

NOTE: In practice, mostly the purchaser's judicial scrivener handles filing procedures and the purchaser bears the costs of registration, licence tax and the judicial scrivener's fee.

Real property acquisition tax: Tax is imposed on those who acquired real estate through purchase, gift or exchange of land/building or constructing of a new residence/building, regardless of whether the property is registered or not. The amount of tax payment is calculated as follows:

4% (Non-residential building) or 3% (land and residential building) of the standard taxable value (i.e. property value evaluated for fixed asset tax)

NOTE: For residential land or evaluated residential land acquired on or before 31st March 2021, the standard taxable value is half of the land value evaluated for fixed asset tax.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

No. In general, there are no such legal restrictions in connection with the time period to hold the real property. In other words, you are allowed to sell your real property to a third party immediately after you purchase it.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Yes. There are no legal restrictions on money transfer outside Japan so long as the seller complies with AML rules, except that purchasers who transfer money as payment of the purchase price to non-residents are required to make a post-transaction filing pursuant to the Foreign Exchange and Foreign Trade Law.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s) or which restrictions have to be taken into account?

It depends on whether or not the leasehold interest in the underlying land/building is perfected before you purchase such land/building. If the leasehold interest in the land is not duly perfected, the lessee cannot assert its leasehold interest against a purchaser of the land/building.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

So long as the change of use (conversion) is registered in respect of such building, such change in itself is generally allowed. However, such conversion must be made in compliance with the City Planning Law and the Construction Standards Law, which regulate/restrict the use of each building.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly – notarial costs?
None (In general, notarisation is not needed for the acquisition of real estate.)

– land register?
Assuming the property value evaluated for fixed asset tax would be €4 million (approximately JPY 480 million), registration and licence tax of the building and land would amount to approximately €70,000 to €80,000 (see question 8 above).

– real property transfer tax?
Assuming the building is non-residential, the real property acquisition tax would amount to approximately €120,000 to €140,000 (see question 8 above).

– advising lawyer (due diligence)?

It is depending on the extent of the lawyer's job scope, but at least around €10,000 to €20,000 would be estimated.

– estate agent?
The upper limit of real estate agent fees in Japan is stipulated in the Real Estate Transaction Business Law: 3% of the purchase price (approximately €150,000 in the above case.)

– others?
For example, if you incorporate a special purpose vehicle in Japan by which you purchase the property, it will cost approximately €10,000.

NOTE: As to exchange rate, €5 million would be equivalent to approximately JPY 600 million.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

Fixed asset tax: Those who are registered in the fixed asset tax register as owners of land and/or buildings as of 1st January shall pay the fixed asset tax. The amount of tax payment is calculated as follows:

(Standard taxable value (i.e. property value evaluated for fixed asset tax) x 1.4%)

15. What are the costs you have to calculate as a foreign investor, if you engage a professional property management for the purchased property? How does the property management normally charge for their work?

In general, property managers usually charge for their work with a fixed fee price, depending on the scale, type, area and other aspects of the building. According to certain statistics, the standard management fees for a €5 million-sized commercial/office building would be approximately 2% to 4% of the sum of tenant rents.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
– directly in real estate?
There are no legal restrictions on the acquisition or ownership of real estate by non-residents in Japan, except that non-residents who acquire real estate in Japan are required to make a post-transaction filing pursuant to the Foreign Exchange and Foreign Trade Law. In this regard, it is legally possible for non-resident investors to directly acquire real estate in Japan. In practice, however, we would advise foreign investors that another way as described below might be preferable.

– through real property funds, open or closed ones?

Real property in Japan is often acquired by a special purpose vehicle incorporated in Japan as part of a tax-efficient investment structure. Please also note that financial institutions in Japan are generally unwilling to lend money to a foreign entity with mortgages on the real property in Japan in light of enforceability.

– through other clear and secure financial products?
Beneficial interest in the trust of an underlying real property (a TBI) is one of the typical financial products. Real property can be owned by the trustee (usually a licensed trust bank in Japan) as part of the trust assets, and the investor (i.e. the purchaser of the TBI) becomes a beneficiary of the trust by acquiring the TBI. For tax reasons and other regulatory or practical reasons, investments in Japanese large-scale real estate are often made through the acquisition of a TBI.

– In commercial real estate or in residential property
In general, there is no material difference between a commercial property and a residential one for investment. But when it comes to unit ownership (see question 2 above), where a small-scale investment can be made easily, residential properties are much more popular compared to commercial ones. Please also note that real property acquisition tax imposed on residential properties is a bit lower (see question 8 above).

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

As described in questions 3 and 16 above, whether an individual person or a legal one, there are no such restrictions on the acquisition or ownership of real property by non-residents in Japan. Nevertheless, for tax reasons, one typical way would be a Tokumei kumiai (TK) structure where you invest in the special purpose vehicle in your capacity as a member of a TK partnership, and such vehicle acquires the real property (including TBI) in its capacity as TK operator. While the acquisition of actual real property through TK structure usually requires a permit under the Real Estate Specified Joint Enterprise Law, you would perhaps be able to avoid such regulations because of non-residency.

Just note that in order to make the structure simple, it is desirable that you have enough cash to purchase the real property without borrowing from financial institutions.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed and what time and effort are needed normally to get it?

Construction Permits:
Assuming the foreign investor will construct the building for a business on such a plot of land, the following procedures, which would probably take around half a year in total, are mostly necessary:
- To request and obtain a building permit:
- To receive interim inspection and final inspection
- To obtain completion certificate
- To file with the Legal Affairs Bureau an application for registration of ownership of the building

Starting Business:
There are two options for a business entity – Japan branch office of a foreign company or corporate-type entity – both of which need to be registered at the Legal Affairs Bureau. Besides, the following procedures, which would probably take approximately two weeks in total, are necessary:

- To file notification of company incorporation
- To apply for the approval of "Blue Tax Returns"
- To file notification of commencement of business at the local tax office
- To file the labour insurance notifications
- To file the application for health insurance and public welfare pension

19. Could your firm assist foreign investors in finding interesting real estate and related valid investment products in real property in your country where required, through personally known estate agents and other advisers?

Our firm, Uryu & Itoga, is not officially engaged in such business. However, we are pleased to introduce prestigious real property companies from among our clients so you can find such real estate and investment opportunities.

– developing construction projects?

The same as above.

– all legal aspects involved in these contexts?

Of course, Uryu & Itoga is able to provide you with all kinds of legal, taxation and accounting services on a one-stop basis.
I, Shigeru KANEDA, am continuously engaged in real estate transactions and fund investments as my primary practice areas. I am also licensed as a Real Estate Notary as well as an attorney-at-law admitted in Japan.

CONTACT

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KENYA
KTK

I. Procedure for real estate transactions

a. Outline of procedure from purchase to possession:

- Identification of property for purchase.
- Signing of sale agreement and payment of the deposit (usually 10%).
- Processing of completion documents (usually within 90 days).
- Payment of the balance in exchange of the completion documents. Note: the balance of the purchaser price is often held by the vendor's advocates as stakeholder until the title is transferred to the purchaser.
- Transfer of the title to the purchaser.
- Release of the balance of the purchase price and granting of possession of the property to the purchaser.

b. Different types of ownership

Kenyan law allows a purchaser to own property as a leasehold proprietor or a freehold proprietor. The latter is, however, rare. A purchaser is also permitted to own single or multiple units. These provisions apply to both nationals and foreigners.

c. Joint ownership

Kenyan law allows for joint ownership of property. The joint owners can hold the property as joint tenants or tenants in common.

d. Implied ownership

In Kenya, the owner of a building is the implied owner of the land. There is no provision under which an entity can own a building but not the land on it.

e. Formal registration

Land transfers in Kenya are registered in a formal register and a good faith purchaser is protected with regard to entries in the formal register.

II. Financing tools for property transactions

a. Financing for investors.

Purchases in Kenya are typically financed by banks through mortgage arrangements. Financing can, however, also be obtained from other financial institutions such as savings societies, commonly known as saccos.

When seeking financing, one must take into account the cost of financing, which can sometimes be high. Cost of credit can go as high as 5% of the borrowings. In addition, financing that involves registration of securities will take some time, i.e. approximately three months.

III. Costs for transactions

a. The basic costs associated with a purchase of property transaction are as follows:
- Legal fees: set out in the Advocates Remuneration Order 2014.
- Stamp duty on a transfer: 4% of the purchase price.
- Stamp duty on a charge: 0.1%.
- VAT on legal fees: 16%.

b. There is no requirement that a party holds a property for a specific time. An owner can buy and dispose of their property any time at will.

c. Repatriation of funds is also allowed. However, the anti-money laundering act and banking laws provide that a party moving in excess of USD 10,000 in or out of the country must provide suitable supporting documentation for the transfer to be effected by their bank. Such supporting documentation can be the sale agreement or other document related to the sale and purchase transaction.

d. With regard to purchase of property leased to one or more parties, the new owner may terminate the leases provided the same are not the subject of protected tenancies.

e. Change of use of a premises is allowed under Kenyan law. However, this is subject to approval by the local county government, to whom a formal application must be made. It should also be noted that approvals may take some time and may be granted with other conditions attached.

f. Costs related to a sale and purchase transaction for €5 million would be as follows;
- Legal/ notarial costs: approx. €46,250
- Registration/land register costs: approx. €200
- Stamp duty/property transfer tax: €200,000
- Advising lawyer (due diligence): approx. €46,250
- Estate agent: 3% = €150,000
- Others: VAT on professional fees @ 16%

IV. Cost of holding real estate

a. The only taxes arising during one's tenure as proprietor of a property are the annual land rent and land rates. These are typically nominal amounts paid to the county on an annual basis. The same will typically be indicated on the title of the property, so one is well advised in advance.

b. The costs of property management for a property are not regulated. As such, they vary from one property manager to another and are typically subject to negotiation and agreement between the parties.

V. Foreign investors

Property prices in Kenya are currently at a low. This makes it an excellent time for real estate investment generally (both residential and commercial). Kenya has also experienced a major construction boom over the last ten years and, as such, there is a very wide variety of property to choose from all around the country. The fact that there are no restrictions on ownership of property by foreigners is another factor that should encourage investment in property, both for business and leisure.

Could your firm assist foreign investors in finding interesting real estate and related valid investment

products in real property in your country where required through personally known estate agents and other advisers?
– developing construction projects?
– all legal aspects involved in these contexts?

We confirm that our firm has excellent connections and relations in the property industry. We therefore constantly have a pulse on many major developments, whether commercial, residential or leisure. The firm also has relationships with a wide array of reputable property agents, banks, developers and government agencies in the property industry. We are therefore very strategically aligned to assist our clients with their property needs within the jurisdiction.

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LATVIA
VILGERTS

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

The most common forms of real estate transactions are:

- purchase of assets (business) of the target company, including purchase of a real estate usually in combination with other assets (e.g. office building or shopping centre with lease agreements);
- purchase of shares in the target company owning the real estate (it is not unusual that an additional SPV is incorporated into the overall structure);
- mergers or demergers of companies;
- acquisition of real estate by using a contractual joint venture.

Purchase of assets (business) and purchase of shares are the more common methods of structuring real estate deals in Latvia which are also preferred by financing banks. However, most of the high-value real estate transactions are engineered as sale of shares plus creation of a buying entity (with or without an in-kind investment of the real estate into the share capital of the target company) due to a high real estate transfer tax (2% of the value of the deal).

Purchase of shares

The standard practice in all major business transactions is to sign a letter of intent (LOI) between potential seller and buyer. Once the LOI or at least a confidentiality agreement is signed, the due diligence process of the target company (and the real estate) commences, including legal, technical, financial and tax due diligence. The aim is to identify potential risks that might affect the value of the business and shares, and which need to be addressed in the share purchase agreement (SPA).

In parallel to the due diligence process, the parties negotiate the terms of the SPA and other transaction documents (e.g. corporate documents and financing documents – refinancing, loans, encumbrances etc.). In our experience, the first draft of the SPA is provided by the buy side. Once the parties have agreed on all terms and conditions of the SPA and other transaction documents, signing takes place. The transaction can be structured as a simultaneous signing and closing or as a deferred closing.

Usually the payment of the purchase price is through an escrow account, where the buyer and the financing bank transfers the purchase price and it is released from the escrow account in one or several tranches upon completion of specific conditions as per the provisions of the SPA, escrow account agreement (e.g. resigning of the management board of the target company, termination of the agreements, completion of construction etc.) and financing documents (e.g. registration of commercial pledges on shares and assets, mortgage on the real estate, financial pledge etc.).

Depending on the complexity of the transaction and the business type of the target company (e.g. whether it is a regulated company), and whether the purchase of the target company shares is considered a merger under Latvian competition law, the time required for closing the transaction can vary from a couple of weeks to several months after signing the SPA and other transaction documents.

Purchase of real estate

When purchasing a real estate, the first step is signing the real estate purchase agreement. If the real estate is complex, it is possible that the seller and the buyer sign an LOI or confidentiality agreement and carry out due diligence of the real estate and enter into an agreement only after similar due diligence as in the case of share transfer deals.

Once the real estate purchase agreement is concluded, the parties enter into an escrow account agreement and the financing bank transfers the purchase price or its part to the escrow account. The funds remain in the escrow account until the parties have fulfilled conditions for the release of the funds. Conditions that must be fulfilled by the seller and/or the buyer depend on the specifics of the real estate, but usually the seller needs to obtain a refusal from the municipality or third party to exercise their rights of first refusal, the seller must terminate agreements etc.

The parties sign an application to the land book for registration of the buyer's title to the real estate in front of a notary. One of the parties, usually the buyer, covers the state and stamp duties. The signed documents are then filed with the land book and the land book reviews the documents within 10 days. Usually the agreement sets strict time limits for each action to be taken by the respective party. Once the buyer is registered as the owner of the real estate with the land book, the bank transfers the purchase price or its remaining part to the seller.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

The Latvian legal system permits ownership of the whole real estate – land and/or construction. Ownership only of one unit or lots of units (condominium) of the improvements is not regulated under Latvian laws. In general, improvements are a part of the real estate.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

The Latvian legal system permits joint ownership of real property. It is not unusual that a real property (land plot and/or construction(s)) is owned by two or more natural and/or legal persons each owning an undivided share of the real property. In general, the joint owners usually conclude an agreement on the use of the real property that is registered with the land book. For example, if several persons jointly own a residential building with apartments, the owners agree which specific apartments are in their separate use. The same applies to joint ownership of the land, which can be later divided into several real estates provided that the spatial plans permit it.

In Latvia both natural persons and legal entities can be owners of real property. However, Latvian laws do provide restrictions as to entities that can own land in Latvia. Specific laws apply to ownership of land located in cities and outside cities.

The following persons and entities can freely purchase land located in Latvian cities: (i) Latvian citizens and citizens of other EU countries; (ii) specific public bodies; (iii) companies registered in Latvia or other

EU country, provided that they meet criteria set by the law or are companies that are public limited liability companies with their shares are listed on a stock exchange.

With respect to all other entities, the following restrictions apply:

- entities cannot purchase land in (i) national border areas; (ii) the protection zones of the Baltic Sea and the Gulf of Riga and in the protection zones of other public water bodies and watercourses, except if the land is intended for construction according to the city master plan; (iii) agricultural and forest land according to the municipality spatial plan.

- entities are allowed to purchase other land (not mentioned above) according to a procedure under the applicable laws. In general, a person wishing to obtain land must apply to the respective municipality (city or county council) expressing its wish to obtain the land and explaining the planned future use of the land. The chairman of the council reviews the application within 20 days and issues a positive or negative decision.

With respect to acquisition of land outside cities, similar restrictions and procedures to acquire approval apply. In addition, with respect to acquisition of agricultural land, stricter requirements apply. The law introduces, inter alia, a requirement that in order to acquire agricultural land a sole shareholder of a legal entity or shareholders who together represent more than half of a legal entity's share capital with voting rights and all persons who are authorised to represent the legal entity must satisfy two criteria, i.e. they must obtain (i) an EU citizen's registration certificate in Latvia if they are citizens of other EU countries, the European Economic Area or the Swiss Confederation; and (ii) a document certifying their knowledge of the state language (Latvian) at a minimum B2 level. The same requirements apply to individuals who intend to acquire agricultural land.

Considering the specific provisions, each case should be analysed separately to provide the most effective solution.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

Due to historical events, a situation has developed in Latvia where it is possible to have different owners of the land and the building(s) erected on it.
In addition, up until 1st January 2017, the Latvian laws and regulations allowed also creation of a voluntarily shared property, which meant that the lessee, with the permission of the landowner, could build structures on the leased land as independent property objects. In practice, it created a considerable number of disputes between lessees and landowners, especially with respect to the legal status of the structures after the expiration of the lease agreements.
The imperfections of the regulatory framework and disputes prompted the legislator to amend the regulatory framework by providing that as of 1 January 2017 it would no longer be possible to enter a legal relationship where the property is voluntarily shared. The voluntarily shared property has been replaced by a new legal instrument in Latvian civil law – the right to build, which also entered into force on 1st January 2017.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

The real estate is registered with the land book and its entries are available to the public indicating the address of the real estate, its composition (i.e. whether the real estate consists of land, agricultural land, forest, land and buildings, only buildings etc.), ownership (including historical ownership), encumbrances and other information about the real estate. Good-faith purchasers are protected with regard to the entries in the land book. However, usually the purchase agreement contains, inter alia, the seller's representation with respect to the ownership of the real estate.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

The most common method of financing is private financing (in case the buyer is an investor, e.g. investment funds) plus bank financing where the real estate serves as a collateral together with commercial pledges and personal sureties.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

There is no special regulation with respect to financing for transactions in the Latvian laws and the parties are free to reflect on the financing method in the transaction documents. However, the choice of the financing method is based on various interrelated aspects – tax considerations (e.g. transfer pricing issues in case of related party financing etc.) especially considering the new tax regime in force as of 1st January 2018, requirements of the financing bank(s), etc.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

Corporate income tax in real estate deals.
Share transfers are generally corporate income tax-neutral. However, asset deals (and sometimes also share transfers) could form corporate income tax basis.

Non-residents are taxed on their Latvia-sourced income through permanent establishment at the standard corporate income tax rate. If no permanent establishment is created, non-residents may be taxed with 3.75% withholding tax (WHT) for qualifying payments.

Acquisition of real estate
Real estate transfer tax is applied and the standard rate amounts to 2% of the purchase price, or the cadastral value of the property, or valuation for mortgage purposes, whichever is higher.
If a real estate is invested in the share capital of a company, the state fee is 1% of the investment value.
Please note that if a company acquires the title to the real estate as a result of reorganisation, the

company is exempt from paying the state fee.

Sale of real estate

Several taxes may apply:

- Value Added Tax (VAT) – sale of a new building is subject to VAT of 21%. A building is not considered new if at least a year has passed since the respective building has been put into an operation and the building has been used. In addition, in Latvia, alternative VAT treatment exists, the so-called 'option to tax'.
- WHT – WHT rate of 3.75% is applicable in case a Latvian resident company purchases real estate in Latvia or shares in a real estate company from a non-resident. Tax refund is possible.
- Personal income tax (PIT) – individual sellers of the shares may also be taxed at the rate of 20% on capital gains.
- Transfer pricing (TP) rules are applicable if transactions (sales, loans) are between related parties. A transfer price must be at arm's length. That means it must match the fair market price that two independent entities would apply in a similar transaction under the same or similar (comparable) conditions. Failure to do so might lead to not only tax surcharge but also penalties.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

The sale of shares in a related company (for example, the one in which real estate is) is tax-neutral if the shares were held at least 36 months. Please however note that the taxpayer should be able to prove the substance of the separate entity and the fact that the separate entity was not formed to avoid any tax payments.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Please note that Latvia does not recognize the 'repatriation of funds' term. Each case should be analysed separately depending on the transaction. The new corporate income tax regime provides that the profit of the company is not taxed unless it is not distributed as dividends. There could be also other tax consequences if the funds are transferred from one company to another abroad.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

In general, if the lease contract is registered with the land book then, in case of the sale of the real estate, the lease contract is automatically transferred to the new owner. If the lease contract is not registered with the land book, then the new owner in most cases is free to decide whether to terminate the agreement or not.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

In general, it is possible to change the use of the building, including from residential use to office use. First, the type of use permitted by the municipality should be checked. If a building is located in a residential use territory, then it most likely will not be possible to change the use of the building from

residential use to office use or vice versa without changing the municipality spatial plans. In addition, some changes might be possible only through the public consultation procedure.

Depending on the extent of the changes required, the change of use of the premises can be implemented in several ways. If the use of a building is changed from residential to office use, it should be taken into account that stricter requirements apply to public buildings, i.e. with respect to access, ventilation, fire safety etc. Therefore, most likely the change of use will entail construction works, and the owner will have to apply to the respective construction board and confirm the changes. After the completion and delivery of the works, only then the change of use can be formally completed.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- notarial costs?
- land register?
- real property transfer tax?
- advising lawyer (due diligence)?
- estate agent?
- others?

The total costs depend on a number of aspects, e.g. composition of the real estate, type of transaction, scope of due diligence, involvement of financing banks, speed of negotiations etc., and thus vary from case to case.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

Real estate tax is payable for all land and buildings in Latvia, owned both by individuals and companies. The local authorities in Latvian regions and towns are free to set tax rates on real estate in their area from 0.2% to 3% of its cadastral value, otherwise tax rates defined by the state apply. A tax rate exceeding 1.5% of cadastral value may be charged only if the real estate is improperly maintained.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

The total costs depend on the property manager and the type of the real estate, e.g. warehouse building or shopping centre. It is not unusual that the real estate developer sets up a property management company for the specific real estate and it is sold together with the real estate in one package.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country

- directly in real estate?
- through real property funds, open or closed ones?

- through other clear and secure financial products?
- In commercial real estate or in residential property?

Purchase of assets (business) and purchase of shares are the more common methods of structuring real estate deals in Latvia which are also preferred by financing banks. However, most of the high-value real estate transactions are engineered as sale of shares plus creation of a buying entity (with or without an in-kind investment of the real estate into the share capital of the target company) due to a high real estate transfer tax (2% of the value of the deal).

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

In general, there are no restrictions for EU nationals and companies registered in the EU (please refer to point 3 above on restrictions). Restrictions apply to persons and entities outside the EU.

Most of the high-value real estate transactions are engineered as sale of shares plus creation of a buying entity. However, most of the legal entities (including private limited liability companies (SIA-type) and public limited liability companies (AS-type)) are required as of 1st December 2017 to start filing information regarding their ultimate beneficial owners to the company register.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

The need for official approvals and procedure to obtain them depends on the business in question, e.g. waste management, production etc.

19. Could your firm assist foreign investors in
- Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?
- Developing construction projects?
- All legal aspects involved in these contexts?

Such services are not part of the firm's standard services, but we are open and flexible to cooperation.

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LIECHTENSTEIN
GASSER PARTNER ATTORNEYS AT LAW

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

As an introduction, it must be explained that the Principality of Liechtenstein is a comparatively very small state with an area of about 160 square miles. Real estate transactions are therefore regulated restrictively. The *'Grundverkehrsgesetz'* (GVG) is intended to maintain or transfer land for use by its owners in order to ensure the broadest possible, most socially acceptable distribution of land ownership in accordance with the size of the country. The land should be reserved for those who need it for use as residential or business premises. The aim is to prevent land concentration in the hands of a few people and speculative acquisition.

However, the basis for every real estate transaction in Liechtenstein is a written purchase agreement, which is registered in the land register.

The contract itself contains some special features, such as the marital status of the parties and whether the property in question is the seller's matrimonial home. Further, the signatures on the purchase agreement to be registered must be certified. However, as there are no notaries in Liechtenstein to date, this task is usually performed, among others, by the Office of Justice (*'Amt für Justiz'*).

As mentioned in the introduction, real estate transactions in Liechtenstein are regulated restrictively. Therefore, every land purchase agreement or contract for a plot of land in Liechtenstein must be approved by the *'Grundverkehrsbehörde'*. For this purpose and as a first step, the duly signed contract must be submitted to the office together with a separate application for approval of the transaction. Therefore, a legitimate interest has to be proved. After approval, the contract is sent to the tax administration, which inspects the contract for any real estate gains tax (*'Grundstücksgewinnsteuer'*) which may be due. If all taxes have been paid, the contract is then sent to the land registry department of the Office of Justice for registering. With the entry of the contract in the land register, ownership vests in the purchaser.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Liechtenstein law knows different sorts of ownerships. On the one hand, there is ownership of the whole land and construction. On the other hand, ownership of one or more units (condominium, *'Stockwerkseigentum'*) is known. Condominium ownership may cover individual floors or parts of floors which must be self-contained as dwellings or as units of rooms for business or other purposes with independent access, but may include separate ancillary rooms. The land on which the real estate is situated and the building right by virtue of which the building may be constructed, the building elements which are relevant to the existence of the building or the rooms of other condominium owners or which

determine the external shape and appearance of the building, as well as the installations and equipment which also serve the other condominium owners for the use of their rooms, are not attributed to the condominium owner.

Further, there are so-called '*Fahrnisbauten*' like huts, stalls and barracks which retain their specific owner if they are erected on foreign soil without intentional permanent connection. However their stock is not entered in the land register (see Article 59 of the Property Law (SR)).

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Yes. Liechtenstein law permits both sole ownership and joint ownership of real property.

In principle, all entities which have legal personality can own real property in Liechtenstein. Relating to this, a legitimate interest exists if the property to be acquired is used by a pure or mixed family foundation, an establishment without members or a foundation-like trust enterprise with personality to cover the legitimate interest of a beneficiary and the corresponding prerequisites are given in the constituent documents (please see Q 17).

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

As a general rule, the ownership of a building is implied in the ownership of the land. If someone uses foreign material or his own material on foreign soil for a building on his own, it becomes part of the property.

Liechtenstein law, however, knows the so-called building law ('*Baurecht*'). Buildings and other devices which are buried, bricked up or otherwise permanently connected to the land plot on or under the ground surface may have a special and separate owner if their existence is entered in the land register as an easement. The granting of building rights on individual floors of a building is excluded.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

In Liechtenstein, the land and the building are formally registered in the land register. The land register is generally open to the public. Anyone who has a vested interest may seek information. However, any person, even without an interest, is entitled to receive basic information such as the name and description of a property, the owner's name and type of ownership, and the date of acquisition, as well as its easements. Information or an extract from the land register may only be provided in respect of a specific property. An individual-related inquiry is not permitted (Article 551 of the Property Law).

A bona fide third party who acquires a right in rem on the basis of an entry in the land register is therefore protected (principle of the public faith of the land register). However, the objection that someone did not know an entry in the land register is excluded.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

As a general rule, it is upon the investor how he or she finances the transaction. This is due to the autonomy of private law that prevails in Liechtenstein. However, mortgages are the typical way of coverage for banks as far as the transaction is financed thorough credit.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

In the case of a foreign investor, the first consideration should be whether the purchase is approved by the '*Grundverkehrsbehörde*'. As mentioned in Q1, real estate transfer is subject to restrictive conditions and a legitimate interest must be demonstrated. Permission to purchase real estate is granted if there is a legitimate interest in the intended acquisition of ownership of the land plot concerned or another of the conditions laid down by law is met (see Q 17).

Although no special taxes are payable on a real estate transaction, the property gains tax must be taken into consideration. Anyone who makes a profit on the sale of real estate located in Liechtenstein as defined by property law or parts thereof must then pay the property gains tax. The seller is liable to the property gains tax.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

Real property transactions are not subject to real estate transfer tax as the latter does not exist in Liechtenstein. However, the '*Grundstücksgewinnsteuer*' must be taken into consideration. Anyone who makes a profit on the sale of real estate located in Liechtenstein as defined by property law or parts thereof must then pay the property gains tax. The seller is liable to the property gains tax. The amount by which the proceeds from the sale exceed the investment costs is deemed to be the gain on the land (see Article 37 of the Tax Act).

Losses incurred by the taxpayer in previous years on the property may be deducted from the gain on the property resulting from the legal provisions, to the extent that such losses were not covered by insurance benefits.

The taxable real estate gains are subject to the tariff pursuant to Article 19 paragraph 1 lit. of the Tax Act, which means that the tax rate could range between 1% and 8%. In addition, a surcharge of 200% is levied on the amount calculated instead of the municipal surcharge.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

To buy and sell property on a short-term basis, one has to note the limitation to the basic tax-free

allowance according to Article 19 paragraph 1 lit. a of the Tax Act, as Article 40 of the Tax Act states that if, within five years, several parcels of the same immovable property, or immovable property forming a unit of immovable property five years ago, are sold, the tax-free allowance is granted only once to the same taxable person.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

There are no general restrictions on repatriation of funds from Liechtenstein. It should be noted, however, that the seller will generally be a Liechtenstein person (natural or entity), who is taxable in Liechtenstein anyway.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

In Liechtenstein, the principle applies that if the owner sells an object after concluding a rental or lease agreement, the rental relationship with the ownership of the object is transferred to the purchaser.

The new owner, however, could terminate the tenancy of residential and business premises with the statutory period to the next statutory date if he or she asserts a personal requirement for him- or herself, close relatives or in-laws. In the case of another object, the new owner can terminate tenancy with the statutory period to the next statutory date if the contract does not permit earlier termination.

If the new owner gives notice earlier than the contract with the previous landlord would have permitted, the previous owner is liable to the tenant for all damages arising therefrom (Section 1090 article 29 paragraph 3 of the Liechtenstein Civil Code).

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

For the change of the use of a building from residential use to office space or vice versa, an official approval by the building authorities is usually needed (Article 71 of the Building Act).

The Liechtenstein State Court held that, pursuant to Article 72 of the Building Act, changes to the type of use or purpose also require a building permit, such as the change from an authorised to another commercial use. But not every change of use requires an approval. A building permit must only be obtained if changes within the meaning of Article 64(1) or Article 67 of the Building Act are to be expected (VGH 2014/081, LES 2015, 134).

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- **notarial costs?**
- **land register?**
- **real property transfer tax?**
- **advising lawyer (due diligence)?**
- **estate agent?**
- **others?**

Land register: The fees for entries in the land register for the acquisition of property, shares in property and building rights are 6% of the purchase price or, in its absence, its estimated tax value, but at least 200 Swiss francs (see Appendix 1 Section B, Ordinance on Land Register and Commercial Register Fees).

Real property transfer tax: there is no real property transfer tax. Any property gains tax that may be payable is borne by the seller (please see Q 8).

Advising lawyer (due diligence): depending on the agreement with the lawyer. Usually an hourly rate of 300 to 600 Swiss francs is charged.

Others: land register extracts, 10 Swiss francs per property and owner, but at least 20 Swiss francs; authentication of a signature 10 Swiss francs.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

The Liechtenstein tax system is basically based on a general wealth tax with supplementary income tax for individuals and legal persons. Liechtenstein nationals are taxed on their worldwide income and assets, if they are domiciled in Liechtenstein. In addition to the state tax, each municipality imposes a municipal surcharge equal to a certain percentage of the state tax amount. The municipal supplement amounts between 150% and 250%.

The holding of real estate is taxable insofar as is has to be stated and considered in the annual tax return. Therefore, buildings and land are generally to be valued according to the earning rate ('*Ertragswert*'), at least at the estimated tax value ('*Steuerschätzwert*'). Domestic real estate gains from business assets, insofar as they are subject to real estate gains tax, are tax-exempt. Real Estate to private individuals are valued as part of the taxable assets via a statutory target income (currently 4 %) as part of the acquisition/income. The estimated taxable value for undeveloped land was determined in the 1950's and has remained unchanged since then at CHF 5 to CHF 20 per fathom of building land, whereby in most communities the minimum of CHF 5 is applied, which corresponds to approximately 1 to 2 ‰ of the market value for the current property prices.

The general tax rate is calculated on the taxable income, including assets converted into income, and is according to Article 19 generally calculated as follows:

- less than 15,000 Swiss francs per annum: 0%;
- between 15,001 and 20,000 Swiss francs: 1% (minus 150 Swiss francs);
- between 20,001 and 40,000 Swiss francs: 3% (minus 550 Swiss francs);
- between 40,001 and 70,000 Swiss francs: 4% (minus 950 Swiss francs);
- between 70,001 and 100,000 Swiss francs: 5% (minus 1,650 Swiss francs);
- between 100,001 and 130,000 Swiss francs: 6% (minus 2,650 Swiss francs);
- between 130,001 and 160,000 Swiss francs: 6.5% (minus 3,300 Swiss francs);
- between 160,001 and 200,000 Swiss francs: 7% (minus 4,100 Swiss francs); and
- more than 200,000 Swiss francs: 8% (minus 6,100 Swiss francs).

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

The costs for a property manager usually differ from property to property, and no general statement can be made here. Basically, however, the costs depend on the size of the property and the scope of the desired services.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
- directly in real estate?
- through real property funds, open or closed ones?
- through other clear and secure financial products?
- In commercial real estate or in residential property?

In general, adjusted for inflation, rents rose by 600% between 1950 and 2015, with average annual growth of 2.8%. According to experts, rents for small apartments are stable and adequate returns can be achieved. Larger apartments, on the other hand, are more difficult to let (www.stiftungzukunft.li; Raumentwicklung Liechtenstein, March 2019). These figures show that the Liechtenstein market is attractive for foreign investors.

However, as every investment must be carefully planned and thought out, we strongly recommend to discuss any investment project in advance with a Liechtenstein lawyer.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

At first sight, there are no specific restrictions with regard to nationality or a registered office of legal entities. In practice, however, only Liechtenstein nationals or nationals from Switzerland or from the European Economic Area (EEA) will be entitled to purchase property as well as respective legal entities will be entitled to purchase property. However, with regard to the legitimate interest of the building project, it must be noted that Swiss nationals cannot assert this.

As mentioned in Q1, real estate transactions must be approved by the '*Grundverkehrsbehörde*'. Permission to acquire ownership of real estate is granted upon application if there is a legitimate interest in the intended acquisition of ownership of the real estate, i.e. if

- The property to be acquired serves the purchaser or his family to cover an existing or future domestic housing need;
- The property to be acquired serves the purchaser to cover a current need for recreation;
- The property to be acquired serves the purchaser to establish the permanent establishment of his domestic business thereon;
- If the land to be acquired serves the purchaser for the main or secondary management of his domestic

business for the production of agricultural products;
- The property to be acquired serves as a superstructure with owner-occupied or rented flats or for the construction of commercial premises;
- The land to be acquired serves purposes of social housing construction;
- The land to be acquired is land reserved for agricultural use;
- The land to be acquired is used by a foundation, an establishment without members or a trust enterprise similar to a foundation to cover a beneficiary's legitimate interest

or if

- The acquisition is made by a spouse, a registered partner, a blood relative in the ascending or descending line or in the third degree of the lateral line, or an elective or foster child;
- The acquisition is made by way of an exchange with an equivalent property;
- The property to be acquired represents an equivalent substitute for a property transferred to the land or the municipality;
- The acquisition is based on a will, codicil, contract of inheritance or contract of legacy;
- Acquisition by means of compulsory auction, if the bid is awarded to a person of legal age and nationality or a domestic legal entity.

However, please note that permission to purchase land is refused if the purchaser already owns land to cover his housing needs. Notwithstanding that, it is permissible to acquire land or a unit of condominium ownership if the acquirer already has a unit of condominium ownership.
Further, the property to be acquired may not exceed a maximum size of 1,440 m^2. It is not permitted to acquire several smaller plots of land until a total area of 1,440 m^2 has been reached. A single plot of land is sufficient to cover housing needs, even if it does not cover the total permissible area of 1,440 m^2.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

If a foreign investor wants to buy a plot of land in Liechtenstein to run a business, he first of all needs to prove a legitimate interest and also get the approval of the '*Grundverkehrsbehörde*'. Depending on the purpose, it may be necessary to establish a legal entity in Liechtenstein. If the investor wants to run a business, he has to check if the plot of land is zoned for the type of business in which he intends to engage. Active companies cannot be established and operated in every zone. That means not every plot of land is suitable. Further, and depending on the activity, different permits may be required (e.g. business permit).

19. Could your firm assist foreign investors in
- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

We are happy to assist clients in all aspects of real estate and construction projects.

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LUXEMBOURG
BRUCHER THIELTGEN & PARTNERS

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

In Luxembourg, the conclusion of a real estate transaction usually gives rise to the signing of two consecutive agreements: a preliminary contract and a notarised deed.

1.1 Preliminary contract

In Luxembourg, the principle of contractual freedom also governs the real estate field.

As a consequence, as soon as an offer to sale has been accepted by a buyer, or an offer to purchase has been accepted by the seller, and it can be considered that pursuant to this acceptance the parties have agreed on the object of the deal and on a price, there is a fully binding contract under Luxembourg law between the concerned parties and this contract can be enforced by the courts, if requested.

The parties should therefore draft such preliminary contracts with great care. In this respect, it is important for the parties to check the followings points:

- the real estate has to be clearly described and well identified, notably by referring to the reference number of the piece of land with the competent administrative service of the state in this matter ('*Cadaster*'),

- it is advised that the preliminary contract contain a reservation of title clause which is deemed to apply until the signature of the notarised deed or until the payment of the purchase price. Indeed, in the absence of such clause, the property would be transferred to the buyer at the date of signature of the preliminary contract and the buyer would bear the potential damage risks of the property since that date,

- condition precedent clauses allowing the buyer to back out of the deal if its bank refuses to give it the loan are also commonly inserted in Luxembourg preliminary contracts.

In accordance with Luxembourg law, preliminary contracts also have to be registered with the land registration administration (*'Administration de l'Enregistrement')* within three months following their signature (ten days for the real estate professionals).

1.2 Notarised deed

In addition to the registration of the preliminary contract with the land registration administration, any devolution of real estate ownership has, in order to be valid towards third parties, to be transferred in the records of the mortgage registry in accordance with Luxembourg law.

As only some specific deeds, including mainly notarised deeds, can be transferred in the records of the

mortgage registry, the seller and the buyer will have to sign a notarised deed and have it transferred in the records of the mortgage registry by one or more Luxembourg notaries. In this context, the notary will make some searches, notably on the following points, in order to draft the notarised deed:

- the identity of the buyer and of the seller,
- the quality of owner of the seller,
- information coming from the land register,
- the mortgage situation.

Once all these pieces of information have been collected, the notarised deed will be drafted by incorporating the terms of the preliminary contract as well as the results of the searches.

Usually, a notarised mortgage loan deed between the buyer and his bank is signed together with the notarised sale deed.

The notarised sale deed will then be signed by the buyer, the seller and the notary, and the funds relating to the real estate transaction will be paid through the notary.

At this point, the notary delivers to the buyer his ownership title, registers the notarised deed with the land registration administration (*'Administration de l'Enregistrement')* and transfers it in the records of the mortgage registry.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

The Luxembourg legal system permits different sorts of ownership and recognises mainly the following rights on immovable properties:

- the full ownership of real estate properties,
- the co-ownership or joint ownership, which relates to a real estate property as a whole, or to the parts owned in common by the unit owners in a building,
- the rights in rem in immovable property, which are mainly:
  - the *'droit d'emphythéose'* (right of possession on a real estate property – see the definition under point 4. below),
  - the *'droit d'habitation'* (user right on residential building for the beneficiary and its family),
  - the *'droit d'usufruit'* (ownership by a person – the bare owner – of a real estate property of which another person enjoys the usufruct until the end of its life – the life tenant),
  - the *'droit de superficie'* (distinct right of ownership between the land and the construction – see the definition under point 4. below).

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

In Luxembourg, any individual or company with legal personality can be owner or co-owner of real

property, and Luxembourg law permits mainly two types of joint ownership:

- the classical joint ownership where each co-owner has his own title and interest to a share in the property though it is held undivided. Such joint ownership requires the agreement of all co-owners. Indeed, each co-owner is allowed to induce the partition of the relevant real estate at any time, by selling its part to other co-owners or by forcing them to sell the relevant real estate,

- the joint ownership relating to the parts owned in common by the unit owners in a building, which is organised by the amended law of 16th May 1975 regarding the co-ownership status on buildings.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

In Luxembourg, the principle is that, in accordance with article 552 of the Luxembourg Civil Code, ownership of the ground involves ownership of what is above and below it.

Article 553 of the Luxembourg Civil Code also provides for a rebuttable presumption that all constructions, plantings and works on or inside a piece of land are deemed to be made by the owner, at his expense and belonging to him.

As this presumption is rebuttable, it can be provided by contract that some construction built in a plot of land does not (fully) belong to the owner of such plot of land.

There are other exceptions to this principle, such as

- the *'droit d'emphythéose'*, which is a long-term lease agreement on real estate property (between 27 and 99 years – minimum 50 years if the real estate is deemed to be used as an accommodation),
- the *'droit de superficie'*, which is an agreement where the owner of the land grants a right to the beneficiary (*'superficiaire'*) to build constructions on the land during a maximal term of 99 years, these constructions remaining the property of the beneficiary. At the expiration date, the ownership of these constructions is transferred to the owner of the land, who shall reimburse to the 'superficiaire' the buildings at their current value at the expiration date.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

As explained under point 1.2 above, each transfer of real estate property has, in order to be valid towards third parties, to be transferred in the records of the mortgage registry.

In this context, it must be noted that, if the transfer of ownership between the buyer and the seller occurs at the date of signature of the preliminary contract (or at the date provided in this respect by the preliminary contract), the transfer date towards third parties corresponds to the transfer of the notarised deed in the records of the mortgage registry.

As a consequence, if a seller sells the same real estate property to two different buyers, the buyer who first has his notarised deed transferred in the records of the mortgage registry shall be considered as the new owner of the relevant real estate property, even if the other purchaser is a good-faith purchaser.

However, if a deed registered in the records of the mortgage registry by a good-faith purchaser is to be declared void by a court for any reason (the land registrar is not allowed to check the validity of the deeds he receives), it will be considered that the transfer of ownership between the seller and the purchaser never occurred and such purchaser will not be able to use the relevant registration as evidence of his ownership.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

Real estate purchase contracts are not in used in the Luxembourg real estate sector. Virtually all properties are bought instantly from the vendor, which means that the financing of such operations must be done beforehand and that very few vendors enter into real estate purchase contracts.

Investors in Luxembourg will rather choose to conclude a mortgage contract with their bank, which is the usual way to finance real estate transactions. Investors can choose between fixed rates, variable rates and reviewable fixed rate mortgages. The latter is especially useful for investors, as it allows them to secure short- or medium-term repayment capacity whilst still maintaining the potential market opportunities.
Of course, the Luxembourg banks also offer tailored financing step-plans, including alternatives analysis and financing by way of securities.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

The Luxembourg real estate sector is very active, and properties tend to often change hands. As there are currently not enough properties available for the vast number of people who wish to acquire a property in Luxembourg, prices tend to increase quickly.

Consequently, investing in real estate in Luxembourg might be a very good deal, as return on investment can potentially be very high in a very short time.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

The transfer of real estate in Luxembourg is subject to the following taxes and registration fees:

8.1. Taxation of the incomes arising from the sale of a real estate property:

- taxation of capital gains for individuals: between 21% and 42% (when the real estate property

is sold less than two years after it has been acquired) of the capital gain,
- taxation of capital gains for legal entities: 26.01% of the capital gain.

8.2. Registration fees and recording charges in relation to the transfer of a real estate property:
- registration fees (other than on the territory of the City of Luxembourg): 6% of the purchase price (private use), 7.2% of the purchase price (intention to resell),
- registration fees on the territory of the City of Luxembourg (commercial use) : 9% of the purchase price (private use), 10.8% of the purchase price (intention to resell)
- recording charges: 1% of the purchase price.
- Limited transaction costs: normally, when purchasing a property in Luxembourg, notarial deeds are subject to a fee of 7% of the price of the property, including 6% registration fees and 1% transcription rights.

Please also note the following advantages with regards to real estate taxes in Luxembourg:

- In comparison with some neighbouring countries, property taxes are extremely low in Luxembourg (less than €100 per year). Being a landlord in Luxembourg thus does not generate a tax burden which would justify the preference for renting rather than buying.

- The potential capital gain realised on the resale of one's principal residence is not taxable, regardless of the amount.

- A couple can receive up to €10,000 of deductible loan interest (plus €2,000/child) annually on the acquisition of real estate, whatever the use. The deductibility of mortgage interest therefore makes the cost of the mortgage very attractive in relation to the cost of renting. On the basis of these elements, it seems important to consider buying your principal residence in the Grand Duchy, as soon as you know that you will stay over two years in Luxembourg.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

In Luxembourg, it is not a problem to buy and sell property on a short-term basis, but some tax exemptions or preferential tax rates depend on the holding time of the relevant real estate property.

For instance, capital gains arising from the sale by individuals of their habitual residence for more than five years are tax-exempt.

Taxation on capital gains made by individuals also changes in relation to the holding time of the relevant property as follows:

- between 10.5% and 21% of the capital gain if the property is held for more than two years,
- up to 42% of the capital gain if the property is held for less than two years.

Finally, an individual purchaser of a real estate property could benefit from a tax credit up to €50,000

(€100,000 if the real estate property is purchased by two persons) under the following conditions:

- the purchaser has to live in the residence built or to be built on the relevant real estate property within two years from the purchase in case of an existing building, and within four years from the purchase in case of a piece of land,
- the purchaser has to use the relevant real estate property as its usual residence for two years.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Under Luxembourg law, the seller is in principle free to transfer his money from Luxembourg to another country without any restriction.

There might be some limitations or indirect obstacles to this principle, mainly in the fields of taxation (i.e. when a part of the benefits from the sale is withheld for tax reasons etc.), prudential supervision (i.e. when the seller, which is subject to the supervision of a public authority – for instance, a professional of the financial sector – cannot transfer the entire selling price out of Luxembourg in order to maintain a minimum capital base in Luxembourg etc.), or anti-money laundering and public policy considerations (provisions relating to the non-execution of a transaction when there is a money laundering suspicion etc.).

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

In Luxembourg, restrictions have to be taken into account when selling real estate which is already leased to one or more persons. Indeed, Luxembourg law is highly protective for tenants, especially in the matter of residential leases.

In this respect please note that an existing rental contract bearing a definite date (i.e. a rental contract which is duly registered with the land registration administration [*'Administration de l'Enregistrement'*] in accordance with Luxembourg law) will be binding upon the purchaser of the leased property and that the fact that the purchaser bought the relevant property in order to live there is not a sufficient ground for an early termination of such lease.

The same principle applies for commercial rental contracts bearing a definite date (i.e. a rental contract which is duly registered with the land registration administration [*'Administration de l'Enregistrement'*] in accordance with Luxembourg law), with the exception that the initial tenant and the lessee can provide in the contract that the lease can be terminated when specific circumstances occur, for instance when the tenant or the new owner need the rented real estate in order to exercise their own commercial activity.

As a consequence, the buyer will have to comply with the provisions of the recorded rental contract and with the Luxembourg law provisions which apply to such contracts if they wish to force the tenants out.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

The use of each area of the territory is specified by the municipal authorities of each municipality in a general development plan (*'Plan d'Aménagement Général'*).

In order to change the use of a building, the owner has to:

- check if the contemplated new use of the building complies with the provisions of the general development plan which applies to the relevant area,
- obtain an authorisation, or a new building permit if the contemplated new use will require the transformation of the existing building, from the mayor of the relevant municipality (in this context, the competent authority will check if the contemplated new use complies with the provisions of the general development plan),
- if the relevant building is usually leased for residential use, an additional authorisation from the municipal council is required in order to change its use into offices.

Please note that if the contemplated new use does not comply with the provisions of the general development plan, the owner will need to ask the municipality to amend this general development plan. The municipality rarely agrees to amend the general development plan, as such amendment requires complicated and time-consuming proceedings.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- notarial costs?
- land register?
- real property transfer tax?
- advising lawyer (due diligence)?
- estate agent?
- others?

The costs exposed by a foreign investor for buying such property in Luxembourg are usually as follows:

- **notarial costs:** between €3,000 and €4,100,
- **land register:** between €350,000 and €590,000 (registration and recording),
- **advising lawyer (due diligence):** to be determined by the parties (generally between €280 and €400 per hour),
- **estate agent:** more or less €172,500 (to be determined by the parties. In accordance with Luxembourg law, no more than 3% of the purchase price + VAT).

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

When holding real estate, the owner (individual or corporate body) has to pay the yearly real estate tax, which is a percentage of the unit value of the real estate established by the tax administration.

Such real estate tax is calculated as follows: basis of assessment x unit value x tax rate

The basis of assessment is 10% for pieces of land which are not built for more than two years and averages out between 0.7% and 1.5% in the other cases.

The tax rate depends on the use of the relevant property, i.e. 250% for a residential house, 750% for commercial buildings.

As an example, the real estate tax for a residential house situated in the city of Luxembourg with a unit value established at €4,500 will be 4,500 x 1% x 250% = €112.50.

In addition to the real estate tax, limited liability companies are subject to a wealth tax of 0.5% of the value of their real estate less the debts in relation to the acquisition of these real estates.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

It must be noted that the legislation of co-ownership imposes the appointment of a '*Syndic*' for the management of the common parts of the real estate.

As the fees to be charged by a Luxembourg caretaker are freely agreed between the parties and depend on the services to be provided by such caretaker, it is not possible to give an estimate of such fees.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country

- directly in real estate?
- through real property funds, open or closed ones?
- through other clear and secure financial products?
- In commercial real estate or in residential property?

The way to invest in real estate property in Luxembourg depends on the quality and needs of the relevant investor. Where appropriate, investors can invest directly in real estate or through investment vehicles, financial products or Luxembourg companies.

In this context, please note that Luxembourg companies are often used by professional, institutional or private investors for acquiring real estate in Luxembourg or abroad.
Indeed, within the framework of double tax treaties, Luxembourg exempts the income derived from real estate situated abroad. The investor(s) incorporate(s) a Luxembourg company (generally set up in the form of a public limited company or a private limited company) which acquires the real estate abroad.

Luxembourg companies, when receiving real estate incomes, are then taxable on the ground of the country in which the real estate is situated, under deduction of the costs associated to the management of the real estate. The profits of this management are then taxable in that country but fully tax-exempted in Luxembourg.
The investor(s) wishing to acquire real estate abroad often consider favourably the incorporation of

such a Luxembourg company for many legal and fiscal reasons, among which:

- Flexible but secure company laws;
- access to tax treaties;
- exemption of real estate income realised abroad;
- exemption of withholding taxes paid by Luxembourg companies to a financial institution or to other structures;
- access to the Mother Subsidiary Directive facilitating distribution from/to Luxembourg (subject to conditions);
- access to the Interest directive allowing advantages to intra-group financing or with ad hoc entities;
- absence of taxation on capital gains on share invested in real estate companies.

Luxembourg offers to investors a wide range of investments or tax saving schemes.

Moreover, the Luxembourg real estate market undoubtedly represents an investment with high potential and unquestionable resilience to crisis situations:

- Prosperous economy within the European Union: with a GDP growth forecast of 4% per year, Luxembourg's economic development surpasses the forecasts of its neighbours;
- An ever-growing population: with an annual growth of 2.2%, the increase in the resident population of Luxembourg generates a growing demand for real estate;
- Not enough new housing built each year: the annual deficit in additional housing is a fact;
- A market which has shown resilience in time of crisis: prices were little impacted by the 2008 financial crisis (down 1% in 2009 followed by a continuous increase of around 5% per year since 2010).

Within the Luxembourg real estate market, residential is by far the strongest. Its total value was over €122 billion in 2014, and it will continue to grow at a compound annual rate of 5%, to nearly €158 billion by 2020.

Since 2004, the residential market has grown steadily. The Luxembourg residential market was only moderately hit by the global economic crisis of 2008. Factors affecting this stability include:

- the population of Luxembourg has been increasing steadily since 2004;
- demand has remained high, especially for apartments, which are more expensive per square metre than houses;
- dwelling supply has generally not met the increase in demand;
- building standards in Luxembourg are among the highest in Europe, and the related costs of construction increased as well;
- inflation has remained relatively high, with an average rate of 2.6% from 2004 to 2013.

With housing supplies not fully addressing the increase in demand, prices have boomed. To counterbalance the higher investment cost, residential property investors will seek to raise rents.
Moreover, it is important to underline that residential property is mostly owned by private investors, as

it is a long-held Luxembourgish habit to invest in bricks and mortar.

The landscape for residential real estate has changed over recent decades, and will keep on evolving: there will continue to be competition between wealthy people and investors, 'fighting' for large houses in Luxembourg City and its surroundings.

As a consequence, Luxembourg remains a very attractive place to invest in real estate.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

To the extent that the real estate transaction complies with Luxembourg law provisions, notably in the matter of fighting against money laundering, any individual person and legal entity is allowed to invest in real estate without any restriction on nationality or registered office of legal entities.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

Foreign investors do not need any official approval to buy a plot of land in Luxembourg.

However, in order to be authorised to run a business in Luxembourg, foreign investors need to obtain the following approvals.

In order to be authorised to stay and work in Luxembourg for more than three months, nationals from EU countries or nationals from countries assimilated to EU countries have to make a registration statement certificate at the local authority offices (*'administration communal'*) in the place where they intend to live.

Nationals from non-EU countries have to obtain a residence permit allowing them to stay in Luxembourg for more than three months and to work in Luxembourg as self-employed persons.

In order to obtain such a permit, non-EU foreigners:

- must have a visa or a valid passport,
- should apply for a temporary residence permit as a self-employed person from the immigration ministry before their arrival in Luxembourg,
- shall fill in an arrival certificate at the *'administration communale'* in the place where they will live within three days of their arrival,
- shall apply for a residence permit as a self-employed person from the immigration ministry within three months of their arrival.

Please also note that the exercise of commercial activities in Luxembourg (as activities of property developer, real estate agent, professional caretaker etc.) is subject in any case to the prior authorisation of the Ministry of Middle Classes. Obtaining of such authorisation could take several months, depending on the type of commercial activity to be exercised.

19. Could your firm assist foreign investors in

- Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?

- Developing construction projects?

- All legal aspects involved in these contexts?

Our firm is able to assist foreign investors in finding real estate and developing construction projects in Luxembourg.

In this context, we offer a global service, notably in matter of real estate and construction law, and we would be delighted to assist foreign investors in all aspects of their real estate projects.

In addition, our clients can also benefit from our vast network of notaries, real estate experts and caretakers.

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MALAYSIA
AZMAN DAVIDSON

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

In Malaysia, land transactions are based on the Torrens system and are governed by the National Land Code, 1965 (NLC). However, if the separate title of the real property has not been issued, the transaction will be completed by way of an absolute assignment, where the beneficial ownership of the real property will be passed to the purchaser. Upon issuance of the separate title to the real property thereof, a memorandum of transfer (MOT) (a form prescribed under the NLC) will be submitted to the relevant land office/registry for registration, wherein the legal ownership of the real property is transferred to the purchaser.

In Malaysia, it is common for the vendor to appoint a real estate agent to negotiate initial salient terms (such as the purchase price and completion period) with potential purchasers. Once the parties reach an agreement on the salient terms, an offer to purchase will be prepared by the real estate agent to be signed by both parties. Thereafter, a lawyer will be appointed by the purchaser to draft and finalise a sale and purchase agreement within 14 days. It is up to the vendor whether he/she elects to appoint his/her own lawyer to review the sale and purchase agreement. The parties will sign the sale and purchase agreement after they have mutually agreed on the terms and conditions contained therein. The purchaser is normally given three months with an extension of one month (subject to payment of interest) to complete the sale and purchase transaction. Upon payment of full purchase price, legal/ beneficial ownership will be passed from vendor to purchaser once the MOT is registered in favour of the purchaser/ deed of assignment duly signed by both parties and stamped.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Yes. The Malaysian legal system permits:
- ownership of the whole land, for example, purchase of a real property; and
- ownership of one unit or lots of units, for example, purchase of a unit of condominium.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Yes. The Malaysian legal system permits joint ownership of real property by natural persons other than minors of the age of 18 and below, corporations having power under their constitution to hold real property, sovereigns, governments, organisations and other persons authorised to hold land under the provisions of the Diplomatic Privileges (Vienna Convention) Act 1966, the International Organizations (Privileges and Immunities) Act 1992 and the Consular Relations (Vienna Convention) Act 1999, and bodies expressly empowered to hold land under any other written law in Malaysia.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

Generally in Malaysia, the owner of land also owns the building erected on the land. Any permanent fixtures or structures on the land shall form part of the land under the NLC.

However, it is also possible for an owner to own a unit comprised in a building, which is held under the separate 'strata title'. As such, the management corporation will maintain and manage the subdivided building and the common property. The common property held under the master title will be registered in the name of the management corporation as the legal owner.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

Yes, the ownership of land and/or buildings is registered at the relevant land office/registry.

Generally, the title or interest of any person or body for the time being registered as proprietor of any land under the National Land Code is conclusive evidence of his ownership and is indefeasible.

However, there are certain exceptions to the general rule where the registered title or interest of the person is obtained by way of fraud, forgery or misrepresentation. Thus, if a person purchased a piece of land from a person who falsely claimed to be the registered proprietor/seller of the land, the buyer's registration, even if he was a genuine buyer and had no notice of the fraud, may be defeated by the original registered proprietor who had been defrauded. In such circumstances, the interest of the buyer in the land being registered as the legal proprietor is defeasible.

However, if the genuine buyer who got his interest registered subsequently sells it to another genuine buyer without notice of the fraud, the subsequent buyer who got his interest registered would not be defeated by the original registered proprietor. This concept developed under Malaysian case law is called the doctrine of deferred indefeasibility.

In Malaysia, the registrar will determine whether the instruments presented for registration are fit for registration. If the registrar discovers any formal or clerical defect to the instrument, or the documents supporting the instrument are not in order, the registrar may suspend registration.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

It is common for an investor/purchaser to obtain financial assistance from a financial institution which is licensed under the Financial Services Act 2013 or Islamic Financial Services Act 2013 to part-finance the purchase of a real property. The real estate purchase contract (more commonly known as the sale and purchase agreement) entered into between the vendor and purchaser is one of the supporting documents in the loan application. In Malaysia, it is common for a financial institution which grants

financing to a purchaser to part-finance the purchase of the real property to require the purchaser to charge or assign his/her absolute rights, title and interest in the real property to the financial institution as a security.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

In financing a purchase project in Malaysia, an investor should consider, inter alia, the following:

- interest rates offered by financial institutions;
- compliance with any rule and regulation set out by the Central Bank of Malaysia;
- creation of security in favour of the financial institution who grants the financing; and
- terms and conditions of the financing, such as repayment, type of facility, maturity date and default interest rate.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

A purchaser of a real property is required to pay ad valorem stamp duty on the MOT or deed of assignment, which is computed based on the consideration or the market value of the real property, whichever is higher. With recent amendments to the Stamp Act 1949, calculation of ad valorem stamp duty is as follows:

Consideration/Market Value	Rate of Stamp Duty commencing from 1st January 2019	Rate of Stamp Duty commencing from 1st July 2019
Up to RM100,000	1%	1%
RM100,001 to RM500,000	2%	2%
RM500,001 to RM1,000,000	3%	3%
RM1,000,001 to RM2,500,000	3%	4%
Thereafter	4%	4%

The purchaser is also required to pay real property gains tax in the event he/she disposes of the real property within five years from the date of acquisition.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

With the recent amendments to the Real Property Gains Tax Act 1976, the following tax rates shall apply for disposal of a real property by a disposer who is not a citizen and not a permanent resident:-

- within five years from the date of acquisition of such real property, the chargeable tax on disposal of a chargeable asset is at the rate of 30% of the chargeable gain; and

- in the sixth year and onwards from the date of the acquisition of the asset, the chargeable tax on

disposal of a chargeable asset is at the rate of 10% of the chargeable gain.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

A non-resident is allowed to repatriate funds from Malaysia, including any income earned or proceeds from divestment of ringgit assets, provided that the repatriation is made in foreign currency.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

In Malaysia, a distinction is drawn between a tenancy and a lease. A tenancy is for a period not exceeding three years and is not required to be registered at the relevant land office/registry. It is known as tenancy exempt from registration. Therefore, it is up to the purchaser whether to continue with the tenancy. However, if such tenancy exempt from registration is endorsed on the title of the real property, it is binding on subsequent purchasers. A lease is for period more than three years and, once registered, it is binding on subsequent purchasers.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

Yes, official approval needs to be obtained from the local authority to change the use from residential to office or vice versa.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly
- notarial costs?
- land register?
- real property transfer tax?
- advising lawyer (due diligence)?
- estate agent?
- others?

Exchange rate €1= RM4.69, €5 million = RM23,450,000.

Notarial costs: It is generally included in the disbursement fees charged by the advising lawyer.

Land register: Charges vary from state to state. Certain land office/registry charges are based on a certain percentage calculated on the market value or consideration of the real property. For example, in Kuala Lumpur, it is currently fixed at RM100 and, in Selangor, in the range of RM500 to RM1,500.

Real property transfer tax: Purchaser is required to pay the ad valorem stamp duty on the transfer, as mentioned earlier. If the instrument of transfer of property is stamped:-

- on or before 30th June 2019, the stamp duty payable shall be RM907,000 (€193,413.69); or
- on or after 1st July 2019, the stamp duty payable shall be RM922,000 (€196,612.37).

Advising lawyer: The scale fee as provided by the Solicitors Remuneration Order 2005 made pursuant to the Legal Profession Act 1976 shall apply. The estimated scale fee is RM127,250. The service tax is RM7,635 and the estimated disbursement to be in the range of RM1,500 to RM2,000.

Estate Agent: It is paid by the person who appoints the real estate agent. In Malaysia, it is normally the vendor. The scale fee as provided under the Seventh Schedule (Rule 48) of the Valuers, Appraisers and Estate Agents Act 1981 is at the maximum rate of 3% of the purchase price of the real property.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

In Malaysia, land owners are required to pay an annual land tax known as quit rent. The quit rent payable varies in each state and even within different districts of each state. In Kuala Lumpur, the chargeable rate for quit rent is about RM0.035 per square foot per annum. The quit rent liability generally totals less than RM100 per year. Landowners are also required to pay assessment rates to the local authorities for provision of services. It varies from state to state. In most states, the assessment rates are calculated based on the annual rental of the real property in the open market on the assumption that the real property is rented out.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

If you appoint a property management company, the annual fee chargeable under the Seventh Schedule (Rule 48) of the Valuers, Appraisers and Estate Agents Act 1981 is as follows:-

5% of the gross annual rent on the first RM30,000
3% of the gross annual rent on the residue up to RM100,000
2% of the gross annual rent on the residue over RM100,000

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
- directly in real estate?
- through real property funds, open or closed ones?
- through other clear and secure financial products?
- In commercial real estate or in residential property?

It is advisable to invest directly in both commercial and non-commercial real property in Malaysia for the following reasons:

- real property prices in Malaysia are relatively low;
- economic and political conditions are stable;

- relaxation of rules for foreign acquisition of real property; and
- attractive bank interest rates.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

Any foreign individual persons and legal entities are allowed to buy and own real property in Malaysia, subject to the following conditions:

- the value of the real property must be RM1,000,000 and above. However, different states in Malaysia may impose different minimum thresholds for a foreign individual or legal entity to purchase any real property in that particular state; and

- the requirement to obtain consent from the state authority under Section 433B of the NLC.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

Official approval is only required if the land is not approved for commercial purpose. The requirements and amount of time necessary to obtain such approval vary from state to state, normally in the range of three to six months. Further, foreign investors/purchasers are required to obtain the consent of the state authority under Section 433B of the NLC, as mentioned above. The amount of time necessary to obtain such consent is normally in the range of three to six months.

19. Could your firm assist foreign investors in

- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

Yes, our firm would be pleased to assist foreign investors in all these aspects.

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MEXICO

RAMOS, RIPOLL & SCHUSTER

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

In general terms, most of the real estate transactions in Mexico are triggered with the execution of a Letter of Intention, Memorandum of Understanding or any other kind of preparatory agreement among the involved parties, in which the parties agreed on the general terms and conditions for the transaction. In such preparatory documents, parties agree on a due diligence period to confirm the legal status of the real estate and/or certain conditions for the closing. Additionally to the execution of the preparatory document, it is very common that the purchaser advances to seller a payment equivalent to 20% of the estimated purchase price as a commitment to formalize the transaction.

If the result of the due diligence is satisfactory for the purchaser or meets the conditions agreed on the preliminary agreements, parties execute a public deed before a notary public to formalize the transaction. The notary public will withhold and pay the corresponding taxes and coordinate the filing of the public deed before the local Public Registry of the Property corresponding to the location of the property.

The formal ownership of the real estate vest in the purchaser in the very precise moment when the parties execute the public deed before a notary public. Notwithstanding the above, the purchase agreement is in full force and effect as of the moment the parties agreed on the property subject to the transaction and its price, even if the property has not been delivered to purchaser and/or the price has not been paid to seller and/or the public deed has not been executed before notary public. Additionally, the transaction is effective before third parties as of the moment the public deed is filed before the local Public Registry of the Property.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

In Mexico, either a person may own the land and the constructions therein, or a person may own only the land and another person its constructions, provided that the owner of the constructions has enough documentation to evidence its property.

Likewise, a person may own a lot or private unit located into a condominium or residential development, and, as a consequence of the pro indiviso corresponding to such property, be the owner of a percentage of the common areas of the whole condominium or residential development.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

The legal system of Mexico does allow that the real estate can be own either by one or more persons. If the real estate is own by two or more persons, owners may be co-owners (copropietarios) in equal or unequal parts. Another modality of ownership is when a person, or persons, is owner of the bare ownership per se (nuda propiedad), and another person, or persons, of the right of usufruct.

Real estate in Mexico can be own by individuals, private and public entities (commercial or civil), including Mexican trusts and/or governmental authorities, provided that the corporate purpose of the entities allows them to acquire real estate or the acquisition of the real estate is necessary for the performance of their business.

Notwithstanding the above, there are certain restrictions for the acquisition of real estate within the restricted zone, as described on section V, paragraph 17 below.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well and/or is it possible to have different owners of the land and the building erected on it?

In Mexico, the ownership of the building and its constructions is implied in the ownership of the land, since the building and constructions are incorporated to the land. Notwithstanding, it is possible to have an owner of the land and a different owner of the building and its constructions, provided that the owner of the building has a property title or document evidencing that he/she/it is the owner of such building and constructions.

5. Is the land and/or the building registered in a formal register and is a good faith purchaser protected with regard to the entries in this formal register?

All the transaction related to the acquisition and legal status of private real estate (including but not limited to, granting of mortgages, encumbrances, liens, use restrictions, domain and possession limitations), must be registered before the Public Registry of the Property and Commerce (Registro Público de la Propiedad y de Comercio) ("PRPC"), which is the formal register in Mexico, to be valid and enforceable before third parties. The PRPC is a public institution that aims to enhance legal certainty by publicizing commercial acts that, according to the law, are only valid and enforceable before third parties as of their registration date. Shared, public or common land (ejidos) are not registered before the PRPC.

Notwithstanding the above, the registry and submission of documents before the PRPC is performed by the notary publics or the parties involve in certain transactions, therefore, the information registered before the PRPC may be imperfect. In that sense, a good faith purchaser is quite protected with regard to the entries in the PRPC. Consequently, it is strongly suggested to perform a due diligence proceeding prior the acquisition of a real estate.

II. Financing tools of the transaction

6. How do investors finance the transaction? Are mortgages the typical way of coverage for banks?

Most of the time, investors finance the transactions with funds procured from financial institutions.

When financing is procured from financial institutions, mortgages are the most typical and reliable security device of coverage for lenders, since mortgages are in rem guarantees created on a specific property and may include the constructions over the property, if any. For a mortgage to be effective against third parties, it must be registered before the local office of the PRPC in which the property is located.

Other typical ways of coverage are, inter alia: (i) promissory notes, (ii) guarantee trusts, (iii) conditional sales in which seller reserves the domain of the property sold until complete payment of the price, (iv) joint and several liability constituted by third parties, and (v) bonds.

All guarantees can be granted through each real estate purchase agreement or by means of a side, ancillary, additional or accessory agreement, provided that the constitution of the guarantee meets the legal requirements for each type of guarantee.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

Principally, the property or possession title regarding the real estate, type of loan, down payment amount, financial situation of purchaser, financing requirements, repayment terms (i.e. allocation of each payment to principal and interest), interest rates, length of the financing, origination fees and brokers' fee and the guarantee requirements of the lender or investor.

III. Costs for transaction

8.What tax aspects are directly involved in a purchase of real property, for example real property transfer tax and what is the percentage of it?

a. Taxes related to the selling of a property.

Real estate transactions are principally charged with federal taxes, such as Income Tax and Value Added Tax, as follows:

- **Income Tax:** When parties formalize a purchase agreement before notary public, the notary public will calculate, withhold from the price and pay to the Mexican tax authority the profit generated to seller derived from the transaction. This calculation implies detracting from the income the proven cost of acquisition (i.e. price paid for seller when acquired the property, expenses related to the acquisition, local acquisition taxes, commissions for brokerage, constructions, remodeling and improvements, notarial fees, appraisals), provided that an Online Digital Tax Receipt (Comprobante Fiscal Digital por Internet "CFDI") is obtained.

The applied rate for non-residents (for tax purposes) in Mexico is 35% regarding the profit of seller. The representative of the non-resident shall submit to the notary public the applicable deductions. In certain cases, and provided certain conditions are met, the applicable rate may be 25%.

- **Value Added Tax ("VAT")**: The VAT is not applicable to the land, it is only levied over the constructions destined to commercial or industrial real estate. Residential constructions are exempted from the VAT.

VAT is caused by the non-resident selling the property and is transferred to purchaser. Therefore, the notary public granting the public deed in which the purchase agreement is formalized shall calculate, withhold from purchaser and pay an amount equal to 16% (and 10% in borders) of the value of the constructions as VAT.

b.Tax related to the purchase of a property.

Local Property Acquisition Tax: The acquisition of real estate is taxed by a local property acquisition tax. This tax may vary from state to state. The average rate is variable up to 3% of the higher value of: (i) appraisal value, (ii) fiscal value, (iii) cadastral value, and (iv) the real value of the transaction. This tax applies without distinction to residents and non-resident.

In exceptional cases, when the acquisition price is less than 10% of the appraisal value of the property, the differential is considered as an income for acquisition. In that case, a 20% withholding on the differential is applied.

The local property acquisition tax is calculated, withhold and paid by the notary public, at the moment of the formalization of the public deed containing the purchase agreement.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis - for example, within a year?

There is no restricting regarding the acquisition and selling of the same property within certain period of time. However, residents in Mexico (for tax purposes), including foreigners who are residents in Mexico, are subject to a tax benefit consisting in the exemption of payment of all or part of the Income Tax generated for selling a property used for residential purposes, depending on the purchase price, provided the resident proves that he/she has lived in such property over the last 3 years, at least and meets other certain requirements.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Yes, he/she can. There are no restrictions for repatriation of funds, other that the withholdings described in Section III above.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

There are two main factors to be considered before buying a leased property: (i) subsistence of the lease, and (ii) priority right of the lessee.

a. **Subsistence of the Lease:** Unless otherwise agreed among leasor and lessee, if during the term of

the lease, leasor sells his/her property to a third party, the lease will subsist under the terms of the agreement, and the lessee shall pay the rent to the new owner as agreed with the leasor.

If the transfer of the property is made for the sake of public utility, the agreement shall be terminated, but the lessor and the lessee shall be compensated by the expropriator, in accordance with the provisions of the respective law.

b.**Priority Right:** If the owner of the leased property wishes to sell it, lessee will have a priority right to acquire the property, before any other third party, under the same terms and conditions. Therefore, it is important to confirm that the owner complied with the provisions and proceeding established in the Civil Code prior the execution of the transaction or that the lessee waived such pre-emptive right.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

In general terms, owners may change the use of a building. In order to do so, owners shall obtain a permit from the municipality, and if applicable, the corresponding operating licenses. The permit may be granted depending on the municipality's urban development plan and zoning restrictions.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of EUR 5 Million, particularly

– notarial costs?

€13,000 - €17,000 approximately. This amount is calculated according to the Law of the Notary Public in the State of Jalisco. Each State has its own fees and rates.

– land register?

In order to determine the approximate amount, it is necessary to confirm the type of land (commercial, residential or industrial), constructions and location, among others. Costs and expenses may significantly vary in different locations.

– real property transfer tax?

See Section III, paragraph 8.

– advising lawyer (due diligence)?

Most of this kind of transactions are quoted in an hourly basis. The fees may vary depending on, inter alia, the complexity of the transaction, available information, expertise of the attorneys and the parties involved (entities or individuals). An estimate range of fees may be among €13,000 - €40,000 approximately.

– estate agent?

3% - 5% approximately (€150,000 - €250,000)

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property - for example yearly land tax after the transfer of ownership - and what is the percentage of it?

The only tax directly involved when holding a property is the local property tax ("Property Tax"), which is bimonthly or annually paid for owning a piece of land or a house/building. The Property Tax is calculated according to the cadastral value of the property and the amount to be paid is determined depending on the value of the land (i.e. location, characteristics and infrastructure of the location, urban equipment, services, types of use of soil in the location), constructions (i.e. type of the property, floors, surface of the property, construction surface, years of the construction), topographic conditions, cadastral value ranks, among others.

The percentage to be paid as Property Tax is very complex to determine, since every municipality has its own tariffs depending on the characteristics and general concepts described above, but for general informative purposes only, we may say that the average percentage to be paid as Property Tax may vary from 0.025% up to 1.5% of the cadastral value of the property.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

This range of costs may be very wide, depending on the type of property, location, maintenance, management and security requirements, vehicle of investment holder of the property rights and other factors.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
- **– directly in real estate?**
- **– through real property funds, open or closed ones?**
- **– through other clear and secure financial products?**
- **– in commercial real estate or in residential property**

We consider that investing in real estate in Mexico is a very profitable business, since the value of real estate and its development is increasing constantly in different areas of the country. The best vehicle to invest may vary according to the final purpose of the investor and investment (patrimonial, recreational, vacations, industrial or business).

If the purpose of the investment is patrimonial or hereditary (i.e. vocational condo) the best option maybe an investment directly in real estate; if the purpose is business we would suggest through a vehicle of investment, such as a trust, Mexican entity or any other vehicle providing certain level of protection to investors and tax benefits. Additionally, if the investment will be within the restricted zone, it is important to consider that, either for patrimonial or business purposes, it must be done through a trust or a Mexican company if the purpose is non-residential.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example to nationality or registered office of legal entities? If there are restrictions, are there ways to organize a domestic entity for the purchase on a valid legal structure notwithstanding?

Acquisition of real estate in Mexico is regulated differently to: (i) Mexican individuals (ii) Mexican entities with foreigners' exclusion clause, (iii) Mexican entities with foreigners' admission clause (Calvo Clause), or (iv) foreign individuals and/or entities (non-residents).

- Mexican individuals and/or Mexican entities with foreigners' exclusion clause, have no restrictions to acquire private property, other than those regarding public order and illegal purposes.

- Mexican entities with Calvo Clause are entitled to acquire private property, according to the following parameters:

  - For real estate located outside the Restricted Zone, which is the 100-kilometers (62-miles) strip along the borders and 50-kilometers (31-miles) along the beaches of Mexican territory, such entities do not have any restrictions other than those regarding public other and illegal purposes.

  - Regarding real estate located within the Restricted Zone, ownership rights can be acquired for non-residential purposes, provided a notice is submitted before the Secretary of Foreign Affairs; if for residential purposes, title of the real estate must be held through a trust by a trustee (Mexican bank), with an authorization of the Secretary of Foreign Affairs.

- The right of foreign individuals and/or entities (non-residents) to acquire real estate within Mexican territory depends on the location of such property:

  - Real estate located within the Restricted Zone, cannot be directly owned by foreigners. However, foreigners can acquire rights to the use and benefits of real estate located within Restricted Zone through a trust with an authorization of the Secretary of Foreign Affairs.

  - Real estate located outside the Restricted Zone can be acquired by non-resident through a written notice submitted to the Secretary of Foreign Affairs.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed and what time and effort are needed normally to get it?

- Registry before the Federal Taxpayers Registry.
- Registry before the Mexican Institute of Social Security.
- Land use permit.
- Operations licenses, depending on the operations of the business.
- Construction licenses, if needed.
- Notice of Opening of Commercial Establishments.
- Opening of establishment before the Health Secretary, if applicable.

19. Could your firm assist foreign investors in

– Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?

– Developing construction projects?

– All legal aspects involved in these contexts?

We will be very glad to assist you in any matter related to the acquisition of real estate and establishment of businesses in Mexico. We provide integral and personalized consultancy to our clients in order to capitalize upon all business, commercial and investment opportunities that may arise, as well as to deal with any related contingency.

We have considerable experience in real estate operations, representing both real estate developers and private investors. Our services include legal consultancy in operations involving purchase, sale and lease of real estate. We also assist our clients in the creation and development of condominium regimes, timeshares, joint ownership, transformation of ejido lands to private property, real estate administration, and development and implementation of real estate trusts.

We have an in-depth understanding of public procurement procedures at federal, state and municipal levels. We support our clients in all stages of the tender process, including the legal advice in regard to the procurement possibilities, the preparation of all documentation and submission of their offers, the award of contract, the eventual use of defense actions against such award, and all legal assistance required during the execution and performance of the contracts awarded.

Our firm has comprehensive experience in the development and management of public-private partnership projects with the public sector. We deliver to our clients top quality services for the participation in open and restricted tenders, the submission of unsolicited proposals, the selection and implementation of adequate financing schemes, and the negotiation of the terms and conditions of the projects.

Additionally, one of the partners of the firm is a notary public. Therefore, notarial proceedings are more efficient and economic when engaging our services.

Our services are supported and enriched by the professional background, expertise and competence of our lawyers with a single purpose: to satisfy the needs of our clients by rendering optimal, practical and professional legal services.

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NETHERLANDS

JONKER ABELN ADVOCATEN (Amsterdam)
EKELMANS & MEIJER ADVOCATEN (The Hague)

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

In the Netherlands the transfer of title of real estate (ground and/or structures erected on it) takes place and is completed by registration of a notarial deed of transfer in the national land register ('*Kadaster*'). A civil law notary is by training a lawyer, holding a public appointment. His duty is to render advice and draft contracts on the basis of impartiality.

In the notarial deed the agreement of purchase and sale and the title (legal basis of the transfer) have to be incorporated. The details of the purchase agreement and deed of transfer can be combined in one document (in cases where parties are fully in agreement or close to it), but mostly a separate purchase agreement is negotiated and executed, which document is referred to in the deed of transport.

Parties to a prospective sale of real estate will usually negotiate the terms of agreements of purchase and sale with the assistance of real estate agents or lawyers (in most instances, '*advocaten*'). Purchase and sale agreements usually contain representations and warranties (e.g. regarding environmental aspects and the absence of third-party rights, attachments and governmental claims). In particular, the fact that, according to Dutch law, tenancy agreements are not affected by the sale of the property emphasises the importance of these warranties and a proper due diligence. For straightforward transactions, standard forms for representations and warranties are in common use. Additionally, the relevant sections of the Netherlands Civil Code will be applicable.

It is to be noted that in the case of a sale of commercial real estate, agreements will be binding even if only made verbally. Foreign investors may wish to stipulate in the early stages of negotiations that no agreement comes about unless and until made in writing, in order to ensure that their negotiations about the representations and warranties do not lead to premature inconvenient obligations.

Purchase and sale agreements will usually contain conditions precedent and a scheduled date for the delivery (transfer of title). Subject to stipulation in the purchase agreement it is common in the Netherlands to pay a deposit of (usually) 10% of the purchase sum to the notary public of choice (usually made by the buyer) after signing the purchase agreement.

If there are no commercial reasons for agreeing a longer period (such as a condition precedent relating to obtaining the required finance) parties will commonly agree periods varying from one month to three months between the execution of the purchase agreement and the instrument of delivery.

The instrument of delivery (deed of transfer of title) must be signed in the presence of a civil law notary, officiating in his capacity. Mostly a notarial power of attorney (to one of the assistants of the notary) is

used to avoid impractical multiple party travelling.

Besides the deposit, it is almost invariably agreed that the purchase sum is paid into the third-party account of the civil law notary a few days prior to the date scheduled for delivery. After checking whether the real estate is indeed clear from liens and encumbrances and upon the signing of the instrument, the civil law notary will deposit the signed instrument of delivery with the registrar of the land register and pay out the purchase sum to the seller. Usually, it is agreed that, in the completion statement of the notary at delivery, current rents (if applicable) and costs are settled on a pro rata basis relating to the proportion of relevant time periods lapsed.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

The normal position is that the ownership of land comprises the ownership of the surface, the buildings and the works forming a permanent part of the land.

For the owners of land it is possible to create rights in rem on their property, such as the right of leasehold (*emphyteusis*) and the right of superficies (in which ownership of land and ownership of structures on that land are separated). Such rights give control to the surface, the land and the works to the extent provided in the deed pursuant to which such rights were created. Such rights can be transferred to third parties separate from the ownership of the land from which they are derived. Any remaining rights remain with the registered owner. The creation and delivery of rights of leasehold, superficies and apartment rights are to be established the same way as bare ownership: a notarial deed of transfer must be registered in the national land register.

A special chapter of the Dutch Civil Code is reserved for apartment rights (condominium). The main feature of an apartment right is the circumstance that more than one owner uses the same ground on which the complex is situated and the joint features of that complex. The ownership of an apartment right is exclusive and to be transferred the same way as bare ownership of other real estate property. The difference is that the apartment owners are undividable joint owners of the ground and joint features of the complex. As this joint ownership forms an integral part of the apartment right, the owner of the right can only dispose of his part of the joint ownership together with the apartment right itself.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Yes, the legal system of The Netherlands permits joint ownership of real estate (community property). In the Dutch Civil Code a distinction is made between a 'common' community (joint ownership of one or more possessions) and 'special' communities (e.g. inheritance, dissolved marriage, dissolved companies and partnerships etc.)

Both natural persons and legal persons can be owners of real estate. Entities with legal personality are (limitative): associations with legal capacity, cooperative societies, mutual insurance associations, private companies with limited liability, public companies and foundations.

This would include foreign legal persons.

Unlimited partnerships would not qualify as registered owners: one or more managing partners would be registered.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

In The Netherlands, the ownership of the ground implies the ownership of building erected on that land. Every part added to a building in the process of construction of that building therefore automatically adds to the ownership.

To prevent this basic assumption and to separate the ownership of land and the ownership of property in or on top of that land, the right of superficies has to be established by the owner of the land and granted to the owner of the building. As these rights have to be registered in the national land register, knowledge of the existence of such rights is publicly available.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

In the Netherlands, all land is registered in the national land register ('*Kadaster*') referred to above. As title to ownership and rights in rem may only be transferred by registering the same on the land register, the land register is very accurate. There is a very limited number of title defects which would not appear from the register.

Notwithstanding that accuracy, the Dutch system is at bottom negative and incomplete. Registration does not imply that what is registered is correct; the custodians of the register depend fully on the offered documents. Registration could also be incomplete; there are facts (regarding real estate also) that do not have registration as a constitutive condition, for example inheritance and prescription.

A good-faith purchaser would be conditionally protected with regard to title defects (which, as implied, hardly ever occur). For a successful appeal on good faith it is necessary that the facts involved would be subject to registration and were not registered, without previous knowledge of the purchaser. Purchaser is also protected against certain defaults in the registration itself. Title insurance is not available.

A purchaser would rely on the normally rather thorough title search performed by the civil law notary. Defects, if any, would in the course of time lose effect through prescription.

II. Costs for transaction

6. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

There is a national transfer tax of 2% for domestic buildings and 6% for other objects of the assessed value of existing real estate. The sale of the shares of companies which qualify as real estate companies

is also subject to the 6% transfer tax. The notary will retain the tax.

There is a limited number of exemptions.

Worth mentioning is the exemption in case of a subsequent transfer within six months from a transfer already taxed (except to the extent the purchase price of the second transaction is in excess of the purchase price of the first transaction). Furthermore, the sale of plots on which construction is yet to take place, and the new construction itself, are not subject to transfer tax, but to VAT. The current rate is 21%. Because of this obligation, the liability to pay VAT on the construction work itself – during the course of construction – under some circumstances can be transferred to the obligation of the end user to pay VAT for the whole. As the paid VAT under these circumstances is deductible for companies, a transaction under VAT could be preferable.

7. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

It is generally not a problem to buy and sell property on a short-term basis. Tax wise, a sale within the first ten years from delivery may be unattractive in the case of sale of plots used for construction if the aforementioned exemption from transfer tax was used.

8. Can the seller get his money out of your country after the transaction (repatriation of funds)?

In The Netherlands, there are no restrictions on transfer of capital to foreign countries.

9. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

In the Netherlands, purchase does not end lease. Leases pursuant to a tenancy agreement (i.e. a contract, the most common type of lease) can therefore not be terminated with effect any earlier than the agreed term or any agreed option to extend.

The Dutch system differs for different kind of leased subjects. In the case of residential premises the Dutch system is very protective for tenants. It is for the owner very difficult to terminate the lease, even upon expiration of the agreed term.

In the case of certain types of commercial real estate (primarily shops and catering establishments like hotels, bars and restaurants) the owner may only effectively terminate if and when its interests in terminating the lease override the interests of the tenant.

In the cases of all other commercial real estate such as plants and offices, the tenant may upon the expiration of the agreed term at best rely on a grace period for eviction of three years at most, normally less. Leasehold rights are rights in rem and can therefore not be terminated unilaterally prior to the term stated in the instrument of creation of the same.

10. Are you allowed to change the use of a building from residential use to office space or do you

need official approval for doing so, or is it not allowed at all?

Whether changing the use of a building from residential use to office space is allowed depends on the municipal zoning restrictions applicable to the area in which the real estate is situated. The municipality is obliged to permit construction/renovation activities within the activities defined and allowed in the prevailing zoning plan.

If the prevailing zoning plan does not allow the pursued use and the zoning plan itself is not to be altered, an exemption or a special statutory arrangement for minor deviations could be tried.

Exemptions from the current zoning restrictions may usually be obtained if a change of use conforms to future public plans for the area.

If and when the residential real estate is held as a leasehold right, the owner would have to agree to a change of use and would usually make this agreement subject to an increase of the retribution payable for the leasehold.

11. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- **notarial costs?**
- **land register?**
- **real property transfer tax?**
- **advising lawyer (due diligence)?**
- **estate agent?**
- **others?**

The purchaser normally pays the notarial fees, and usually for that reason has the privilege to choose the notary to be employed. The fees will depend on the agreement made by the purchaser with the notary and could be a fixed amount or a percentage of the purchase price. The percentage (to about 0.75%) also depends on the purchase sum.

Costs of entry in the land register depend on the assessed value of the land. These costs are negligible.

Transfer tax normally amounts to 2% or 6% of the assessed value. In some cases VAT is due instead. See above.

The fees of advising lawyers are calculated on the basis of agreement with their clients. Such fees would in most cases be based on time spent and the agreed rate. Title search would in most cases be included in the notarial services. For other due diligence (for example regarding prevailing lease contracts and possibilities to change the use) lawyers are usually involved.

The fees of the real estate agent also depend on the agreement with the client and could be a fixed amount or a percentage. Often a success fee is agreed, stating a percentage (ranging from 1% to 1.5%) of the purchase price.

VAT (currently 21%) is charged on most fees and costs.

In order to develop (or transform) real estate a building permit has to be acquired from the municipality, based upon detailed construction plans (final design), surveys and environmental investigations. Not only are costs involved in preparing the necessary documents, but also a special municipal tax (planning application charges) has to be paid. The charges vary from 3.8% to 1.5% of the construction costs on different brackets thereof.

Sustainability measurements

A special point of attention in the category 'others' would be the (relatively new) Dutch statutory obligations regarding sustainability:

- Energy Performance Labels for all real estate objects (in force, but not subject to widespread observance yet);

- Obligations for new real estate developments as from 1st January 2020 regarding compliance to 'Almost Energy Neutral Buildings'. To be enforced by means of the building permit.

- The obligation for office buildings to comply with Energy Label C as from 1st January 2023 (a prohibition to use office buildings from that moment with lower labels!) and to comply with Energy Label A as from 1st January 2030.

A relevant part of the current supply of office buildings (mostly buildings constructed before 1999) does not comply yet with the Label C obligations. Compliance, of course, could have serious investment consequences.

It is calculated (by the Economic Institute for Construction) that, depending on the current Label, the yearly revenues of the improvements on average should be 22% of the investment to reach Label C and 17% to reach Label A. The payback time for investments should be 3.5 to six years to comply with Label C and 3.5 to 13.5 years to reach Label A. Because of the lower energy consumption costs, in theory the investments should not lead to relevant capital losses.

III. Costs for holding real estate

12. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

In The Netherlands, the municipality in which the real estate is located charges a real estate holding tax. The municipality will charge a percentage of the assessed value of the real estate, divided in a part for the owner and a part for the user (only not domestic real estate). Assessment will automatically take place by the municipality on a yearly basis.

The percentage of the tax differs from municipality to municipality. For example in 2019 the following percentages in Amsterdam are due:

- domestic buildings: 0.38% of the value

- owners* of other real estate: 0.15% of the value
- users* of other real estate: 0.12% of the value

*owner/users pay both

13. What are the costs you have to calculate as a foreign investor, if you engaged a professional caretaker for the purchased property? How does the caretaker normally charge for their work?

Professional caretakers will often charge on the basis of the value of the property or on rental income. Some will charge on the basis of time spent. Charges may range from 4.5% (shops) to 6% (residential) of the rental income.

IV. Foreign investors

14. Would you advise foreign investors at the moment to invest in your country
- **directly in real estate?**
- **through real property funds, open or closed ones?**
- **through other clear and secure financial products?**
- **at the moment not because of the impacts of the worldwide financial crisis?**

Most foreign investors have the choice between investing directly or through companies, depending on tax considerations. It will primarily depend on the country of origin of the investor whether a foreign or a Dutch vehicle is used.

There are a number of real estate funds which invest in Dutch real estate. The choice depends on the foreign investor's strategy.

As interest rates are very low at this moment and investments in real estate – especially long-term investments – proved reasonably secure, investments in real estate are very popular nowadays. The other side of the coin is that real estate prices rose considerably in the last few years.

15. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

There are no restrictions with respect to nationality or registered office of foreign investors.

16. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

It depends on the type of business concerned whether local permits are required to run such business. In the case of EU nationals and nationals from treaty countries, requirements may not discriminate and can in most instances easily be obtained. In the case of nationals from other countries it would depend on the type of business concerned.

17. Could your firm assist foreign investors in

- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

We can make introductions to real estate agents personally known to us and to other clients owning and/or developing real estate. We can also make introductions to valuation experts who can double-check any value assessed.

The real estate, administrative law and construction law section of our firms will, where required and practical, jointly assist in developing construction projects from A to Z:

- Financial contracts and tax aspects;
- Company structures;
- Purchase of the land;
- Third-party rights;
- Set up of rights in rem;
- Administrative law counselling (zoning plans and permits);
- Legal planning;
- Advice on all of the widely used general contracting terms in the Netherlands (i.e. UAV and DNR);
- Drafting of contracts with contractors and advisors (i.e. architects);
- Monitoring contractual compliance during construction process (risk management and progress);
- Dispute resolution (both court and arbitration);
- Alignment of delivery protocols with contractors and end users;
- Claims regarding construction term overruns, guarantees and (hidden) defects;
- Lease contracts.

We can assist with all legal aspects of negotiating and assessing real estate transactions. Due diligence as to title (other than introductory searches) and the responsibility for transfer of title are in The Netherlands in the hands of civil law notaries. We have good working relationships with many civil law notaries and tax planners in Amsterdam, The Hague and around the country.

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NEW ZEALAND
LOWNDES LAW

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

A real estate agent, acting for the vendor, will market the property and negotiate and usually prepare a sale contract.

Real estate agents, lawyers and banks in New Zealand are now required to comply with anti-money laundering laws. This requires that they conduct customer due diligence in certain circumstances, which must be completed before they can begin acting for a new client, or continue to act for an existing client with changed circumstances.

Land is generally sold by one of three methods: auction, tender or negotiated contract. The contracts under each of the three methods of sale have particular characteristics:

- Auctions – a successful bidder will be bound to purchase the property from the fall of the hammer. Therefore, a purchaser under this process must be satisfied with the property in all respects before the date of the auction.

- Negotiated contracts and tenders – offers can be submitted that are conditional on the purchaser or its solicitor being satisfied with particular matters relevant to the sale such as the purchaser's ability to obtain finance, a building inspection, valuation, Overseas Investment Office consent, general due diligence and a satisfactory Land Information Memorandum (which is a statutory report from the relevant council which sets out in a summary form the information held by the council which is relevant to the property in question).

A deposit is usually payable either when the contract is signed or when it becomes unconditional. 5% to 15% of the purchase price is usual, although 10% is by far the most common for a deposit. This is usually held by either the real estate agent or the vendor's lawyer.

Before settlement, the vendor's lawyers will prepare a settlement statement for the purchaser's lawyers setting out the amount of money required for settlement (taking into account any apportionments for council rates, water rates, body corporate levies, rent and any other relevant items). The purchaser's lawyer must set up the e-dealing to effect the transfer through our electronic registration system operated by a government entity, Land Information New Zealand (LINZ), and also prepare and send to the vendor's lawyer a notice of sale which sets out the change in ownership details, which the vendor's lawyer will then send on to the relevant local authority and water authority so that the change in ownership can be updated in their records.

Both parties' lawyers will need their clients to sign authority and instruction forms, authorising the

lawyers to transfer the property through LINZ – this will include authority to discharge mortgages/ register mortgages as appropriate. LINZ has stringent requirements regarding identification of people who sign authority and instruction forms to mitigate the risk of fraud. Overseas signatories will most likely be required to sign in front of a notary (in Australia, a lawyer is acceptable). Both parties are also required to sign land transfer tax statements which, unless a specific exemption applies (for example, for individuals selling/buying their main home and mortgagees conducting mortgagee sales), requires each party to provide details regarding the nature of the property, the residency status of any family members who will live in the property, the NZ tax number and any overseas tax numbers. The property cannot be transferred without this information. Trusts in NZ must also be registered for tax purposes and provide their NZ (and overseas, if relevant) tax numbers.

Before settlement, the vendor's lawyer will usually fax its undertakings to the purchaser's lawyers setting out that they have completed the necessary certifications in the LINZ e-dealing workspace and that the relevant documents (usually a transfer and often also a discharge of mortgage) will be released in the online workspace to the control of the purchaser's lawyers on receipt of the required settlement funds in cleared funds.

The purchaser's lawyers on receipt of the vendor's lawyers' undertaking, will arrange for the required settlement funds to be transferred to the vendor's lawyers by cleared funds. Usually this is done by way of same day cleared payment, a system which is operated by the Reserve Bank of New Zealand through the various retail banks. The purchaser may still settle by delivering a physical bank cheque to the vendor's solicitors' offices, but this is very rarely used in practice.

On receipt of cleared funds, the vendor's lawyer will then release the LINZ e-dealing to the control of the purchaser's lawyers, who will then submit the e-dealing for registration. In most cases, registration happens instantly. The vendor's lawyers then send the notices of sale to the relevant authorities to update their records, make any payments as per undertakings in the settlement statement (for example, payment of rates instalments), make any mortgage repayments in accordance with any discharge authorities given by any mortgagee in relation to any mortgage discharged at settlement, and pay the balance to the vendor. The vendor's lawyer should also contact the vendor's real estate agent to authorise the agent to release any keys, alarm combinations and so on to the purchaser, before reporting to the vendor, including by providing a statement of account showing the flow of funds through the trust account.
The purchaser's lawyer will then submit the e-dealing for registration and, upon registration, must report to the purchaser's bank (if any) and the purchaser, including by providing a statement of account showing the flow of funds through the trust account.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Yes. Generally in New Zealand estates comprise:

- Fee simple estates, analogous to full ownership, which carry the largest number of rights;

- Cross-lease estates, meaning shared ownership of a fee simple estate between two or more owners, who then lease to each other the respective buildings they occupy at no rent. Cross-leases are a creature of history as their use enabled a developer to avoid the restrictions and cost of subdividing a fee simple estate amongst the owners; or

- Unit title estates, which were created by statute to meet, in particular, the requirements of apartment developments. Each apartment is defined as a three-dimensional parcel of land which the owner owns. The unit titles in any given development are governed by the Unit Titles Act 2010. Under this Act, rules for the use of the building are enacted and levies are struck to allow owners, as a body corporate, to maintain with respect to the development, the common areas, building insurance and other administrative concerns.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Real property in New Zealand can be owned by individuals, companies, registered charitable trusts, limited partnerships and registered incorporated societies, or any combination of these entities. Real property can be owned by multiple entities as joint tenants (an undivided share in the estate where, with individuals, upon death of one party their interest vests in the other). The other method of ownership is as tenants in common, where each party's share can be specified and can be sold separately.

4. n some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

In New Zealand you can have what is called a ground lease. This is where one entity owns the land and another party holds a long term, often perpetually renewable lease called a leasehold estate. The owner of the leasehold estate has a lease of the land and the leasehold interest is issued its own leasehold certificate of title. Although it depends on the terms of the lease, the owner of the leasehold interest generally has the right to develop the land and erect improvements on the land, the ownership of which, at the end of the lease, will revert to the owner of the fee simple estate.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

New Zealand has adopted an electronic land registration system which is operated by a government entity, Land Information New Zealand (LINZ). Each estate is recorded in an electronic register. The register describes the surveyed boundaries of each parcel of land comprising the estate, along with the details of the owner and any other interests that will affect the land (such as mortgages, leases, charges and easements) in their order of priority. Registered interests take precedence over unregistered interests (which will typically not be binding on a purchaser).

Each register is updated in real time (and transactions are usually registered and given effect to in real time). Searches of the register at any moment (for example, before a purchase) are guaranteed by LINZ to be correct and complete. As such, purchasers do not need to undertake an exhaustive search for a succession of title deeds to understand the quality of the title they are purchasing.

II. Financing tools of the transaction

6. How do investors finance the transaction? Are mortgages the typical way of coverage for banks?

Investors usually finance transactions by making a loan to the purchasing entity. The loan is usually secured by a registered mortgage, often also accompanied by a general security agreement which is secured by registration of a financing statement on the Personal Property Securities Register. First registered mortgages are the typical way in which banks secure loans to individuals.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

Financiers should take into account the quality of the security that they are obtaining, the value of the property and the level of any prior lending which is secured by the property.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property, for example real property transfer tax and what is the percentage of it?

There is currently no requirement to pay tax on purchase of land in New Zealand.
New Zealand has recently introduced a residential land withholding tax. From 29th March 2018, people who sell a house in New Zealand within five years of buying it must pay income tax on any gains, unless it is their main home or another exception applies. The tax applies when:

- The property being sold is residential land located in New Zealand;

- The vendor acquired the property on or after 1st October 2015;

- The vendor has owned the property for less than:

  - two years (if purchased between 1st October 2015 and 28th March 2018); or
  - five years (if purchased on or after 29th March 2018), before disposing of it; and

- The vendor is an offshore residential land withholding tax person. This includes all non-New Zealand citizens and individuals who do not hold resident's class visas granted under the Immigration Act 2009. It also includes a New Zealand citizen who is living overseas, if they have not physically been present in New Zealand within the last three years. A holder of a New Zealand resident's class visa may be an offshore person if they are outside New Zealand and have not been in New Zealand within the last 12 months. New Zealand trusts and companies may also be offshore persons for resident land withholding tax purposes if there are significant offshore interests in them (generally being more than 25% of the directors or holders of the shareholder decision-making rights, or more than 25% of the trustees, as relevant).

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

Please see response under question 8.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

There are no current restrictions in New Zealand on the repatriation of funds.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

Generally, if you buy property in New Zealand that is leased, you buy subject to that lease and are bound by it. Individual leases may have early landlord termination rights on the sale of the property, but this would be on a case-by-case basis and any such right would need to be exercised by the vendor in accordance with the lease terms. When purchasing a leased property, you should consider, amongst other things, the term, renewal rights, rent, rent review mechanisms, early termination rights and make-good obligations under the leases.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

In New Zealand a change in use will generally require a resource consent under the Resource Management Act 1991. Whether the change in use will be permitted or not depends on the permitted activities for the planning zone in which the property is located and the limitations on those activities.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- notarial costs?
- land register?
- real property transfer tax?
- advising lawyer (due diligence)? – estate agent?
- others?

- If the authority and instruction form is signed overseas, then there may be costs associated with the requirement to have the authority and instruction form signed in front of a notary public (or, if in Australia, a lawyer).

- The LINZ registration costs are:
  - Transfer NZ$80 (including GST); and
  - Mortgage NZ$80 (including GST).

- There is no real property transfer tax.

- Legal costs of NZ$7,000 - NZ$20,000 (plus GST) are usual, depending on the complexity of the ownership structure and any financing documents.
- Generally real estate agents are acting for the vendor and are paid by the vendor.

- If applicable there can also be the following costs: valuation costs (around NZ$10,000), building report

costs (NZ$10,000-NZ$15,000), and Land Information Memorandum (*LIM)* report (if not provided by the vendor as part of its sales material) (NZ$200-NZ$500, depending on where the property is and the urgency of the report). A LIM report provides details of information held by the relevant council regarding the property, including information relating to rates, building/subdivision/resource consents, natural hazards, contamination, subsidence, seismic and utilities/services.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

There is no land tax but there are annual council land rates which must be paid. These are calculated with reference to the size of the land, value of the land and any improvements, and also services provided by that council.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional caretaker for the purchased property? How does the caretaker normally charge for their work?

Property owners in New Zealand often engage a property manager to manage tenants and maintenance in relation to a property. What they charge depends largely on the services they are providing, but typically this will be between 7% and 9% of rents collected per month.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
- directly in real estate?
- through real property funds, open or closed ones?
- through other clear and secure financial products?

We recommend contacting a registered financial adviser for this type of advice. We can make recommendations on request.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

Overseas people (as defined in section 7 of the Overseas Investment Act 2005) and their associates may need to apply to New Zealand's Overseas Investment Office for consent to acquire:

- Sensitive land or an interest in sensitive land by buying shares in a company that owns sensitive land; or
- Business assets worth more than NZ$100 million; or
- Fishing quota or an interest in fishing quota.

Recent changes to the laws now mean that if you are not a New Zealand, Australian or Singaporean citizen, or you do not have a permanent residency visa for one of those countries and live in New

Zealand, then you must obtain consent to purchase residential land in New Zealand. The costs are just over NZ$2,000 in application fees, and applications are meant to be processed in ten working days. There are penalties aimed at disincentivising attempts to circumvent the law.

The pathways to consent change and the process become considerably costlier and lengthier if the land you are purchasing involves sensitive land. There are also special rules dealing with forestry land.

The definitions of 'overseas person' and 'sensitive land' are complex and require expert legal and planning advice in each case to identify if Overseas Investment Office consent is required. LINZ has useful information at www.linz.govt.nz/regulatory/overseas-investment/do-i-need-consent-invest-new-zealand.

There are ways to structure acquisition, but generally, if an acquisition would require consent, then most will be caught by the 25% owned by an overseas person or associate test. Consent is determined (broadly) on whether the transaction will or is likely to benefit New Zealand or if the overseas person is likely to reside in New Zealand indefinitely.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

Refer to responses above.

19. Could your firm assist foreign investors in

- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

Yes. The Lowndes team would be very happy to assist with all these aspects and have done so successfully for many international clients.

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PANAMA
ROSAS Y ROSAS

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

Properties are usually marketed either by the promoter of the property (if it is a new project) or by a real estate agent (in any case – new or used). There are also direct sales from the current owner to the new one. In any of the cases, the sales contract is prepared by the seller or seller´s representative and negotiated between the parties with or without the intervention of a lawyer for the buyer´s side. Nevertheless, it is recommended to have legal advice on negotiating real estate contracts in order to ensure the clauses of the contract are fairly drafted for both parties, that the land or property is clear, that the property is duly registered and updated at the National Authority of Land, if the same is duly exonerated when it is the case, and that the same is properly divided and that all permits are in order, including the cadastral permits.

In Panama, there are strict regulations against money laundering, hence due diligence forms and requirements must be completed before continuing with any real estate transaction.

The usual manner in which a project is acquired is by signing a separation form and giving a deposit, in most cases between $1,000 and $10,000. Then the promissory sale agreement is signed and, with its execution, the purchaser has to pay the remaining of the value of the property. This agreement is issued in triplicate, either notarised or not – this is not a legal requirement for its validity. If the property is going to be mortgaged, the remaining deposits can be divided between one and two additional payments, depending if the project is ready or under construction, or if the approved loan by the bank is lower than the remaining balance of the sales price.

When the final purchase and sales agreement is signed, the buyer has to pay the remaining balance or, as in most cases, handle a promissory letter of payment issued by a licensed bank in Panama. After the handling of the promissory letter of payment, the seller signs the public deed of transfer of the ownership title. The usual time between the signing of the promissory agreement, the final purchase and sale agreement and the effective transfer of ownership of the property and payment of the sales price is 120 days, taking into consideration that this is the usual maximum time a bank will take to issue the promissory letter. If the property is not mortgaged, escrow accounts/agents are used in order to ensure the proper payment. This can be done through notaries or lawyers.

After the signing of the final purchase and sale agreement, the public deed containing this the transfer of the ownership title / mortgage agreement is also signed and the bank finalizes the registration procedure at the public registry. The registration fees vary depending of the amount of the sales price. Once the title deed is registered, it shall be submitted to the National Authority of Land Administration in order to update the value of the property so the property taxes are fixed based on said value.

All the information regarding real estate is public at the Public Registry of Panama through its website, and copies of the registered deed containing the purchase and sale agreement and mortgage can be accessed through the website.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

A property can be owned by one or more owners and the ownership title is registered at the Public Registry of Panama. There is also the horizontal property regime, applicable to condominiums (apartments). These are segregated into units and each unit has its own property title which makes it an individual property.

It is also permitted that the owner of the land is different from the owner of the construction, but this has to be declared by a special judicial procedure.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

A property can have more than one owner in different proportions from the proportion of ownership of the estate. A real estate property can be owned either by individuals or corporate entities, private interest foundations, non-profit associations or any other legal entity.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

When a building is constructed, the owners of the units of the building are co-owners of the land in the same proportion that they are owners of the building. This co-ownership generates the obligation to pay property taxes of the land in proportion to their ownership, and the land usually remains under the name of the building under the horizontal property regime.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

The transfer of ownership is only considered effective once it is registered at the Public Registry of Panama. Such registry is considered in good faith and protects the buyer against third parties since the moment of the registration.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

The most common way of financing a real estate purchase is by a loan agreement secured by a mortgage agreement which is duly registered at the Public Registry of Panama. However, in Panama there is a growing trend of guaranteeing the financings for the acquisition of real estate properties through trusts that are done through fiduciaries owned by the banks.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

The first thing to bear in mind is the real value of the property as the security of the loan. In addition, whether there are any other securities over such property and the credit history of the purchaser, whether the property is correctly registered at the Public Registry and whether it has been subject to lawsuits of any kind.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

- **Property transfer title tax:** corresponds to 2% of the registered value of the sale or registered value of the property, whichever is the higher amount.

- **Capital gains tax:** corresponds to 3% of the sales value or registered value of the property, whichever is the higher amount.

- **Complimentary tax:** this tax is applicable only when a property is sold through a corporate entity and corresponds to 10% of the capital gain, which eliminates the obligation to pay the dividend tax on a company.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

A real estate property can be acquired and sold on a short-term basis without any restriction, as soon the same is registered under the owner at the Public Registry of Panama. However, the owner (seller) is responsible to cover the applicable taxes accrued during the ownership of the land and the relevant transfer tax.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?
Yes, the funds can be transferred out of the country once the transaction is finalised, or the funds can even be transferred outside the country by the way of payment of the sales price. There are no restrictions in Panama regarding the repatriation of funds.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

If a leased property is bought by a new owner, the latter does not have the right to terminate the existing agreement between the original owner/landlord and the tenant as long the contract is duly registered at the Public Registry. In this case, the anticipated termination can only be agreed by these two. Otherwise the new owner has to honour the lease agreement until being able to use or dispose of the property. However, there is the common practice that the new owner honours the term of the existing lease contract.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

In all residential properties the owners can perform their professional activities without requiring any special permit to do so. However, in order to convert a residential property into a commercial office it has to be registered under a specific zoning. If the zoning does not permit it then a special procedure must be followed in order to change it so the commercial activity can be performed in the property.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 - million, particularly

- notarial costs? $280
- land register? $16,960.
- real property transfer tax? $250,000
- advising lawyer (due diligence)? $25,000
- estate agent? $250,000 (5% of the sales price)
- others? Escrow Services: between $300 and $500

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

- Yearly land tax of 1% of the registered value.
- On new projects and depending on the value of the same, the tax exonerations on the construction are between five and ten years. Before 2019, the tax exoneration on the construction was 20 years.
- After the exoneration expires, then the following table applies only for the first residential property of a buyer:
  - From $0 - $120,000 – 0% tax
  - From $120,000 to $700,000 – 0.5% of the amount between $120,000 and $700,000.
  - $700,000 and higher – 0.7% of the exceeding amount after $700,000

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

If the investors require property management services, they will fix a percentage on the net rent depending on the property (if it is residential or commercial), its location and the services required. The usual rate is between 8% and 10% on the monthly rental income.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country

- directly in real estate?
- through real property funds, open or closed ones?
- through other clear and secure financial products?
- In commercial real estate or in residential property?

The advice that we would provide should be deemed as one given in good faith and based in general appreciation of the current real estate market conditions, and shall not be deemed to be received from

a professional adviser. Based on this and how we see the market conditions at the moment, we would recommend investments through other clear and secure financial products, as there seems to be a surplus of properties of commercial and residential type that are moving prices lower.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

There are no restrictions regarding the nationality of a buyer, whether individual or legal entity, on acquiring real estate in Panama.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

The first step would be to complete the recording of title in the name of the investor. Assuming that the plot of land needs to be developed, then construction and occupation permits would have to be obtained, which would each take several weeks to obtain, in addition to actual construction time.

Depending on the type of business to be developed, municipal and corresponding licences from other governmental offices would be needed, and in general these are fairly expeditious to receive, maybe around two to four weeks, except when the activity is more especially regulated and subjected to reviews and analyses.

19. Could your firm assist foreign investors in

- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

We can gladly assist investors that aim to acquire a real estate in Panama in all the legal aspects involved in such transactions, including the organisation of corporate and financial structures.

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POLAND
FKA FURTEK KOMOSA ALEKSANDROWICZ

Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

The main regulation concerning real estate in Poland is the Polish Civil Code of 23rd April 1964, which regulates the basic principles of real estate transactions as well as containing definitions related to real estate trading (such as real estate, easement, usufruct and others).
There are also more specific acts which may be applicable in certain situations, e.g. the Act of 18th October 1991 on Agricultural Property Management of the State Treasury, the Act of 21st August 1997 on Real Estate Management, the Act of 11th April 2003 on Formation of the Agricultural System, the Act of 24th March 1920 on the Acquisition of Immovable Property by Foreigners, and the Act of 20th July 2018 on Transformation of the Perpetual Usufruct of Land Occupied for Housing Purposes into the Ownership of Land.

Formal registers
In Poland, each real estate should be registered in land and mortgage registers ('księga wieczysta') regulated by the Act of 5th July 1982 on Land and Mortgage Register and Mortgage), which are maintained by the district courts. Land and mortgage registers are kept in order to establish the legal state of immovable property. They contain also historical information deleted from the register.
In the case of inconsistency between the legal state of the immovable property evidenced in the land and mortgage register with its real legal state, the content of the land and mortgage register should prevail in favour of the person who (acting in good faith), by performing an act in law with the person entitled under the contents of the register, acquires the right of ownership or another right *in rem* (land and mortgage registers' public credibility warranty).This makes the land and mortgage registers the most trustworthy sources of information concerning real estate in Poland. Please consider however that the content of this register is not decisive for physical aspects/description of the real estate so another register of lands and buildings should be visited.
Notaries and anyone who can prove a legal interest can review the files substantiating the content revealed in the land and mortgage registers. A legal interest should be understood broadly; for example, a person interested in buying or selling a real estate can ask to review the land and mortgage files kept in the courthouse. The files of the land and mortgage register may contain, among others things, court decisions or sale and purchase agreements concluded by previous owners of the real estate.
In addition, anyone without legal interest can review the land and mortgage register excerpts *via* internet and check the real estate's legal status. It is sufficient to know the number of the land and mortgage register for a given real estate. Electronic access enables reviewing in four sections of the land and mortgage register:

- section I containing the designation of the immovable property and the entries of the rights related to its ownership;
- section II containing the entries concerning the ownership and perpetual usufruct;

- section III containing so-called limited rights in rem, except for mortgages, restrictions on the disposal of the immovable property or of its perpetual usufruct, as well as other rights or claims, except for claims concerning mortgages;
- section IV containing mortgages.

The land and mortgage register has columns titled 'Motions and basis of the entries in the land and mortgage register' and 'Location of the document'. These columns contain information about the document submitted to file of the land and mortgage register and which was the basis for making an entry in the land and mortgage register. If the motions pending revealed in the register waive the warranty of this register, one should then check the file since no protection will be given if there is an annotation of a motion filed.
A separate set of information concerning real estate is provided in the register of lands and buildings ('ewidencja gruntów i budynków'). From this register one can find out about:

- land – location, boundaries, areas, types of arable land and classification classes, land and mortgage registers or collection of documents;
- buildings – location, purpose, utility, functions and general technical data;
- premises – location, utility, functions and usable space.

In some cases it also includes information about owners, entries in the register of objects of cultural heritage, any form of nature protection and cadastral value. The register of lands and buildings is most updated and includes relevant maps.

Transfer of the ownership

Before a transaction takes place, it is common that parties enter into a written preliminary agreement. On the basis of a preliminary agreement, the parties undertake to conclude a promised agreement (final contract) under which the ownership of the real property will be transferred.
According to the Polish Civil Code, if a party obliged to conclude a promised contract evades its conclusion, the other party may demand that the damage sustained as a result of counting on conclusion of the promised contract be redressed. Parties may differently specify the scope of indemnity in a preliminary agreement. However, if the preliminary contract meets the requirement on which the validity of the promised contract depends (in particular, for a real estate, it must be executed as a notarial deed), the entitled party may demand the conclusion of the promised contract by a court (a court will issue a verdict replacing the other party's statement for a transfer of ownership).
The preliminary agreement should already contain all essentialia negotii of the future final agreement (the essential elements of the content of the legal act which determine its type). Essentialia negotii of a sale agreement include parties, the designation of the real estate, sale price (or the method of its calculation) and the obligations of the parties of the agreement (transfer of the ownership and payment of the purchase price). The preliminary agreement may also contain, for example, representations and warranties to be inserted in the final contract, provisions regarding an advance payment, conditions precedent for a final contract, termination of the contract or the period of time in which the final agreement shall be concluded. If the time limit within which a promised contract is to be concluded has not been specified, it shall be concluded in due time specified by the party entitled to demand that the promised contract be concluded; if both parties were entitled to demand it and each of them has specified a different time limit, the parties shall be bound by the time limit specified by the party which

has made it first. Where the time limit to conclude a promised contract is not specified, its conclusion may not be demanded after a year from conclusion of a preliminary contract.

The transfer of ownership of the real estate will take place at the time of concluding the final agreement (promised agreement) or a transfer agreement (if there was no preliminary agreement) and requires a form of notarial deed (with disclosure in the land and mortgages register with a declaratory effect). Ownership of a real estate cannot be transferred conditionally or with a reservation of a time limit. If an agreement obliging the transfer of ownership of an immovable property was concluded conditionally or with a reservation of a time limit, an additional agreement between the parties constituting a transfer of ownership is required.

If a real estate is subject to the pre-emption right (nowadays, the most common pre-emption right is a statutory pre-emption of the National Centre for Agriculture Development ('KOWR') that applies to agricultural land), it may be sold to a buyer on the condition that the person entitled to pre-emption right has not exercised his/her right. In this case, the parties should conclude a conditional sale agreement (also in the form of a notarial deed). Although a doctrine is of the view that making the declaration of will by the entities entitled to statutory pre-emption right causes the transfer of ownership of the real estate, in certain circumstances it is necessary to conclude another agreement (notarial deed) to transfer the ownership to the party entitled to the pre-emption right (e.g. in the case when the conditional sale purchase agreement contains other conditions precedent). If an entity entitled to pre-emption right does not exercise the pre-emption right, the parties should conclude an agreement on the transfer of ownership of the immovable property.

It is advisable to disclose the preliminary agreement in the land and mortgage register (section III), since it will protect a promised transaction by waiving a good faith of another buyer.
All types of real estate transfers in Poland require a written agreement in the form of the notarial deed in order to be valid. A new owner must be disclosed in the land and mortgage register. The transfer of the ownership of the real estate takes place by the conclusion of the final ownership transfer agreement. After the conclusion of the agreement, a notary is obliged to apply to a district court for entering a transfer of the ownership of the real estate in the land and mortgage register (*via* Internet).

Perpetual usufructs
Polish law provides for freehold, the legal right to own and use a real estate for an unlimited time, or perpetual usufruct. The perpetual usufruct is given by the State Treasury or municipalities to natural and legal persons for the limited period of 40 to 99 years, with the possibility to prolong the given period. The title to the real estate is transferred upon the entering of the perpetual usufructuary into the land and mortgage register. In case of perpetual usufruct, the owner of the land is other than the owner of the buildings and facilities erected on the land. The perpetual usufructuary's ownership of buildings and facilities on land is a right related to perpetual usufruct, which means that after the period for which it was established (and renewed), the ownership of the buildings and other facilities will pass to an owner of the land (State Treasury or municipalities).

As of 1st January 2019, the perpetual usufruct is no longer available for real estate for housing purposes, but it still might be established for other types of real estate (e.g. land with buildings solely for business

purposes). On 1st January 2019, the perpetual usufruct of lands for housing purposes by operation of law (the Act of 20th July 2018 mentioned above) became the ownership of these lands. As a result of the transformation, the new landowner will pay a transformation fee to the previous owner of the land (State Treasury or municipality) – in general for 20 years and equal to a fee paid under the previous usufruct. A new owner can pay the transformation fee as a one-off payment (then, if declared and effected in the first years from the transformation, with substantial discount).

Agricultural real estate

Further restrictions concerning transfers of ownership in agricultural real estate apply. They do not depend on a buyer being an EU citizen or entity but are discussed in our answer to question 17. These restrictions apply both to direct acquisition of such land and indirectly to acquisition of shares in an entity owning such land (as well as to forms of ownership acquisition other than a sale contract).

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

In general, ownership of real estate in Poland confers the whole real estate. Even the co-ownership pertains to the whole real estate, as it is indivisible (more information in answer to question 3). As a result, a building erected on land forms a part of this land, with some exceptions – see our answer to question 4 (separate ownership of units in a building).

It is possible to own an independent unit in a building (condominium), resulting in the co-ownership of common areas in the building and of land underneath the building (more in our answer to question 4).

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

In Poland, it is possible for several persons to own indivisibly one real estate. Co-owners' shares are presumed to be equal. Each co-owner is entitled to possess a co-owned thing jointly and use it to the extent compatible with the joint possession and use of the thing by the remaining co-owners. The co-ownership may also apply to ownership of a unit (premises).

There are two types of co-ownership of real property: joint co-ownership and co-ownership in fractional shares. Joint co-ownership is based on provisions of specific legislation expressly establishing it (e.g. spouses in case of a joint property marital regime, partners in a partnership). Shares in this type of joint ownership are not determined as fractions.

Co-ownership in fractional shares is regulated by the Polish Civil Code and is characterised by each co-owner being entitled to a share in the property ownership right, determined by a fraction. Each co-owner may dispose of his/her share without the consent of the remaining co-owners. The disposition of the co-owned real estate and other acts beyond an ordinary management of the real estate require the consent of all co-owners. In the absence of such consent, the majority co-owners may demand that a court decide on the issue.

The set of entities that can own a real property in Poland is broad and includes natural persons, legal

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

The concept of a divided property (e.g. in horizontal layers) was not adopted in Poland. In general, everything attached to the land forms part of the same real estate (e.g. buildings, plants) and is owned by the same person (same ownership), subject to two exceptions:
1/ The first one deals with the perpetual usufruct, with an owner of the land being the State Treasury or municipality agreeing to grant the perpetual usufruct to erect a building (from 2019, not for residential purposes). The building erected on this land is subject to separate ownership by a perpetual usufructor. In this case, the ownership of the building is linked with the perpetual usufruct and cannot be transferred further without this right (more information in our answer to question 1).
2/ The second exception allows for establishment of a separate ownership of units/premises in a multi-flat building and is used mostly by developers of residential buildings. Once a residential building is erected and approved for occupation and the units are separated physically (it is confirmed with a special certificate), a developer may establish a separate ownership of a unit (premises) by a notarial deed and entry to the land and mortgage register (where a 'book' with a separate number revealed in the 'book' of the underlying land) is created for the ownership of a unit; in this case, the entry in the register is a constitutive element of establishment of this right). Once the first unit is separated, all owners of the units and the developer keeping not separated units form a residential condominium. In this case, the land underneath the building as well as common parts of the building (e.g. staircases) are subject to the joint co-ownership of owners of all the units.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?
Yes. There are two main formal registers concerning real estate in Poland: the land and mortgage register and the register of lands and buildings. Both together give detailed information regarding ownership, type of land, its location and area, and any immovable property, as well as mortgages and other rights or claims linked with the real estate.

An entry of a right evidenced in a land and mortgage register is presumed to be reflecting the actual legal state. According to this presumption, the good-faith purchaser is protected if he/she uses the information provided in the register as factual and binding. The purchaser of real estate does not benefit from the presumption as long as he/she acts in bad faith. A person is deemed to be acting in bad faith if he/she knows that the contents of the land and mortgage register are inconsistent with the real legal state, or if a person could have learnt easily this fact (the annotation of a pending application revealed in the register gives ground for depriving the good faith, since a buyer could then have checked the reasons for an annotation). The rule of warranty (presumption of conformity with legal state) does not apply to the information from the register of lands and buildings.

I Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

The investors can finance the real estate acquisition through a variety of ways, e.g. via investment funds or a special purpose vehicle acquiring the land, by bonds or by a bank loan/credit facility.
The banks usually require a mortgage over the real estate property (together with a security assignment of real estate insurance policy) as a basic security interest; depending on the financial creditability of a buyer, a security from another person may be required. In case of SPVs acquiring land, a bank loan may be secured further with pledges over shares in an SPV (or over the enterprise of an SPV). Sometimes the acquisition cannot be financed as a typical project, so the bank may require some recourse to project sponsors by a parent company guarantee or suretyship (especially in the preparatory and construction phases of the project with respect to cost overrun or loan defaults). The bonds may be secured by similar security interest (with a pledge/mortgage administrator acting for the account of bondholders).

7. What should be taken into account when thinking about the financing of a purchase project in your country?

Before an investor decides to invest in the purchase of real estate, it is necessary to examine the legal status of the real property (*due diligence*), for example all the documents regarding the real estate designation, its location, area and types of land and their classes. Checking the zoning plans adopted by local authorities as well as historical registers should be fundamental for an investor if the land is planned for erecting a building. Classification of real estate may have a significant impact on the planned investment. If the immovable property is, for example, agricultural land, the Act on Forming Agricultural System will apply and a buyer may be required to obtain the consent of the National Centre for Agriculture Development (KOWR) to finalise the transaction. In certain circumstances, the KOWR may have a statutory pre-emption right to acquire an agricultural real estate (or shares in a company owning the land).

As part of the *due diligence* of the real estate, the investor should also analyse the circumstances of the transfer of the ownership by previous owners, in order to confirm that the seller has the right to this real estate. Moreover, it is necessary to verify whether the real property is not encumbered by third-party rights.

Furthermore, it is also very important to examine the correctness of all existing administrative decisions regarding the real estate and other decisions regarding construction works. Depending on the type of investment, it is also necessary to consider obligations to obtain other administrative decisions, e.g. a water permit issued pursuant to the Water Law Act.

If the real property is part of the enterprise or agricultural estate, the sale transaction should be prevented from being qualified as a transfer of the enterprise (or an organised part of the enterprise), where in addition to certain tax aspects the liabilities of the enterprise/estate would pass to a buyer. Of course, all the tax and charges owed to local authorities (such as a fee related to the perpetual usufruct), together with social security duties, of the seller should be examined since the unpaid duties can pass on a buyer. Authorities issue special certificates on a lack of unpaid duties that protect a good-faith buyer (but within a certain time period only).

II Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

Transfer of real estate by way listed in the regulations (e.g. sale or exchange) is subject to civil law transaction tax ('PCC'). PCC taxation will apply only if the transfer of real estate is not subject to VAT or if it is VAT-exempt. If transfer of real estate is taxed with VAT, it will not be subject to PCC. PCC on the sale of real estate amounts to 2% of its market value. It is the purchaser who is obliged to pay PCC and submit a PCC tax return.
If transfer of property is subject to VAT, it will be a transaction which is taxed with VAT or exempted with VAT.
A transfer of an undeveloped plot will be VAT-exempt, unless that plot does not constitute a building land specified as such in a local zoning plan or in a zoning decision. In the latter case, a transfer of an undeveloped plot will be taxed with 23% VAT rate.
Transfer of buildings, structures and parts thereof is VAT-exempt unless it is performed either within the first settlement or before it or within two years after first settlement. First settlement is defined as putting a building or structure into use after it has been built or improved. The supplier and purchaser may resign from the exemption and notify that resignation to the tax office.
If the exemption from VAT mentioned above is not applicable, the transfer of buildings and structures and parts thereof will be exempted if the supplier was not entitled to deduct input VAT in respect of these buildings etc. and he has not borne expenses for their improvement exceeding 30% of their initial value. In that case, the parties may not choose VAT taxation instead of exemption.
If no VAT exemption applies, the transfer of buildings, structures or parts thereof will be taxed with 23% VAT rate. Reduced 8% VAT rate applies to usable floorage of dwelling houses not exceeding 300 m^2, and to usable floorage of dwelling premises not exceeding 150 m^2.
Transfer of the ownership has to be registered by the land and mortgage court. The register fee amounts to PLN 200.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

Natural persons are not obliged to settle and pay the income tax on the income from disposal of real estate, provided that the transfer takes place not earlier than five years after the end of the fiscal year in which the real estate was purchased or built. For inherited real estate, the above-mentioned five-year period begins at the end of the fiscal year in which the testator has purchased or built the real estate. For real estate purchased or built during conjugal community with a spouse and disposed of after termination of conjugal community, the five-year period begins at the end of the year in which the real estate has been purchased to the joint property or in which it has been built during the conjugal community. The exclusion from income taxation refers to a transfer which is not performed within the business activity conducted by the seller. However, income from the transfer of a dwelling house or dwelling premise which is used for business purposes will also be excluded from income taxation. The same refers to the plot of land on which such house or premise is situated. In other cases, income from transfer of real estate which is used for business purposes is taxed according to the rules applied to income from business activity and the above-mentioned exclusion from income taxation does not apply.

If conditions for the application of exclusion are not met, the income from transfer of real estate achieved by the natural persons is exempted from income tax as long as the income is spent on housing purposes.
For legal entities there are neither specific exclusions nor exemptions from income tax regarding transfer of real estate.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

In general, with regard to non-residents of Poland who are from other EU member states, countries from the European Economic Area or the OECD countries, there are no restrictions to transfer of funds. The principle of free movement of capital shall apply (subject to extraordinary measures that can be taken by the Government of Poland in special circumstances).
Entities/persons from other countries may need to check the necessity to obtain an individual foreign exchange permit from the National Bank of Poland.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

In case of selling the real estate, the new owner becomes the party to the lease agreement as a matter of law. Nonetheless, the new owner is then legitimately able to terminate the lease agreement upon a notice, regardless of whether the lease agreement was concluded for definite or indefinite period of time. The termination periods of the lease agreements are as follows:
(i) If it is a lease other than a lease of premises:

- rent is payable at intervals longer than one month, the lease agreement may be terminated with three months' notice at the end of a calendar quarter;
- rent is payable on a monthly basis, the lease agreement may be terminated with one month's notice at the end of a calendar month;
- rent is payable at shorter intervals, the lease agreement may be terminated with three days' notice;
- rent is payable daily, the lease agreement may be terminated with one day's notice.

- If it is a lease of premises and rent is payable monthly, the lease agreement may be terminated not later than with three months' notice at the end of a calendar month. The exception concerns residential premises – with regard to them, the new owner is not legitimately able to terminate the lease agreement, if the lessee took up the premises.

In relation to tenancy agreements, the new owner is also legitimately able to terminate the agreement upon notice, independently of whether the agreement was concluded for a definite or indefinite period of time. The termination periods of the tenancy agreements are as follows:
- If it is a tenancy of agricultural land, the tenancy agreement may be terminated with one year's notice at the end of the tenancy year;
- If it is other tenancy, the tenancy agreement may be terminated with six months' notice before the end of the tenancy year.

Exceptionally, if (i) the lease (or tenancy) was concluded for a definite period of time, (ii) the lease (or tenancy) was concluded in a written form with a certified date and (iii) the object of lease (or tenancy)

was handed over to the lessee (or tenant), the new owner cannot terminate the agreement.
In the case of agricultural real estate, the tenant has a pre-emption right when an agricultural immovable property is being sold, if: i) the tenancy contract was concluded in writing, with a certified date, and performed for at least three years, counting from that date, and ii) the acquired agricultural real estate is part of the agricultural estate of the lessee.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

Although it is allowed to change the use of the building from residential to office space, the consent of the relevant administration authorities is required. The authorities have recently become more rigorous with respect to fire prevention and safety inspections to check the smaller residential buildings (villas) that are frequently used (leased) for small offices without a formal change of their status. In practice, the majority of lease or tenancy agreements contain limitations or prohibitions on changing the designation of the premises by the lessee/tenant. A typical limitation consists of the obligation to obtain the consent of the lessor or landlord.

Additionally, when thinking about the change of use of the building to workplace, it is necessary to meet requirements under law regarding the workplace, such as fire protection, work safety and hygiene provisions. The relevant authorities are entitled to impose further obligations concerning the adaptation of the building. Such a procedure may last approximately one to three months.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5
- million, particularly
- notarial costs?
- land register?
- real property transfer tax?
- advising lawyer (due diligence)?
- estate agent?
- others?

If a foreign investor intends to buy an existing building and land for a purchase price of €5 million, the following costs should be taken into account:

- notary fees should not exceed PLN 10,000 (below €2,000).
- registration fee in the land and mortgage register: PLN 200 (below €50);
- real property transfer tax: VAT amounting to 23% or 8% of net price (€1,150,000 or €400,000). If transfer is not subject to VAT or is VAT-exempt, the purchaser has to pay a transfer tax (PCC) in the amount of 2% of the market value of the real estate (€100,000). See also our comments to question 8;
- the cost of legal advice: due diligence €15,000 to €25,000 and transaction documentation €15,000 to €25,000;
- estate agent's fee: 2.0% to 4.5% of the contractual price of real estate from each of the parties. The buyer may be charged a fee of €100,000 to €225,000. The same refers to the seller.

III Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

The owner of real estate is obliged to pay real estate tax. The amount of tax is dependent on the type of real estate (plot of land, building, structure used for business purposes). For plots of land, buildings and premises, the surface constitutes the tax base. For structures used for business purposes, the tax base corresponds to its initial value. Every municipality determines tax rates and exemptions individually.

Perpetual usufructors are obliged to pay the real estate tax for the plot of land which they have a right to use. Apart from that they are charged an annual perpetual usufruct fee. The fee is determined as a percentage of market value of a plot. Perpetual usufructors also have to pay real estate tax on buildings and structures located on the plot subject to perpetual usufruct.

Since 1st January 2019, perpetual usufruct of land developed for housing purposes has been automatically transformed into ownership. Previous perpetual usufructors became owners of the land and are obliged to pay real estate tax in reference to the land they now own. Instead of the annual perpetual usufruct fee, they will pay a transformation fee corresponding to, in general, the last annual perpetual usufruct fee (for 20 years from 2019). The transformation fee may be paid on a one-off or a yearly basis. In the case of a one-off payment made in the first years after 2019, significant rebates are available (depending on whether the land was owned by the State Treasury or local municipalities).

Owners of buildings used for business purposes and totally or partially rented are obliged to pay special tax. The initial value, reduced by PLN 10 million (approximately €2.3 million), constitutes a tax base for that tax. The tax rate amounts to 0.035% of the tax base for every month. The tax may be deducted from yearly income tax.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

The remuneration for property management is dependent on the surface of the real estate and generally amounts to approximately PLN 0.40 to PLN 3.00 per m^2 (approximately €0.09 to €0.70 per m^2).

IV Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
- **directly in real estate?**
- **through real property funds, open or closed ones?**
- **through other clear and secure financial products?**
- **In commercial real estate or in residential property?**

Poland is the leading, consistently growing economy in the CEE region with an attractive real estate market. Polish real estate law provides foreign investors with a relatively stable legal regime, enabling them to take informed investment decisions. In addition to Warsaw, where the central authorities

and the many corporate business headquarters have been based, the region of Silesia attracting more traditional industries and the major cities with leading Polish universities surrounded by R&D and BPO centres, the hotel and residential properties have also been flourishing in the older towns attracting tourists. Therefore, given the favourable conditions, foreign investors are welcome to invest in both commercial and residential real estate in Poland. Nevertheless, please consider this is not an investment decision advice whatsoever.

Investments in Poland may be made through various investment vehicles and structures. It is possible to invest through a direct purchase, an investment fund or any separate legal entity recognized by Polish law. The majority of investments are made through special purpose vehicles either established or bought by foreign investors and the investment funds. Polish law does not provide for any particular form of SPVs to be used by foreign investors. Generally, pursuant to the Polish Commercial Companies Code, there are two types of legal entities: (i) partnerships, i.e. registered partnership, professional partnership, limited partnership and limited joint stock partnership; and (ii) companies, i.e. limited liability company and joint stock company. Companies, limited partnerships and limited joint stock partnerships provide for limitations of investors' liability against third parties. The limited liability company is the most common legal form under which SPVs operate.
Additionally, foreign investors may invest in real estate directly through their branches or by entering a joint venture.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

Restrictions apply to acquisition of real estate by foreign investors in particular and acquisition of agricultural immovable property in general.

Limitations over acquisition of immovable properties by foreigners
Acquisition of immovable properties by foreigners in Poland is governed by the Act of 24th March 1920 on the Acquisition of Immovable Properties by Foreigners, whereby a foreigner is defined as:

- a natural person not having Polish citizenship;
- a legal person having its seat abroad;
- a partnership of the persons referred to in subparagraph (i) or (ii) having no legal personality and with its seat abroad, created in compliance with statutory law of foreign states;
- a legal person and a commercial partnership having no legal personality and with its seat in the territory of Poland, which is directly or indirectly under the control of the persons or partnerships mentioned in subparagraphs (i) to (iii) (e.g. over 50% of votes at a meeting of shareholders or at a general meeting).

Foreigners who are citizens or entrepreneurs of the member states of the European Union or European Economic Area, or of the Swiss Confederation, are not required to obtain a permit. Acquisition of real estate by other foreigners requires a permit issued by the Minister of the Interior and Administration by an administrative decision unless the Minister of National Defence objects (and as regards the

agricultural immovable properties, unless the Minister for Agriculture Development objects). The permit is issued upon the foreigner's request provided that: (i) acquisition of immovable property by a foreigner does not pose a threat either to the defence and the security of the State or to the public order, and likewise the social policy and health of society factors do not speak against that; (ii) the foreigner proves that there are circumstances which confirm his/her ties with Poland (e.g. carrying on economic or agricultural activity in Poland in accordance with the provisions of the Polish law). The application for a relevant permit is subject to a fee of PLN 1,570 (below €400).

Limitations over acquisition of agricultural immovable properties

In 2016, restrictions on the freedom of trade of agricultural land had been introduced by the amended Act of 11th April 2003 on Formation of Agricultural System. Acquisition of agricultural immovable property in Poland is in principle available to individual farmers only (this relates to both domestic and foreign buyers). However, such acquisition by persons who are not individual farmers is still possible in enumerated cases, including the possibility of obtaining the consent to acquisition from a relevant authority (the National Centre for Agriculture Development (KOWR)). Moreover, in certain circumstances, KOWR has a statutory pre-emption right to acquire the agricultural real property and a pre-emption right of shares in the company which owns the agricultural immovable properties. In due diligence before the acquisition of land in Poland, it is then of the utmost importance to check whether it falls within a broad definition of agricultural immovable property.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

As regards limitations over acquisition of immovable property by foreign investors and necessary permits, please see the answer to question 17 above.

Foreign investors' business activity in Poland is governed by the Act of 6th March 2018 on Rules for Participation of Foreign Entrepreneurs and Other Foreign Persons in Trade in Poland. The regime differs with regard to investors from EU/EEA and non-EU/non-EEA investors:

1/ Foreign persons from the EU/EEA may undertake and conduct economic activity on the same terms and conditions as Polish entrepreneurs.

2/ Non-EU/non-EEA investors, in order to conduct economic activity in Poland, may establish branch offices on the basis of the principle of reciprocity, unless otherwise provided for in ratified international agreements.

Foreign entrepreneurs may establish representative offices. Establishment of a branch office requires registration in the register of entrepreneurs kept by the National Court Register, whereas establishment of a representative office requires an entry in the register of the representative offices of foreign entrepreneurs kept by the Minister of Economy.

Regardless of the place of origin, foreign investors may establish a separate legal entity under Polish law in order to conduct business activities.

Notwithstanding the above, to be able to commence business activities, foreign investors would have to comply with all the relevant requirements as imposed on domestic investors within their respective field of business.

19. Could your firm assist foreign investors in

- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

FKA would be more than happy to assist foreign investors in all the aspects involved. We offer comprehensive real estate legal and tax advice for a reasonable price. Our lawyers advise real estate clients on all issues related to their activities, including:

- Structuring a deal when buying, selling and leasing commercial real estate (asset deal v. share deal),
- legal and tax due diligence of real estate before acquisitions,
- financing real estate projects,
- property sale and leaseback transactions,
- contracts for construction and structural work, representing clients before courts, construction supervision authorities and public and local administration bodies.

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PORTUGAL
SÉRVULO & ASSOCIADOS

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

The transaction of a real estate in Portugal normally begins with the execution of a purchase and sale promissory agreement detailing the conditions of the sale, according to which the owner promise to sell the property, and the buyer promises to buy it, at an agreed price and within an agreed period. This agreement usually involves the payment of a deposit. As a rule, if the buyer fails to complete the agreement, he will lose the deposit; if the owner fails to complete the sale, he must repay twice the amount of the deposit.

A real estate transaction is completed through the execution of a notarial deed or authenticated document signed between the seller and purchaser. The procedure should be preceded of prior liquidation and payment of municipal transfer tax (IMT) and stamp tax ('Imposto do Selo'), and the transfer may be subject to prior pre-emption right of the municipality or of the estate direction of the patrimony, which should be notified thereto with a prior notice of ten business days before the transfer. After the transaction has taken place, the acquisition is subject to update in the real estate registry and in the tax authorities, which may be directly requested by the competent notary or involved lawyer.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Real estate rights are different in Portugal, and may vary from complete ownership ('direitos de propriedade') to minor real estate rights, as the right of use ('usufruto'), surface right ('direitos de superficie'), right of passage ('servidão') or rights of mere use or inhabitation ('direitos de uso e habitação'). The property and minor rights also may be granted to specific units within a horizontal property, or plots in an allotment.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Co-proprietorship or joint ownership is also allowed, but the division of the common property may be requested at any time, unless it is conventionally determined that the property should be maintained undivided, or if such non-division results directly from the law (i.e. the co-ownership of the common areas in a condominium by all the proprietors of the units). Any physical or legal entities may be proprietors, unless they are inhibited by a legal procedure determining their incapacity thereto.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

In principle, the owner of the land is the owner of any construction existing therein. Nevertheless, it is possible to separate them and grant, perpetually or during a certain period of time or subject to certain conditions (i.e. construction of a certain building), the surface right of the land, thus granting the ownership of the construction to someone else. In any case, the law has created several mechanisms (limited duration and legal pre-emption rights) in order to gather, as soon as possible, the two properties in only one.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

Yes, the Portuguese legal system forecasts a formal registration process for the property registration to be acknowledged by third parties. The registration is public and any person can access it. Only formally registered rights are protected by law, and purchasers may (and should) consult registrations before any acquisition.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

The acquisition may be accomplished by equity from the investors, by financing through banks (up to 80% to 90% of the value of evaluation), and through the rendering of guarantees (mostly mortgages encumbering the property acquired), or through real estate leasing ('imobiliário'), in which case the lessee is entitled to the right of acquisition through a residual value in the end of the lease.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

Mostly, the amount to be financed (80% of the bank's evaluation), the period of financing (up to 40 years, in case of properties for inhabitation, and much shorter for leases) and the quantity of guarantees demanded, as well as the compliance process (origin of funds and structure of the acquirer) in the case of financing led by the banks.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

All the parties in a real estate transaction should bear a Portuguese tax number, so non-EU residents should appoint a tax representative in Portugal for this purpose.
The purchaser will be subject to the following taxes: municipal property transfer tax (IMT) to be declared and paid immediately before the transaction (or, in certain circumstances, in the promissory agreement). The amount to be paid is related in terms of percentage by levels of the cost of the property being purchased. In limited cases, the buyer will be exempt from paying this tax.

IMT for Portugal (Continent) Permanent Residence

Tax value or purchase price (whichever is higher)	Marginal rate	Average Rate
Up to €92,407	0% (exempt)	0% (exempt)
from €92,407 to €126,403	2%	0.5379%
from €126,403 to €172,348	5%	1.7274%
from €172,348 to €287,213	7%	3.8361%
from €287,213 to €574,323	8%	-
above €574,323	unique - 6%	unique - 6%

Second residence or investment

Tax value or purchase price (whichever is higher)	Marginal rate	Average Rate
Up to €92,407	1%	0%
from €92,407 to €126,403	2%	1.2689%
from €126,403 to €172,348	5%	2.2636%
from €172,348 to €287,213	7%	4.1578%
from €287,213 to €550,836	8%	-
above €550,836	unique - 6%	unique - 6%

Other rates:

- Acquisition of land properties - 5%;
- Acquisition of other properties - 6.5%
- Purchaser residing offshore (company or legal entity) - 10%

Stamp tax: a property purchase is subjected to a stamp duty of 0.8% of, as a rule, the declared value. Municipal property tax (IMI): every year the owner of any property is subject to pay an annual municipal property tax. This charge is due from the owner of the property at 31st December of each year. If the tax amount exceeds €250 then it will be divided into two equal payments, the first for payment in April and the second for payment in November. If it exceeds €500, a July instalment is added to these other two. The IMI rates are variable from municipality to municipality and are revised each year. Value added tax (IVA): transfer of property does not attract VAT, although in certain cases the seller may waive the exemption if the buyer uses, in whole or in part, the building for taxed activities. On the side of the seller, the sale can attract plus value in certain circumstances.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

The property can be sold at any time, but transactions of sale and reinvestment of the plus value for permanent residences within a period of two years may grant the investor an exemption of plus value.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Yes, there is no limitation on this repatriation of funds.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

The lease agreement needs to be respected, and a lessee with contracts of more than two years has a pre-emption right in the acquisition of the property.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

Should the property have a licence for use (real estate built after 13th August 1951), the change in use must be requested from the municipality, and the construction requirements for inhabitation or services, whichever you wish to have, complied with.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- **notarial costs?**
  It depends on the notary, but it might range upwards from €600.
- **land register?**
  €250 for the registration.
- **real property transfer tax?**
  €300,000 (IMT)
  €40,000 (stamp tax)
- **advising lawyer (due diligence)?**
  €3,000.00 to € 5,000.00 (depending on the negotiation and complexity)
- **estate agent?**
  3% to 5% of the price of sale
- **others?**
  N/A

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

Municipal property tax (IMI): every year the owner of any property is subject to pay an annual municipal property tax. This charge is due from the owner of the property at 31st December of each year. If the tax amount exceeds €250 then it will be divided into two equal payments, the first for payment in April and the second for payment in November. If it exceeds €500, a July instalment is added to these other two. The IMI rates are variable from municipality to municipality and are revised each year.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

A professional management usually charges a percentage of the profits of the property, varying between 8% (long-term residential lease) and 30% (local lodging management full service), depending on the type of property and the location. These figures are subject to VAT at a rate of 23%.

V. Foreign investors

16 Would you advise foreign investors at the moment to invest in your country

- **directly in real estate?** Yes
- **through real property funds, open or closed ones?** Yes
- **through other clear and secure financial products?** Yes
- **In commercial real estate or in residential property** Yes

In general, investment is advisable because the golden visa and the non-permanent residence regimes are very attractive. The country is very safe, and there are new real estate investments that are very interesting from the industrial, residential and touristic level. It is a good time to invest in real estate.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

There are no restrictions on foreign investment in Portugal, and foreign investment has been highly attractive because of the golden visa regime and the non-permanent residence regime.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

Requests for licensing of activities have been highly simplified, except for financing activities from countries outside the EU. Zero licensing has granted the possibility to access activities like commercial activities (shops and restaurants) and industrial and agricultural activities requiring specific licence procedures.

19. Could your firm assist foreign investors in

- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?** Yes
- **Developing construction projects?** Yes
- **All legal aspects involved in these contexts?** Yes

We would be pleased to assist foreign investors once the standard procedure of conflict check is satisfactorily concluded.

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RUSSIA
INTELLECT

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

a) Purchase agreement

Under Russian law, a real estate sale and purchase agreement needs to be in writing in the form of a single document signed by both parties. Unlike many other types of agreements, the real estate purchase agreement may not be formed by means of exchange of written documents (letters) between the parties, neither may it be signed with the use of an electronic signature.

There is no general mandatory requirement for the real estate purchase agreement to be notarised. However, the parties may, upon their mutual agreement, have it notarised. There are only two exceptions to this general rule: (1) sale and purchase of real estate owned by several persons (joint ownership); and (2) sale of real estate owned by minors or by other persons under guardianship or patronage, or with limited legal capacity. In these two cases, the real estate purchase agreement has to be witnessed and certified by a notary. In cases when the parties on their own initiative decide to have the purchase agreement notarised, then usually the notary also submits the documents for the transfer of title to the registration authority. Furthermore, the parties may use the notary's deposit account for the facilitation of the payments under the purchase agreement, or the payment may be made in cash in the presence of the notary.

It is mandatory for a real estate purchase agreement to contain provisions providing a description of the real estate being purchased and its price. The property may be described by reference to its cadastral number or address, or by other means clearly identifying the particular real estate asset. If the agreement provides for the sale of two or more separate real estate assets, then, according to the courts' practice, the prices should be clearly set for each of the objects independently.

As a rule, before signing of the purchase agreement the buyer would examine the seller's title to the real estate. In most cases, the title is registered in the Unified State Register of Real Estate. There are, however, several particular cases when there may be no such registration of the title:

- if the real estate was acquired by the current owner before 1998;
- if the real restate was inherited;
- if the real estate was transferred as a result of the reorganisation of a company;
- if the real estate was acquired as a result of the owner’s membership in a building cooperative.

The seller may enter into a purchase agreement while not having the title in the real estate object to be sold (but which, for example, is in the process of being acquired by the seller). It is mandatory, however, for the seller to have the relevant title in the real estate asset at the moment when the agreement is performed (i.e. the moment of transfer of the real estate asset to the buyer).

The parties may also agree on the purchase of a real estate that does not exist yet as of the date of the agreement but is going to be constructed. In such a case, in cases when the seller fails to transfer the

real estate asset within the agreed terms, then the seller would be obliged to reimburse the buyer for any damages incurred and pay the penalties in accordance with the agreement.

b) Transfer of title

In accordance with Russian law, title in the real estate is transferred at the moment when the relevant record of transfer is made in the Unified State Register of Real Estate. In order for the changed title to be registered, both parties to the transaction need to file applications for the transfer of the title to the authorised registration body. In cases when the agreement has been notarised, then the notary public files the necessary application forms and other documents to the registration authority instead of the parties.

The application form is to be accompanied by the following documents:

- the agreement or contract on the basis of which the title is to be transferred;
- documents evidencing the powers and authority of the parties' representatives to sign the agreement and an application form (power of attorney, excerpts from trade register for companies' directors);
- documents evidencing payment of the state fee for the transfer of title.

If the seller's title has not been registered by that moment (in any of cases listed above), then the seller's title is to be registered first, and immediately after that, the transfer of title to the buyer is registered.

Once the transfer of title is registered, the registration body issues an excerpt from the Unified State Register of Real Estate recording the buyer as the new holder of the title in the real estate.

c) Transfer of possession

Transfer of possession is not a prerequisite to the transfer of title. However, in order to be able to exercise the relevant property rights the buyer should come into possession of the real estate. Transfer of possession may be precedent to the transfer of title or come after that.

In order to pass the possession of the real estate, the parties usually sign a statement of transfer which evidences the fact of transfer, as well as the physical state of the object being sold. At the same time, although the signing of the statement of transfer is prescribed by law, even in the absence of the statement the fact of transfer and, accordingly, due performance of the agreement may be proved by other means. Moreover, even if the buyer has signed the statement of transfer without raising any objections at that time, he nonetheless subsequently may still claim the defects of the real estate if he proves that such defects had arisen before the transfer.

Besides enabling the buyer to exercise the property rights over the real estate, such physical transfer of possession may also strengthen the legal position of the purchaser against a third party's claims to the title over the real estate, since in such cases the purchaser may prove his bona fide (see question 5 below) only if he has come into possession of the real estate.

d) Payment for the real estate

Payment under the purchase agreement may be performed before the transfer of title or after that. The parties may agree on payment in instalments, or delegate payment obligations to a third party, or agree on the payment of the contract price to a third party instead of the seller.

If the purchase agreement provides for the payment(s) after the transfer of title, then, in accordance with Russian law, the real estate shall be pledged for the benefit of the seller as a security for the buyer's

obligations to pay the agreed price. Therefore, in such cases, the registration body will record the buyer's title together with the pledge in the interests of the seller. However, this provision of law for the statutory pledge may be overridden by the terms of the purchase agreement.
The price of the real estate may be recorded in the purchase agreement in any currency or conventional units, subject to currency control legislation requirements. If both the buyer and the seller are residents of the Russian Federation, payments may be made only in Russian rubles. In this case, the price recorded in foreign currency needs to be exchanged into rubles according to the official currency exchange rate set by the Central Bank of the Russian Federation as of the date of the payment, or at any other exchange rate agreed by the parties. If either the buyer or the seller is not a Russian resident, then the payment may be made in any foreign currency.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Russian law provides for the three main types of real estate:

- plots of land;
- buildings and constructions;
- compartments (separate units) in buildings and constructions, as well as parking places.

These types of real estate are considered as separate objects, and therefore they may be owned by different persons.
If a building is separated into different compartments (as well as parking places) as separate real estate objects, then the building itself will not be considered as a single subject of property rights, but rather as a complex of separate compartments of real estate objects and common property. The common property may include constructive elements of the building: basement, walls, roof, building facilities, common places such as corridors etc., elevators, staircases etc. The common property is owned jointly by the owners of all of the compartments in the building. The share of each joint owner is set in proportion to the size of the compartments owned by such joint owner.
The common property is managed by a general meeting of the joint owners. Decisions are taken at the meeting by voting, with each joint owner having the number of votes in accordance with his share.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

a) Joint ownership
Russian law recognises joint ownership of the real estate. Joint ownership appears in cases when one real estate object is acquired by several persons. As a general rule, the shares of the joint owners are determined on the basis of their agreement and are usually equal to the amounts of their investments into the real estate. There are also situations where the establishment of the joint property is mandatory and the size of the shares is stipulated by the law. For example, this is the case for the common property in a building with separated compartments (see question 2 above). In that case, the shares of the joint owners are always proportionate to the size of their compartments, and this provision of law may not be changed by any private agreement.
In certain cases prescribed by law, joint ownership exists without dividing it into set shares. There are only two such cases:

(1) matrimonial property: any assets acquired by either spouse while married are subject to the joint ownership of the couple, with some minor exceptions;
(2) property regime of the farming household: property used for farming is subject to the joint ownership of all members of the household without any set division of shares (a farming household is quite a rare form of agricultural business not being a corporate entity).

Operation of the real estate jointly owned by several persons is subject to their mutual agreement. As a general rule, a unanimous agreement is needed to handle these issues, except for the general meeting of the joint owners of compartments in a building (question 2 above), where the decisions are taken by majority of votes.

b) Capacity to be the owner of real estate

Russian legislation does not provide for any special requirements for a person to own the real estate. The real estate may be owned by any individual or entity.

There are certain limitations based on national security grounds, but the list of such limitations is quite narrow (see question 17 below).

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

Russian law is based on a system of separate ownership of the land and of the building. Therefore, the land plot and the building erected on it may be owned by different persons. At the same time, if the owner of the building (or the owners of the compartments in it) are not the owners of the land, they still have to obtain some rights over the land plot establishing the legal basis for the building to be located on the relevant plot of land. At present, the most popular right used for that purpose is a lease right placing the owner of the building into quite a strong legal position: the owner of the land has no right to avoid entering into the lease agreement with the owner of the building and cannot terminate it even in case of non-fulfilment of the payment obligations by the lessee. Moreover, the land plot owner cannot lease the land plot taken by the building to any other person other than the owner of the building.

If the building is owned by several persons (as well as in case where the building is separated into compartments), and the land is owned by another person, than all owners of the building (or compartments in it) are considered as the lessees in proportions equal to their shares in common property of the building (see question 2 above).

In the case of transfer of title in the building (or a compartment) the purchaser acquires the same rights over the relevant land plot as the seller had prior to the sale. Furthermore, if the building and the land are owned by the same person it is not allowed to sell the building without selling the land occupied by it as well.

Current Russian legislation promotes joining of the titles over land and a building built on it. For that reason, for example, the law entitles the owner of the building with a right to purchase the plot of land on which the building is located in cases where the land plot is owned by the state. Such purchase is subject to preferential conditions: the purchase does not require a public auction to be held (as in usual cases of purchase of state-owned land), and the land is sold at the price determined by an independent expert.

There is only one significant exception to the rule of separate ownership over the land and the building: a plot of land occupied by a house which is in itself a block of flats, as well as the neighbouring territory,

is jointly owned by the owners of units in such building (as the common property of the joint owners, see question 2 above). This rule, however, does not apply to commercial buildings having separate units; owners of the units in such building may have either property right over the land, or a lease right.

5. Is the land and/or the building registered in a formal register, and is a good faith purchaser protected with regard to the entries in this formal register?

a) Registration system for real estate

Russia has implemented a system of registration of titles in real estate. The general rule is that the title in real estate only exists from the moment of its official registration. As an exception, the title in real estate may exist regardless of the registration in the following cases:

- the real estate was acquired by the current owner before 1998;
- the real estate was inherited;
- the real estate was transferred as a result of the reorganisation of a company;
- the real estate was acquired as a result of the owner's membership in a building cooperative;
- the real estate was acquired by the spouses as a matrimonial property (see question 3(a) above);
- the real estate is a part of common property of the joint owners in a building (see question 2 above), including the land occupied by the block of flats (see question 4 above).

The most perilous situation for a purchaser is the situation with the real estate being matrimonial property, as current court practice does not protect the good faith purchaser from the claims of the seller‘s spouse regarding his or her rights in the sold estate.

Moreover, limited proprietary rights and interests over the real estate (e.g. easement, pledge) do also emerge only when officially registered.

Some restrictions imposed on the property rights in the real estate would also be considered as existent only once registered. Examples of these restrictions are:

- court or administrative freezing order over the real estate;
- long-term lease of the real estate (over one year).

At the same time, regardless of the registration, these restrictions are binding on the persons aware of the relevant order establishing the restrictions, including a party to the proceedings in which the order was imposed, or a party to the lease contract.

b) Protection of bona fide purchaser

Russian law provides legal protection to good faith purchasers, as a general rule, and the registration of the title does not have a great significance in this regard.

The good faith purchaser is being protected from third-party claims if all of the following conditions are present:

- bona fide (good faith) of the buyer, which means that the purchaser does not know that the estate is acquired from an unauthorised person;
- the real estate is acquired for value;
- the true holder of the title over the real estate has voluntarily lost or given up possession over the real estate.

These conditions have to be present at the moment when the purchaser would have become the owner of the real estate in a normal situation – that is, the moment of the registration of transfer of the title to the purchaser (see questions 1(b), 5(a) above). Therefore, such purchaser is not the "true" purchaser in principle.
Registration of title is a prerequisite, but not enough for the purchaser to be considered as a good faith purchaser and thus protected.
The good faith purchaser would not be protected if it has not come into possession of the real estate, even if its title has been registered (see question 1(c) above). Moreover, if it is established that the purchaser had to notice or be aware that he was acquiring the real estate from an unauthorised person at the moment of the transfer of possession, than such purchaser would not be considered as a bona fide purchaser.
Finally, the protection may be granted to the good faith purchaser only if the true holder of the title in the real estate has voluntarily lost or given up possession over the real estate. That means not only the actual transfer of possession (which may be transferred voluntarily), but also the intention of the owner to transfer the title in the real estate. Therefore, if the owner had passed the possession over the real estate to another person without any intention to transfer the title as well, and such transfer had been subsequently recorded without the consent of the original owner, than the owner would not be considered as having voluntarily alienated the real estate. In such case the original owner would be able to claim the real estate back from the good faith purchaser.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

The most popular way to finance real estate transactions in Russia is through a bank loan with a pledge of the real estate in favour of the lending bank. Such a financing scheme is so common that it is called by the word "hypotheca" in everyday usage, although the word "hypotheca" means any pledge of a real estate according to the legislative definition.
In such a case, a bank obviously finances only transactions up to the value of purchased real estate. Any remaining part needs to be paid by the investor himself, or the investor has to provide other security: a pledge of another property, a personal surety of a third party, a guarantee of another bank etc.
Other ways of financing the transaction of real estate are poorly developed in Russia. For example, leasing of real estate is legally provided for, but remains quite exotic, and leasing companies rarely agree to finance such transaction of real estate.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

a) High interest rates on loans in Russian banks
Despite the fact that Russian residents are not prohibited from receiving funds from foreign banks, the Russian currency legislation requirements may impose some difficulties for them when being financed by a foreign bank.
At the same time, interest rates on loans in Russian banks significantly exceed the rates on loans in many other foreign banks and are currently at the level of about 10% per annum or more on loans

secured by the pledge of the purchased real estate.
Thus, the investors are forced to choose between Russian banks with high rates and their domestic banks, which may, on the one hand, be unprepared to accept assets located in Russia as collateral, and on the other hand, be unacceptable for Russian counterparties due to the need to comply with the Russian currency legislation requirements.

b) Title insurance
Since the current registration system in Russia does not provide full protection to a good faith purchaser (see question 5b), insurance of title is a common request from the lending banks to the prospective purchaser of the real estate being purchased and pledged. In this regard, the costs of insurance premium payments should be included in the total calculation of the investor's expenses.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

According to Russian law, the real property transaction itself is not subject to any tax.
Only general taxes are imposed on the purchase of real property:

- value-added tax (VAT),
- corporate tax,
- individual income tax,
- tax payable under the simplified taxation system.

VAT is set at a rate of 20% in Russia. The entire amount of tax shall be payable to the budget, though should be added to the value of goods and services, including real estate. The seller must provide the purchaser with a VAT invoice, which is the basis for the buyer to deduct VAT amounts declared by the seller. However, given that the purchaser may not have comparable taxable income in Russia, a VAT invoice may be useless for him.
Corporate income tax is paid by the seller, being the legal entity earning the income from the transaction. The corporate tax rate in Russia is generally 20%. The taxable amount of income is reduced by the documented amounts of costs incurred by the taxpayer.
Individual income tax is imposed on sellers, being individuals. The amounts received by the seller from the purchaser form the seller's taxable income. Unlike the corporate tax, there is no deduction of costs for the individual income tax. At the same time, when selling real estate, this tax may not have to be paid under certain conditions (see question 9 below). The individual income tax rate is:

- for Russian residents, 13%;
- for non-residents, 30% of income received in the territory of the Russian Federation.

Some legal entities and individual entrepreneurs are allowed to apply the simplified taxation system, which means that the above taxes are being replaced with a single tax. Rates of such a single tax vary from 0% to 15%, depending on certain conditions of business activity of the taxpayer and the territory

of its registration.
A person using such a system of taxation needs to provide the counterparty with a confirmation of the right to apply the simplified taxation issued by the Russian tax authority. At the same time, the seller using such a system may not demand payment of the VAT from the buyer, nor can he provide an invoice by means of which the amount of VAT subsequently charged to the purchaser could be reduced.
It should be taken into account that the simplified taxation system is reserved for small businesses. Therefore, the seller loses the right to apply it if its income exceeded RUB 150 million. Given the usually high cost of real estate, it is likely that the seller would not be able to apply such a simplified system after the sale of the real estate to an investor. In such a case, the seller would be subject to general taxes.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

The term of ownership of real estate makes a difference only if the seller is an individual. Such a seller is fully exempt from individual income tax by owning the property for more than five years. In some exceptional cases, this period can be reduced to three years. Furthermore, the term may be reduced by regional laws of the Russian Federation.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Under Russian laws, a foreign investor is guaranteed with the right to return the invested funds, including the right to get his money out of Russia.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s) or which restrictions have to be taken into account?

Russian law provides for the unconditional preservation of the leaseholder rights when changing the property owner.
An exception to this rule is established for a good faith purchaser. In the event that the lease contract was subject to state registration (lease for a period of more than one year is subject to state registration), but was not registered, and the purchaser did not and could not have known of the existence of the lease, then such purchaser is not bound by such a contract.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

Residential use of a building may be changed to office use provided that it is (or can be) equipped with a separate exit to the outside of the building or at least an exit through other premises with no access to residential premises.
Change of the use of a building from residential to office and vice versa is carried out by the local authority and requires an owner's application together with the site plan, confirming the possibility of such a change in compliance with construction rules.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly – notarial costs?

– land register?
– real property transfer tax?
– advising lawyer (due diligence)?
– estate agent?
– Others?

Transaction costs are relatively small in Russia and in the described situation are the following:
notarial costs (are non-obligatory, see question 1a) – about €1,500,
- land register – about €315,
- real property transfer tax – none (see question 8),
- advising lawyer (due diligence) – depends on the characteristics of a particular property and its history. Fees charged by Russian lawyers vary widely, ranging from very modest by European standards up to rates comparable to London or US rates if lawyers from Russian offices of major international law firms are involved,
- estate agent – the participation of the estate agent in the real estate transactions is optional. Most transactions for the acquisition of commercial property are made without agents. The Russian market of estate agents is focused mainly on sellers and purchasers of residential real estate. The costs of estate agents' services vary even more than the costs of legal services.
- Others – depending on the characteristics of the property, it may require the involvement of specialists in the field of construction, engineering, protection of cultural heritage, environmental safety etc.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

Depending on the legal identity of an investor, as well as on what kind of property is owned and where such property is situated, the real estate ownership may be subject to one of the following taxes:
- corporate property tax (imposed on legal entities) – up to 2% of the cadastral value of real estate per annum (the exact tax rate is determined by the regional law);
- individual property tax – in general, up to 2% of the cadastral value of real estate per annum (however, the tax rate may be varied by municipality from 0% to 6% depending on different conditions);
- land tax – up to 1.5% of the cadastral value of real estate per annum.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

The costs of professional property management differ significantly depending on the type of real estate, its location, size, purpose and other factors that do not allow to give a generalised assessment of the costs of such services.
Real estate management companies usually agree a list and frequency of provided services with the client and charge a monthly fee for the entire agreed services. Some extra services may be paid for on a fixed basis.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
– directly in real estate?
– through real property funds, open or closed ones?
– through other clear and secure financial products?
– In commercial real estate or in residential property

The large territory of Russia, with a wide variety of natural, business, economic, social and other conditions, determines a wide variety of real estate in the market with different investment attractiveness.
The current real estate registration system determines the relative security of owners, but there are still prevailing defects in the legal system, such as domination of state interests over interests of private owners, the possibility of unpredictable changes in public regulation and the volatile economic environment, which can frighten away investors.
Within this framework, financing the transaction of real estate in Russia can hardly be considered as a profitable or reliable investment per se. Therefore, real estate purchase is reasonable only if there is an understanding of the purpose for which such investment is made – in other words, a business plan for the implementation of which the real estate is needed.
The commercial real estate market is the most promising in this regard, especially in regions with dynamic economies (Moscow, St Petersburg, major cities of the Volga region, the Urals and Siberia).
Real estate investment funds operate in Russia, but their profitability can hardly be compared with stock market investment funds.
Foreign investors can establish a Russian company acting along with other Russian entities in the domestic market, which is the most common way of real estate investment. However, this way of investment has its risks associated with the business and political environment in Russia.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

Restrictions on the purchase of the real estate by foreigners in Russia are insignificant. Foreign persons cannot hold title in land plots located in the border territories; agricultural-purpose land plots (but they can hold lease to it); and land plots located within the boundaries of seaports.
Establishment of a Russian legal entity could help to overcome these restrictions in certain instances. For example, the prohibition of agricultural-purpose land ownership on foreigners also extends to Russian legal entities in which the equity participation of foreigners exceeds 50%.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed and what time and effort are needed normally to get it?

The possibility of land use in Russia is determined by the category of land.
There are the following categories of land which can be owned by a private person:
- agricultural-purpose land;

- settlement land;
- industry land and the land of other special purposes;
- the land of specially preserved territories and facilities.

Each category of land has its own limitations. Settlement lands are the most commercially viable. Lands of this category are subject to more detailed rules of use, which are established by the local municipal authority for each territory, as a part of the rules of land use and development. These rules provide for the limits of possible uses of the land within the given territory, including types of buildings that are allowed to be constructed on it.
Within this permitted use, the owner of the land plot is entitled to carry out any activity provided by the rules. At the same time, if the investor wants to construct or reconstruct any building or structure, in most cases it is necessary to obtain a construction permit prior to commencing construction. Before obtaining a construction permit it is often necessary to get the expert assessment of building design documentation. Upon completion of the construction, it is necessary to secure a permit for commissioning issued by the local authorities (or authorities of the constituent entities of the Russian Federation), thereafter a registration becomes possible.

19. Could your firm assist foreign investors in
– finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?
– developing construction projects?
– all legal aspects involved in these contexts?

INTELLECT law firm is ready to provide full legal support for the purchase, construction and operation of real estate in Russia.

INTELLECT is able to offer recommendations and suggestions on matters related to the choice of investment projects, finding various local partners, advisers, specialists in real estate and construction in different Russian regions.

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SLOVAKIA
PAUL Q

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

- Letter of intent
- Due diligence
- Negotiation of a purchase agreement
- Signing and closing of the agreement.
- Execution of the contract
- Registration with the public cadastral registry (signature of the transferor shall be verified)
- Post-closing stage

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Yes, the legal system permits different sorts of ownership. It is possible to own the land and property as a whole, separately or in a joint ownership. In the case of residential properties, it is possible to own it as a whole or on many-unit configuration, depending on the owner's will.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Yes, joint ownership is permitted in Slovakia under the Civil Code. There is no restriction on which entities can own any sort of property. However, there is special treatment for foreign entities owning farming land, with several restrictions established to getting an ownership deed of the land under the special statutory law.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

No. Under the current Civil Code, implied ownership of the building in the land is not established. In Slovakia, both of these properties are deemed separate. Yes, it is possible to have separate ownership of the land and the building, as well as separate owners of the properties.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

Yes, both of them are registered in the formal registry. The so-called Cadastral Registry is a register for both land and buildings, as well as for other legal obligations in connections with the properties.
The bona fide purchaser is generally protected under the provisions of the Civil Code regarding

ownership titles. However, please note that this is established on a case-by-case basis depending mostly on adjudication of the courts.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

Yes, investors can finance their transaction either via loans or mortgages depending of the type of real property. It is usually carried out through vehicles such as SPVs. Loans are a typical way for financing, but mortgages are suitable too.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

To acknowledge that buying land does not mean there is property included. Slovakia has a separate legal regime for buying land and property. Therefore, you need to be aware of this in the structure of the transaction.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

In Slovakia these types of taxes are connected with a real estate transaction:

- VAT (value added tax) on a standard basis: 20%
- Specific tax charges related to real estate
  - Tax on the land 0.25%
  - Tax on buildings €0.033 (if the building has several stories, the municipal authority adds the same surcharge for each story)
  - Tax on apartments €0.033
  - *Local development fee from 3 to 35 per m^2*

Slovakia doesn´t have any real estate transaction fee.

9. Do you have to hold the property for a specific time with respect to tax reasons or is it in this context no problem to buy and sell property on a short-term basis, for example within a year?

Yes, for income tax purposes it is better to hold property in an ownership for five years to be tax-exempt.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

It depends on the structure of the investment as well as the financing options.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

The restrictions are codified by the Civil Code. However, you should bear in mind that the lessee is entitled to terminate the lease as a consequence of the change in the ownership.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

Generally speaking, you are allowed to change the purpose. However, without official approval through an administrative process, you are not able solely to change it on an arbitrary basis.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- Municipal and utility register fees are various
- Land register fees are €8 for one ownership deed (online is free of charge but not useful for official legal purposes)
- Company register fees are €6.50 per company
- Cadastral register fees are €66 in standard procedure and €266 for expedited petition (online there is a 50% discount)
- Lawyers' fees are mostly on an hourly basis
- Estate agents: depends

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

- Income tax
- Specific tax charges related to real estate on a yearly basis
  - Tax on the land 0.25%
  - Tax on buildings €0.033 (if the building has several stories, the municipal authority adds the same surcharge for each story)
  - Tax on apartments €0.033

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

Rates for management of the property vary on a case-by-case basis. It depends on what kind of estate you own and the purpose for which is used, such as commercial or residential and range.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country

- **directly in real estate?**
- **through real property funds, open or closed ones?**
- **through other clear and secure financial products?**
- **In commercial real estate or in residential property?**

All the options are appropriate in the current state of affairs

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are

restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

The only restriction based on nationality is ownership of farming land. Thus, there is a way to organise an SPV and go through the purchase.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

There are several decisions under the public law which investors have to seek:

- Zoning decision
- Decision on the placement of the building
- Building permission
- Occupancy permission
- Environmental impact assessment
- Energy efficiency qualifications

An investor can qualify his investment also for the status of 'important investment' to speed up the process. However, it is a strict review.

The time frame and effort required depends on the kind of investment – whether it is greenfield, brownfield, seeking yields etc.

19. Could your firm assist foreign investors in
Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?
Developing construction projects?
All legal aspects involved in these contexts?

Yes, our firm has capacity for real estate transactions. We are a full-service law firm.

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SOUTH AFRICA
FLUXMANS INC.

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

Real estate is usually marketed by a broker or estate agent, and attorneys are often involved in the transactions and the finalising or drafting of agreements in larger transactions. Once an agreement has been signed by both parties, a conveyancer, being an attorney specialising in the transferring of real estate and related issues, is appointed, usually by the seller. The conveyancer prepares the transfer documents; obtains rates clearances from the local authority and a receipt or exemption certificate from the South African Revenue Services; liaises with the attorneys acting for banks cancelling existing securities and registering new securities over the property; and arranges for submission of the documents, simultaneously with the documents of the conveyancers acting on behalf of the banks to be submitted to the Deeds Registry under which the property falls. There is a formal examination process in the Deeds Registry which takes approximately two weeks, whereafter transfer of the property is formally registered in the Deeds Registry and a new title deed is issued which identifies the purchaser as the registered owner of the property.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

There are two main forms of ownership in South African property law, being freehold, in terms of which ownership of the land, together with all improvements thereon of a permanent nature, is registered in the name of the owner, and sectional title ownership, in terms of which ownership of a specific section in a building or complex, together with an undivided share in the common property, is registered in the name of the owner.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Joint ownership of real property is permitted in the South African legal system. The specific percentage of ownership is set out in the title deed of the property, and the ownership is in respect of an undivided share in the whole property. Any individual or juristic person can own real property in South Africa. If a juristic person registered outside of South Africa becomes the owner of a property in South Africa, it is obliged to register as an external company in terms of the Companies Act. Due to the formalities required in registering an external company, it is preferable for a newly registered South African company to take ownership of the real property. There is no limitation on an individual who is a foreigner becoming the registered owner of a property in South Africa, other than that he/she cannot be in the country without being in possession of the required temporary or permanent residence permit.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

Sectional title ownership, which was referred to in question 2 above, creates a situation where there are various different owners of sections of a building or buildings and common property is owned jointly by the owners of such sections. If the ownership is freehold, the registered owner owns the land and all improvements thereon. There are, however, ways to separate rights to improvements and income from a real property, which is usually achieved by cession of a lease, which results in the registered owner only having rights to the bare dominium in the property. This however is not strictly speaking a form of split registered ownership. In addition, there is a mechanism to register a usufruct, in terms of which a person has rights of occupation of a property, normally for their lifetime, while another person remains the registered holder of such real property.

5. Is the land and/or the building registered in a formal register, and is a good faith purchaser protected with regard to the entries in this formal register?

There is a cadastral system in South Africa in terms of the Deeds Registries Act, which provides that every piece of land which is transferred to an owner must be depicted on a diagram or a general plan prepared by a land surveyor and approved by the Surveyor General, a government office, and accordingly all real properties and their location can be identified with absolute certainty. Real rights and ownership in real property cannot be acquired by any means other than by registration in a Deeds Registry, under which such real property falls. Ownership of land can only be acquired by formal registration in the relevant Deeds Registry, and there is a formal register of all surveyed properties in the country. Accordingly, a good faith purchaser is protected with regard to the entries in the register.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

The most common way of financing transactions is by the purchaser obtaining a loan from a bank or other registered financial institution and for such bank or financial institution to register a mortgage bond over the property simultaneously with registration of transfer to the purchaser, and the title deed in respect of the real property is endorsed to the effect that the mortgage bond has been registered over such property. It is not common for purchases to be financed through real estate purchase contracts.

7. What should be taken into account when thinking about the financing of a purchase project in your country

Issues to be considered would include the initial costs of raising finance, in addition to the interest payable on the loan amount, as well as additional security required from a financier. Before a loan is approved by a financier, a formal valuation of the property is carried out, as well as an investigation into the current and future income in respect of the real property.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

a) If the seller is not registered as a vendor for the payment of value added tax (VAT), transfer duty in accordance with a tariff is payable by the purchaser to the South African Revenue Services based on the value of the property (the upper spectrum being 13% on a property value above ZAR 10 million;

b) If the seller is a registered VAT vendor, VAT would be payable at the rate of either –

(i) 15% of the value of the property; or

(ii) 0% if the transaction qualifies in terms of the VAT Act as the sale of a going concern, which will include the requirement that an income-generating activity is being acquired by the purchaser and that the purchaser is registered as a VAT vendor.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

There is no minimum time period that a purchaser would have to hold a property. It is possible for a purchaser to enter into a sale agreement disposing of the property before transfer of the property is registered into its name and for the property to be transferred from the first purchaser to the second purchaser on the same day that the first purchaser takes transfer of the property in the Deeds Registry.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

The seller would have to comply with Exchange Control Regulations and related legislation in order to get money out of South Africa after the transaction, and it is advisable to obtain specific advice on this before purchasing real property in South Africa. In addition, capital gains tax is payable on the disposal of a property. Different rates apply in respect of individuals, companies and trusts.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s) or which restrictions have to be taken into account?

There is a principal in South African law known as “huur gaat voorkoop” which provides that a lease takes precedence over a sale and accordingly, unless a lease agreement specifically provides that the lease may be terminated by the landlord on sale or registration of transfer of the property, the lease would by operation of law be ceded to the purchaser on registration of transfer.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all

All properties in South Africa have a specific zoning in terms of the town planning scheme in respect of the area in which the property is situated, which allows the property to be used for particular stated purposes. In order to change the zoning of a property, a formal application would have to be made to the local authority which would include the advertising the proposed rezoning.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly: (on the basis that €5 million is ZAR 79 million, the following costs will be payable)

– notarial costs?
No specific notarial costs would be payable in South Africa, although if documents were to be signed by a party outside of South Africa, signature would have to take place in front of a notary in such country.

– land register?
A Deeds Office fee of ZAR 4,890 would be payable to the Deeds Registry

– real property transfer tax?
If transfer duty is payable, ZAR 9,903,000. If VAT is payable, but the transaction does not qualify as a zero-rated transaction, VAT of ZAR 11,800,050 would be payable.

– advising lawyer (due diligence)?
The costs of the advising lawyer together with any due diligence conducted would depend on the time spent and complexity of the matter.

– estate agent?
The estate agent or broker's fee is usually payable by the seller and usually ranges between 3% and 6% of the selling price. If a property is sold on auction, the purchaser is liable for auctioneer's commission, which is usually 10% of the selling price

– others?
The conveyancer instructed to attend to the registration of transfer of the property is entitled to charge a fee in accordance with the conveyancing tariff, which would in this case be ZAR 321,230, plus 15% VAT.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

The registered owner of a property would, in addition to electricity and water consumption, be liable for monthly payment of rates and taxes to the local authority which has jurisdiction over the area in which the property is situated. The amount payable would be dependent on a number of factors including the local authority valuation of the property, the zoning of the property and the area in which the property is situated.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

Costs of a property managing agent would depend on the scope of the management services required by the owner. The fees are sometimes based on a set amount with annual increases, with additional amounts payable for specific maintenance and repairs, and sometimes based on a percentage of rental collected, with additional amounts payable for new rental agreements facilitated and concluded by the managing agent on behalf of the owner.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
– directly in real estate?
– through real property funds, open or closed ones?
– through other clear and secure financial products?
– In commercial real estate or in residential property

All the above forms of investments have certain advantages and disadvantages and advice would only be given based on specific circumstances and in conjunction with relevant advisers, including registered financial advisers in the case of funds and financial products and property professionals in relevant fields. Any agreement concluded by a purchaser should be suspensive on an extensive due diligence being carried out to the satisfaction of the purchaser within a specified period which would enable the purchaser to obtain all information and advice in order to make an informed decision before proceeding with the transaction.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

Please see response to question 3 above.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed and what time and effort are needed normally to get it?

A formal application for the zoning or rezoning of the property would have to be submitted to the local authority, and a town planner would be instructed to attend to the application. The length of time that it would take to obtain the relevant approvals is dependent on a wide range of factors, and objections to the application could substantially lengthen the process. It would be advisable for the particular circumstances to be taken into account and an opinion to be obtained from a town planner before signature of a purchase agreement and for the agreement to be suspensive on the necessary zoning being approved by a certain date.

19. Could your firm assist foreign investors in
– finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?
– developing construction projects?
– all legal aspects involved in these contexts?

The attorneys in our firm specialising in real estate enjoy a close relationship with a wide network of estate agents, property professionals and developers, and, as we have done many times in the past, we would be happy to assist foreign real estate investors in the areas above, as well as providing any further assistance to foreign investors.

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SOUTH KOREA
BARUN LAW

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

Execution of Sale and Purchase Agreement
In entering into a real estate transaction, real estate brokers are not required to be retained under Korean law. However, in Korea, real estate brokers are involved in most real estate transactions in general, and an insurance security is often purchased to cover defects that may arise with the property.

There is no specific provision regulating terms of real estate sale and transfer agreements under Korean law. However, a prior report or approval should be made with/from the government for real estate sale and purchase agreements for transactions that include land specifically designated for special uses such as development of restricted areas and/or agricultural use areas. In the event an agreement is entered into without having made such report or obtained such required approval, such agreement would be void.

A detailed description of the real estate being transferred can be confirmed by the real estate registry of the property, which is publicly accessible information. For a more accurate and complete information on the property, however, a visit to the actual site may be conducted.

Payment of Purchase Price
Parties to real estate sale and purchase agreements may agree on the payment methods for the purchase price being transferred. In practice, such payment is customarily made in three instalments: initial payment, interim payment and final payment. The amount of the purchase price is negotiated and agreed between the purchaser and the seller based on the market price and consultation with the real estate broker.

The purchaser's obligation to pay the purchase price and the seller's obligation to deliver the real estate and the title therefor are to be performed simultaneously. Accordingly, unless the parties otherwise agree, in the event a seller fails to perform his/her obligation to deliver the property and the title therefor, the delay in the purchaser's payment of the purchase price shall not result in default by the purchaser. In practice, parties generally agree to have the purchaser make the full payment for the purchase price prior to the transfer of the property.

Transfer of Title
Together with the necessary documents to effect the transfer of title of the property, a seller is obligated to deliver and transfer the property as agreed under a real estate sale and purchase agreement. As mentioned above, such delivery obligation is to be performed simultaneously with the purchaser's obligation to make the full payment of the purchase price.

In order to transfer the title of real estate, a registration for the ownership transfer must be made. Unless such registration is made, the ownership transfer is not completed, except for some cases provided under law. In registering the ownership transfer, in principle, a purchaser and a seller must apply for registration of such transfer at the registrar. However, in practice, the seller delivers the necessary documents for the registration of the ownership transfer to the purchaser with a power of attorney authorising the purchaser to make the registration on the seller's behalf, and the purchaser makes the application for the registration to the registrar. Once the application for the registration of ownership transfer is made, the transfer becomes effective on the date of the filing of the application. In the event the seller fails to perform its obligation to transfer the title (deliver the necessary documents to effect the transfer), a purchaser may bring a court action and the winning judgment therefrom may be used to show the seller's intention to apply for the registration of ownership transfer.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Yes. As further explained below, rights over land and buildings are separate from each other in principle. Accordingly, owners of land and buildings may be different parties except where there is strata ownership in one building pursuant to the Act on the Ownership and Management of Aggregate Buildings. For land on which a building with strata ownership stands, use rights over the proportional area of the land for a portion of the building owned under strata ownership is combined together with the respective portion of the building for conveyance.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Yes. Joint ownership is permitted in Korea. Joint ownership may be between or among person, associations, companies and non-corporate associations.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

There may be two different owners of the land and the building erected on it in Korea as ownership over the building and the land are separate. If the land and the building erected on it have two different owners, surface right in law, which is a right granted to the building owners regardless of the intention of the landowner, over the land may be granted to the building owner if certain conditions are satisfied. However, if such conditions are not satisfied and surface right in-law cannot be granted, the building owner must acquire the use right over the land from the landowner. If the building owner fails to acquire such use right, the landowner may claim for removal of the building against the building owner.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

In order to acquire ownership over real estate, registration of the ownership is required. However, this does not protect a bona fide purchaser of the real estate who relied on the real estate registration.

Even when an ownership is registered, in the event a defect on the registration of the ownership transfer exists (such as cancellation or termination of the real estate sale and purchase agreement), the registered owner will not be recognised as the owner of the property, and any purchaser(s) of the property from the registered owner thereafter will also not have ownership over the property in such case. In this regard, although the ownership would not be recognised under law, the bona fide purchaser may be protected under the Civil Code which prohibits bringing a claim against a bona fide third party on the basis of cancellation and/or termination of an agreement, in which case the ownership of the bona fide purchaser would remain valid and effective.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

Investors usually finance the transaction by setting collateral to their properties including, but not limited to, the property that is being purchased. Furthermore, personal as well as other proprietary collaterals could be granted during the purchase contract to ensure the payment. In most cases, banks set collateral called *kun-jeodang* (collateral security) onto the property being purchased, in exchange for a loan of money amounting to 30% to 70% of the purchase price of the property.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

Since the mortgage system, in which one makes a down payment upfront and pays monthly payments for next 30 years or so, is not common in Korea, it is necessary to have money amounting to at least 30% of the purchase price of the property, unless one's credit and collateral is very strong from the banks' point of view.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

Taxes that are imposed in connection with a purchase of real property include registration tax, education tax, acquisition tax and special tax for rural development. The registration tax and education tax are imposed in connection with registration of the transfer. Different rates are applied for residential and commercial buildings and land as follows, which may also differ on a case-by-case basis. Where a company acquires land for non-business use, for extravagant (vacation home and luxurious entertainment purposes) use and/or that is located within the Seoul metropolitan areas, the registration tax and the acquisition tax may be increased up to three to five times the general rate.

Category			Acquisition Tax	Special Tax for rural development	Education Tax	Total
Residential Building	KRW 600 million or less	85 m² or less	1%	Exempted	0.1%	1.1%
		Exceeding 85 m²	1%	0.2%	0.1%	1.3%
	Exceeding KRW 600 million but 900 million or less	85 m² or less	2%	Exempted	0.2%	2.2%
		Exceeding 85 m²	2%	0.2%	0.2%	2.4%
	Exceeding KRW 900 million	85 m² or less	3%	Exempted	0.3%	3.3%
		Exceeding 85 m²	3%	0.2%	0.3%	3.5%
Non-residential (Commercial building, non-agricultural land, etc.)			4%	0.2%	0.4%	4.6%
Farmland (Field, paddy field, orchard, ranch, forest lands)		Newly acquired	3.0%	0.2%	0.2%	3.4%
		Self-cultivating for 2 or more years	1.5%	Exempted	0.1%	1.6%

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

A higher capital gains tax rate applies to sales of real estate with short holding periods. For a holding period not exceeding one year, 50% capital gains tax applies, and 40% capital gains tax applies for a holding period exceeding one year and not exceeding two years, to the difference between the purchase price and the sale price. In this regard, for ownership of one residence per family unit for two or more years (holding period of two or more years and residing period of two or more years for Seoul metropolitan areas), there is no capital gains tax imposed.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Yes. When a foreigner remits funds into Korea, a report must be filed with a foreign exchange bank. In case of repatriation of funds outside Korea, a report must also be made to the bank or the governmental authority, and the evidentiary documents filed for the remittance of funds into Korea must be presented.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

A new owner may claim evacuation from the real property to the lessee based on his ownership, and the lessee may not object to such claim of the new owner based on the existing lease agreement (however, since the existing lease agreement is between the lessee and the old owner, the new owner, who is not a party to the agreement, may not cause such lease agreement to be terminated), unless the

lessee's right is a registered right. In the event that the lease is registered in the real estate registry, the lessee may enforce the lease against third parties other than the existing owner. There are exceptions to the new owner's right to claim for evacuation against small business owners and residents under the Commercial Building Lease Protection Act and the Housing Lease Protection Act respectively. Based on the statutes, in the event the rent does not exceed a certain amount, the lessees are protected from such right of the new owner. For leases that are governed by these statutes, in the event the lessor transfers the real estate to a third party, the purchaser is deemed to have succeeded the lease, does not have right to claim for evacuation and is unable to terminate the lease until its expiry. Whether a certain lease is subject to such statutes cannot be confirmed by the real estate registry and must be confirmed by the local government offices.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

Governmental approval must be procured in order to change the use of real estate.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- notarial costs?
- land register?
- real property transfer tax?
- advising lawyer (due diligence)?
- estate agent?
- others?

Notarial costs: Notarial fee costs 0.15% of the contract price, not to exceed KRW 3 million in total. As for a property costing €5 million, the notarial fee would be approximately KRW 11,250,000 (KRW 7.5 billion*0.15%). Since the fee cannot exceed KRW 3 million, the notarial fee for this property would be KRW 3 million.

Land register: Land registration fee includes a certificate stamp fee of KRW 14,000 and a stamp duty of KRW 350,000. In addition, when purchasing real estate, a housing bond must be obtained. The cost of bonds differs depending on the location and other details of the real estate, but in general, it costs approximately 0.5% of the purchase price. Accordingly, in this case, it would be approximately KRW 37,500,000 (KRW 7.5 billion*0.5%).

Real property transfer tax: For a purchase by an individual, as mentioned above, tax of 4.6% of the purchase price would apply (increased in case of a corporate party). In this case, the transfer tax would be KRW 345 million (KRW 7.5 billion*4.6%).

Advising lawyer (due diligence): The attorney fees and due diligence period would vary depending on the complexity of the deal. In general, attorney fees range from KRW 200,000 to KRW 700,000 per hour of service by one attorney.

Estate agent: Real estate broker fees cannot exceed 0.9% of the purchase price (excluding VAT) in

Korea. Although this amount does not include VAT, real estate brokers in general include VAT in fee quotations. Up to the permitted amount, it is up to the parties to negotiate and agree. In this case, parties may agree on the broker fee not to exceed KRW 67,500,000.

Others: In practice, a paralegal may prepare the necessary Korean documents and applies for the registration of the transfer. The paralegal fee for the real estate registration is approximately KRW 3,400,000.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

Property tax for holding real estate is imposed on a yearly basis. Property tax is a regional government tax imposed by the offices of the city ('ghun/gu') where the property is located. The standard rates and calculation methods for the property tax are explained in the following. Please note that the regional government may change the standard rates for the property taxes within a certain range.

A. Standard of Assessment

In order to calculate property tax, the standard of assessment must be first calculated as follows:

- houses: from 40% to 80% of the standard market price determined and published by the mayor/governor/chief of 'gu' office
- lands and buildings: from 50% to 90% of the standard market price determined and published by the mayor/governor/chief of 'gu' office

B. Calculation Method of Property Tax

- Land

For the purposes of calculating property tax on land, standard assessments for land owned by the taxpayer in the relevant jurisdiction are combined except for certain properties subject to individual taxation. In addition, accessory land to buildings and land designated by presidential decree are combined separately for property tax purposes.

K : Sum of standard assessment amounts

General Lands to be combined	KRW 50 million or below	KRW 100 million or below	Exceeding KRW 100 million
	K * 0.002	K * 0.003 + KRW 100,000	K * 0.005 + KRW 250,000
Other lands to be separately combined	KRW 200 million or below	KRW 1 billion or below	Exceeding KRW 1 billion
	K * 0.002	K * 0.003 + KRW 400,000	K * 0.004 + KRW 2,800,000

Lands subject to individual taxation	Field, paddy field, orchard, ranch, forest lands	Golf course and luxurious entertainment land	Other land
	K * 0.0007	K * 0.04	K * 0.002

- Houses

Villa	K * 0.04			
Other houses	KRW 60 million or below	KRW 150 million or below	KRW 300 million or below	Exceeding KRW 300 million
	K * 0.001	K * 0.0015 + KRW 60,000	K * 0.0025 + KRW 195,000	K * 0.004 + KRW 570,000

- Buildings

Golf course, luxurious apartment	K * 0.04
Factory buildings in the residential area	K * 0.005

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

It is up to the professional caretaker and the foreign investor to agree on the terms of the agreement. We include the fee schedule charged by some of the major real estate trust companies for their service:

Type A service: management service (management of the tenants, building and ownership)
Type B Service: management of ownership in the building registry

Value of the trust company	Type A	Type B
KRW 100 million and below	10/1,000 per year	30/10,000 per year
KRW 500 million and below	8/1,000 per year	15/10,000 per year
KRW 1 billion and below	7/1,000 per year	13/10,000 per year
Exceeding KRW 1 billion	6/1,000 per year	10/10,000 per year
Minimum fee	KRW 300,000 per year	KRW 100,000 per year

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country directly in real estate?

- through real property funds, open or closed ones?
- through other clear and secure financial products?
- in commercial real estate or in residential property?

Given the current unstable economic conditions in Korea, it is difficult to predict and advise on the issues raised.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

In general, any individual person or legal entity may purchase real property in Korea regardless of his/her/its nationality and/or existence of a Korea branch office.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

A foreigner and a foreign company may purchase land in Korea, as long as a report is made with the government authority after the purchase. There is no requirement to obtain approval prior to the purchase. Accordingly, no additional effort or time would be required for a foreign purchaser of land, except that if the foreigner or the foreign company does not have a registration number, such foreigner or foreign company must obtain a number for real estate registration from the court. Exceptions to this are when the land being purchased is in a military defence area, cultural artefact protection area or other area designated by statutes, in which case prior permission must be obtained from the government. Also, if a foreign country prohibits Korean nationals from purchasing land in that country, persons with nationality of such foreign country may be prohibited from purchasing land in Korea based on reciprocity.

19. Could your firm assist foreign investors in

- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

Yes, we frequently assist foreign investors in all these aspects of real estate transactions in Korea.

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SPAIN
VENTURA GARCÉS & LÓPEZ-IBOR

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

Before any formal transfer begins, it is highly advisable to make some initial checks relating the property's current legal, tax/economic and town planning situation. Legal information is normally obtained from the land registry by requesting excerpts relating to current liens and charges. Tax/economic information may be obtained from the town hall and from the ownership association ('*comunidad de propietarios*'), if any, as, under Spanish law, he who acquires a property is liable for the amounts owed to the ownership association and the payment of local property tax. Town planning information may be obtained by requesting from the seller or the town hall the activity licence/first occupation licence ('*Licencia de Actividad/Licencia de Primera Ocupación*') for commercial/housing purposes.

The formal procedure of a real estate transaction in Spain normally begins with a private purchase and sale promissory agreement ('*contrato de arras*') detailing the conditions of the sale which the parties have agreed during negotiation. According to this agreement, the owner promises to sell the designated property and the buyer promises to buy it at an agreed price and within the agreed period. This agreement usually involves the payment of a deposit or a percentage of the price. As a rule, if the buyer fails to complete the purchase and/or payment terms, he will lose this deposit; on the other side, if the owner fails to complete the sale, he must repay twice the amount of the deposit (or as agreed).

It should be noted that Catalonia has its own different civil code. For real estate transactions carried out in this territory, the purchase and sale agreement can foresee that the transaction will be financed by a bank. If so, except when the parties expressly agree to the contrary, if the purchaser cannot obtain the financing within a certain term, he can terminate the contract unilaterally and recover any advanced payment and, given the case, the deposit made ('arras'). For that purpose, the purchaser must justify in writing the bank's denial to finance the transaction.

Although parties may commit to sale and purchase under the terms of a private agreement between them, the Spanish legal system makes mandatory the execution of a public deed to transfer the property. Further to the execution of the public deed, in order to be a completely valid, effective and legal transaction, though not compulsory (only required for mortgages), it is highly advisable and virtually necessary to register the transfer or property before the land registry. Registration is essential to prove the title held over the property against third parties.

The execution of the public deed, or engrossment of private purchase agreement as a public deed, is drawn up by the notary public and executed in front of him, as he is legally required to review and judge the legal capacity of the parties to enter into the transaction. Once executed, the last requirement before its registration is the clearance of all taxes related to the transaction. Please see question 6 for further details.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Yes. In Spain there are different ways to own property: it is possible to own the whole piece of land or only a fraction of the land (plot) after segregating the land.

It is also possible to own the building without owning the land where it was built, if the land/building is subject to an allotment permit/horizontal property regime *('régimen de propiedad horizontal')*.

It should be noted again that Catalonia has its own legal regulation of the horizontal property regime, which in some aspects differs from the regulations applicable in the rest of Spain.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Joint ownership is permitted. Under the Spanish horizontal property law, buildings with more than one owner have common spaces, which are property of all owners.

As explained above, certain entities like trusts are unknown to Spanish law and may have serious problems formalising their property, as their registration as owners in the land registry is not permitted. Aside from this, practically all legal entities may own real property.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

Yes. Under the right of accession (Art. 358 et seq. of the Spanish Civil Code and Art. 542-1 et seq. of the Catalan Civil Code), a building is owned by the owner of the land unless otherwise proven. If the building was built by another party, such third party has the right to a compensation for the necessary expenses or, alternatively, the owner of the land can ask such third party to buy the land.

Surface rights may be granted over a plot to build and develop (Art. 564-1 et seq. of the Catalan Civil Code). In this case, plot and buildings would have different owners, but once the surface rights expire, all that is built over the plot will revert to the owner of the plot.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

The land registry, with delegations at every Spanish region, is the formal registry where title over property is recorded. The legal principle *prior tempore potior iure* ('first registered has the better right') grants protection to the registered titles over any other transaction which is not.

The good-faith purchaser who acquires a property from the person who appears in the registry with the faculty to transfer shall be maintained in acquisition, once he has registered his right, no matter if the right of the transferee is later annulled or resolved (Article 34 of the Spanish mortgage law).

II. Costs for transaction

6. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

Several taxes are involved in a commercial real estate transaction.

- Value added tax (VAT): ('Impuesto sobre el Valor Añadido'): The supply, leasing or letting of commercial real estate or of a building for first occupation is subject to Spanish VAT. Second and further supplies of a building or of parts thereof are exempt from VAT. However, in so far as commercial real estate is basically aimed at developing business activities, and most buyers of this kind of real estate also qualify as taxable person for VAT purposes as they are generally dedicated to the development of business activities, said buyers, by waiving the tax exemption, are allowed to exercise a right of option for taxation under VAT for these supplies, leasing and letting of commercial property. By way of this mechanism, buyers are entitled to deduct and to obtain reimbursement of the VAT paid with the property acquisition, provided that statutory requirements are complied with. Should these requirements fail, transaction would be subject to property transfer tax. Finally, the building activity is also subject to VAT. There are two different applicable VAT rates, depending on the nature of the transaction. VAT related to building activities is 10%, and VAT related to the transfer of property is 21%.

- The property transfer tax ('Impuesto sobre Transmisiones Patrimoniales'): This tax is imposed, among other acts, over the second and subsequent transfers of property and is paid by the purchasers of real property. When dealing with commercial real estate transfers, this tax is rather unusual as the buyer generally exercises the right of option for taxation under VAT. If requirements under VAT regulations fail to apply, the transfer of the property will then be subject to this tax. The tax rate is different in each Spanish region and is calculated according to the purchase price that appears in the public deed of transfer. Percentages applied by the different Spanish regions range between 4% and 11%.
- Public document tax ('Actos Jurídicos Documentados'): This tax is applied to the execution of agreements or rights when they are granted as notarial, trade and/or administrative documents in Spanish territory (or abroad, if they have legal or economic effects in Spain). The rates applied depend as well on the Spanish region wherein it is executed and on the final tax applied to the transaction (VAT or property transfer tax). When VAT is applied to the transfer of property, the rates of this tax range between 1% and 2% of the purchase price. When there is a mortgage-backed loan, this tax is paid by the financing entity, in accordance with Royal Decree Law 17/2018 of 8th November 2018.

- Tax on the increase in value of urban land ('Impuesto sobre Incremento del Valor de los Terrenos de Naturaleza Urbana'): This is a local tax which is levied on the implicit value increase that urban land gains by time elapsed, therefore, this tax is calculated considering the time passed since the last transaction (exceeding one year). The taxable amount is based on the property cadastral value (not the sale and purchase price) of the land, and the effective rate ranges from 3.7% to 3% depending on the property holding period. It is paid by the seller of real property.

7. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

No, there is no legal minimum period for which you are obliged to hold a property.

8. Can the seller get his money out of your country after the transaction (repatriation of funds)?

There is no restriction to the repatriation of funds.

However, in the case of transfers of real property situated in Spanish territory by taxpayers without a permanent establishment in our country, the purchaser shall be obliged to withhold and pay to the tax authorities 3%, or make the appropriate payment on account of the agreed consideration, as payment on account of non-resident income tax imposed on the capital gain obtained from the sale of the property. If the amount withheld exceeds the effective tax due, the non-resident taxpayer is entitled to claim reimbursement of the excess.

The acquisition or sale of a property in Spain by a non-resident is considered a foreign investment. As such, at the time of granting the notarial deed of purchase or sale, the non-resident must sign a declaration regarding the investment or the liquidation of the investment, as the case may be, using the forms named D-2A or D-2B, respectively.

9. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

The tenant has a pre-emption right over the leased property unless expressly waived. It is frequent, however, for lease contracts to contain such waivers. Once this is cleared, property may be sold to any other third party. The buyer may not terminate the lease agreements currently in force, as the transfer of a property means that the acquirer succeeds in all of the previous owner's rights and obligations. According to the Spanish urban leasing act ('*Ley de Arrendamientos Urbanos*'), lease agreements in force can only be terminated without cost when the property is going to be used to live by its owner or its family.

10. Are you allowed to change the use of a building from residential use to office space or do you need official approval for doing so, or is it not allowed at all?

Every property has a use licence indicating whether it is for residential or commercial use. This license may be changed or amended by approval of the town hall (according to the urban plan and the individual features of the property) and by approval of the owner's association ('*comunidad de propietarios*'), if the building has multiple owners. In practice, it is quite difficult to change residential space to commercial as the amount of commercial space in residential areas, buildings and/or plots is limited.

11. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

– notarial costs? Notary public's costs will be around €2,500 to €3,500.
– land register? Inscription of the transfer of Property before the relevant land registry may be around

€2,000 to €3,000.

– **real property transfer tax?** €200,000 (4%) to 550,000 (11%)
  - **Value added tax: €1,050,000**
  - **Public document tax when transaction is subject to VAT: €50,000 (1%) to €10,000 (2%)**
– **advising lawyer (due diligence)?** €3,000 to €6,000, depending on the type of property. Due diligence over land subject to zoning regulations would be more costly as this is a complex area of the law.
– **estate agent?** Estate agents' usual rate is 3% to 6% of the transaction value.
– **others?**

III. Costs for holding real estate

12. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

Property tax ('*Impuesto sobre Bienes Inmuebles*') is a yearly paid tax, managed by the town halls and calculated using the property cadaster value estimated by the cadastral office (dependent of the Ministry of Economy/tax authority). The effective tax rates vary between town halls as they are entitled to fix their own final rates within a range from 0.4% to 1.1% of the cadastral value.

Special tax on property of non-resident entities. Foreign entities holding real estate which do not fall within the following categories shall pay this annual tax. The taxable consideration is 3% of the real property cadastral value. Foreign entities exempt from this tax are: i) international public Institutions and foreign states, ii) entities entitled to apply a double tax treaty entered into with Spain containing an information exchange clause, provided that the final individuals directly or indirectly holding the share capital of such an entity are also resident in a country with a double tax treaty entered into with Spain containing an information exchange clause, iii) foreign entities carrying out economic activities (other than mere holding or leasing of immovable property) in Spain on a regular basis; iv) listed companies and v) non-profit organisations recognised by countries with a double tax treaty entered into with Spain.

Wealth tax ('*Impuesto sobre el Patrimonio*'). Under certain circumstances, when the commercial real estate cannot be regarded as engaged in business or economic activities for the purposes of the wealth tax, this fiscal charge is imposed annually on individuals holding property in Spain. The effective tax rate varies depending on the value of the estate wielded by the individual in Spain. The tax is only applicable to individuals, not to entities holding the commercial property. In certain parts of Spain, like the region of Madrid, the wealth tax is zero.

Local taxes for public services such as garbage collection, right of use of public property etc. are generally payable annually. Considerations and prices vary depending on the town hall where the property is located. These local taxes are payable by the real estate owner.

13. What are the costs you have to calculate as a foreign investor, if you engaged a professional caretaker for the purchased property? How does the caretaker normally charge for their work?

These fees have to be negotiated on a case–by-case basis and can change very much depending on the type of property and the services included in the caretaker's agreement.

IV. Foreign investors

14. Would you advise foreign investors at the moment to invest in your country?

– directly in real estate? After a prolonged and deep recession, real estate prices have recovered, especially since 2016 and particularly in large cities such as Madrid and Barcelona or prime coastal areas such as Costa del Sol and Palma de Mallorca, and no decrease in prices is expected. It is an excellent time to invest directly in real estate. Spanish banks still hold a portfolio of properties and land and are keen to divest.
– through real property funds, open or closed ones? Real property funds have been the most active investors in the Spanish real estate market, particularly in retail (shopping malls), offices and hotels, as well as in residential property for short-term leases.

15. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office or legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

Spain has no restrictions on investment in real estate for citizens from the European Economic Area (EEA). Citizens from other countries willing to acquire a property in zones declared restricted areas to foreigners under national defence legislation will require a special authorisation from the military authorities.

All the same, investments from financial havens will be subject to notification to Spanish authorities (previous to purchase). When completing transaction, current anti-money laundering regulations require the notary public to identify and record every individual person holding more than 25% of the legal entity party of the transaction (including all individual holders of the legal entities which hold the company, and so on).

Just to mention that trusts as legal entities are not recognised under Spanish law. In this sense it is advisable to use other corporate figures to invest (especially in real estate) as the land registry would not register any transaction or property as trusts are unknown to the registrar.

16. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

To invest in Spain, and to operate in general, foreign citizens need to obtain a Foreigner ID Number (*'NIE'*) from the police. Foreign companies need to obtain a Spanish Tax ID Number (*'NIF'*) to operate in Spain. The NIE for individuals may be obtained at certain Spanish consulates abroad and some police stations in Spain. The dealings can be a little cumbersome if done personally and there can be delays. For companies, the NIF can be obtained by filing a standard form before the tax authority, and a provisional number (valid to operate) is obtained in a short time (several days). A definitive number is issued within a month.

With regard to running a business, it is not possible to give a single, easy reply because that will depend very much on the type of business and the regulatory requirements applicable to it.

17. Could your firm assist foreign investors in

- Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers? Our firm knows personally several estate agents and advisers and works closely with them. These agents and advisers are well-known top-tier real estate firms who know the market and may advise when and where great opportunities can be found.

- Developing construction projects? Yes, we have advised numerous clients throughout the entire real estate development legal process. However, the client will have to engage specialists (architects, engineers etc.) to draft the technical documents required to be submitted and approved by the relevant authorities.

- All legal aspects involved in these contexts? Our law firm has advised in a great number of successful real estate transactions in all legal aspects, including the drafting of all kinds of property transfer agreements, finance of the transaction, tax issues, administrative requirements and registration of the transaction.

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SWEDEN
HELLSTRÖM

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

A written contract concerning the real estate transfer must be established. Further, to be a valid and legally binding contract under Swedish law, it must fulfil a number of formal legal requirements. It must include details regarding the real property, a statement that the property is being transferred from the seller to the purchaser and details on the purchase price, and be signed by both the seller and the purchaser.

Only transfers using a purchase contract are acknowledged by Swedish law to be a binding agreement. The ownership of the property is transferred upon the date set out in the purchase contract(s), without any formal registration needed. If the transfer, under the terms of the purchase contract, is conditional upon the payment of the purchase price and issuing of a bill of sale, it becomes effective on the set out date as long as the bill of sale is being issued.

All property transfers shall be registered in the national land register (*'Lagfart'*), and an application for such registration shall be filed within three months after the date of transfer. Once the transfer has been registered by the national cadastral and land registration authority, the purchaser is entitled to, for example, take out new mortgages on the property.

For tax reasons, commercial real estate transactions are commonly made by way of share transfers, where the seller transfers the property to a wholly owned subsidiary. No real property transfer tax is levied on the sale of the shares.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Ownership of land (real property) and any construction on the same land is undivided under Swedish law. This is the general rule and means that the ownership and transfer of real property comprises the entire property, including buildings, utilities, fences and other facilities erected for permanent use on the property. To own a unit or units of the property is not possible. In order to sell a part of the property, a property formation must take place. A property formation creates a new real property unit, comprising the relevant transferred area.

Cooperative housing associations are a form of divided ownership of real property that is common in Sweden. The members of the association own a right to inhabit a certain part of the building or property unit, e.g. a flat or a house, but the real property is owned by the association itself. A member of the cooperative housing association may transfer his share, including the right to inhabit a flat or house,

more or less freely on the market.
In commercial relations, divided ownership could be arranged by the establishment of a jointly owned real estate company.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Joint ownership of real property is not regulated by law and is thus permitted. Any kind of entity can own real property in Sweden.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

Yes, that is the case in Sweden. The ownership of land includes all fixtures on the same land, including any buildings. However, the ownership of a building and the land could be divided in some situations, e.g. when a tenant or a leaseholder erects a building on the land. The ownership of the building then remains with the tenant or leaseholder.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

All Swedish real properties are registered in the national land register together with data including ownership, mortgages and registered titles. If the seller of the real property was registered as the owner in the national land register, a good-faith purchaser is protected.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

Swedish and international real estate investors in Sweden use not only bank loans, but also promissory notes, shares etc. to finance real estate transactions. Mortgages are normally used as the coverage for banks in real estate purchases. However, other securities, such as corporate mortgage certificates and share pledges, are also used.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

The banks only accept bank loans between 60% and 70% of the purchase price. The rest of the purchase sum must be financed by equity or other kind of loan agreement from financial institutions.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

A real property transfer tax of 4.25%, calculated on the higher of the purchase sum or the tax assessment value, is imposed on legal entities. Natural persons and cooperative housing associations are assessed

a property transfer tax of 1.5%.

The issuing of new mortgages on the real property (in connection with the transfer or otherwise) includes a mortgage tax of 2% of the mortgage amount.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

There is no specific time that you must hold the property with regards to tax reasons.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

There are no repatriation restrictions on funds.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

The purchaser of a real property is not entitled to terminate or change the terms and conditions of the lease.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

The usage of a property is generally regulated in a development plan. The development plan is set by the municipality. Before changing the use of a real property from residential to office space, a building permit must be approved.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- notarial costs?

Not applicable.

- land register?

There is an administrative fee of SEK 825.

- real property transfer tax?

If the buyer is a legal entity (other than cooperative housing association), the stamp duty (real property transfer tax) is €212,500. If the buyer is a natural person or a cooperative housing association, the stamp duty is €75,000.

- advising lawyer (due diligence)?

Lawyers cost is about €20 000 including due diligence, but is depending on the type and use of the property.

estate agent?

Real estate agents normally work on a commission basis and are employed by the seller. Their commission ranges from 0.25% to 1.5% of the purchase price.

others?

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

There are two kinds of yearly real property taxes in Sweden. The tax is calculated based on a value, the tax assessment value of the property, which is determined by the national tax authority.

Holders of residential houses pay a yearly municipal property charge amounting to SEK 8,049 (as at 2019) or 0.75% of the tax assessment value.

Regarding other types of land such as undeveloped land, blocks of rental flats and industrial and commercial properties, a yearly national property tax is charged of 0.4% to 1.0% of the tax assessment value, depending on the type of building.

The individual or entity holding the real property on 1st January each year is billed for the full property charge or property tax for that property for the entire year. Transfer contracts therefore normally contain provisions to the effect that the purchaser shall compensate the seller for the charge or tax for the remaining period of the year.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

There are many different types of property management offerings on the market depending on what kind of services are required for the property. Fees are normally a fixed sum as a base, added with a price by the hour, and depend on the service and where in Sweden the property is located.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country directly in real estate?

- **through real property funds, open or closed ones?**
- **through other clear and secure financial products?**
- **In commercial real estate or in residential property?**

The property market in Sweden is rather stable. Because of the risk of higher credit costs, the market has slowed down compared with the years before. Due to relatively low transaction costs compared to other markets, buying real property directly in Sweden as an investment is an attractive opportunity.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

Every individual and legal entity is allowed to buy property in Sweden. There are no restrictions on foreign ownership of land. There are no requirements to involve a domestic entity when buying property in Sweden, regardless of whether you are a foreign natural person or legal entity.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

The intended use of the property is of significance with regard to which official approvals and permits may be required. Foreign and national entities are subject to the same laws and regulations, and there are no specific requirements or restrictions based upon nationality. Depending on the intended use of the property, building and/or environmental permits may be required, and a foreign business owner may be required to register for tax and VAT and as an employer with the national taxation authority.

19. Could your firm assist foreign investors in

- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**
- **All legal aspects involved in these contexts?**

Hellström will be able to assist foreign investors in all legal matters, and we have extensive contacts with professionals regarding any other matter.

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TURKEY
GÜN + PARTNERS

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

In Turkey, the main laws that govern real estate are the Turkish Civil Code ('Civil Code'), Turkish Code of Obligations ('TCO') and land registry law (the 'Land Law').

The main stages and the required documents in a real estate transaction starting from the commercial negotiation phase until the execution of purchase agreement are as follows:

Commercial Negotiation: Parties to a property transaction can come together in many ways. Prospective buyers and sellers often find each other on the Internet, through newspaper advertisements of the real estate or, often, through real estate agents. The parties usually first negotiate the main economic aspects such as the price of the property or the warranties that shall be given by the seller to the buyer. If the parties want to include further provisions, they may enter into a preliminary sale contract. Considering that the sale of real estate must be in the form of a deed prepared by the public register offices and held by the General Directorate of Land Registry and Cadaster ('Tapu ve Kadastro Genel Müdürlügü'), commercial negotiation must be finalised before the registration of the transfer.

Preliminary Sale Contract: A preliminary sale contract is a contract where the buyer can be forced to sell and the seller can be forced to buy the real estate in line with the conditions set forth in the contract. Preliminary sale contracts for real estate must be prepared in the form of a deed prepared by a notary public or by the public register office. In practice, large real estate companies are known to execute preliminary contracts with their customers before the start of construction and define the details relating to the to-be-constructed real estate without following the form requirements mentioned above. These contracts are not preliminary sale contracts in the legal sense.

Sale Contract: Drafting lengthy and meticulous sale contracts for real estates is not a common practice in Turkey. The title of ownership is transferred by means of registration of the transfer of ownership before the public register with the mutual agreement of the parties. Since execution of the sale contract and the transfer of ownership by registration are carried out simultaneously before the public register, there is no explicit distinction between these two stages in practice. The parties are legally bound when the transfer of title is registered at the public register. The parties can register the change of title at any time.

Transfer of Title: Title of the real estate transfers to the new owner once it is registered under the name of the new owner. For the sale to be legally valid, the title must be registered under the name of the new owner at the public register. Failure to comply with this requirement renders the sale null and void. Information registered at the public register includes section and plot of the real estate, its surface area and qualification (indicating if it is agricultural land and if there is any building located on

the real estate), the identity of the seller and the buyer as well as the legal cause and date of transfer and past ownership registrations, easement rights and encumbrances, mortgages, annotated personal rights (e.g. lease contract, preliminary sale and purchase agreement) and information registered in the declaration part (in specific cases as set out in the legislation which may affect the real estate, such as the accessories of real estate).

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

The Civil Code defines ownership as the broadest right in rem which enables the owner to use, receive the benefits of and dispose of a real estate, subject only to the law. The owner has the right to reclaim it from anyone withholding it from him or her and to protect it against any unwarranted interference. Any title, transfer or charge on the ownership right must be registered with the local public register.

Our legal system permits different kinds of ownership which are explained as follows:

- Joint Ownership ('paylı mülkiyet'): Article 688 of the Civil Code regulates joint ownership. Joint ownership exists where several persons own a share in a real estate which is physically undivided. Unless otherwise stipulated, they are joint owners, each having equal shares. Each owner has the rights and obligations of ownership in respect of his or her share in the real estate, and the said share may be alienated and pledged by him or her, or distained by his or her creditors.

In joint ownership, the division is about the division of rights and obligations concerning the real estate, but not about the ownership itself. This view is based on the concept that some of the rights and obligations in the content of ownership are divisible while others are not. Although these divisible rights and obligations are capable of being exercised by any joint owner, the others need to be conducted by some or all of the joint owners acting together. For example, each joint owner can alienate his/her share without the other joint owners' consent. However, some rights and obligations are indivisible, such as the fundamental management tasks relating to the jointly owned real estate. In such cases, the joint owners must make decisions by unanimity or by appropriate majority to conduct specified duties concerning the real estate.

- Co-ownership ('elbirligi ile mülkiyet'): Article 701 of the Civil Code regulates the concept of co-ownership. Co-ownership exists where none of the co-owners can dispose of his or her share without the consent of the others and none of them holds a separate part of the real estate. Unless otherwise stipulated by law, co-owners must unanimously decide for management and disposal transactions. As long as the co-ownership lasts, no separation can be made and no one can dispose of a share.

- Condominium Ownership ('*kat mülkiyeti*'): As per Turkish Condominium Law ('TCL'), condominium ownership is a particular type of ownership on a terrain which is suitable for separate utilisation of multiple divided units as real estate and as savings depending on the land share. It is a private ownership relevant to the land share and to the common areas within the main real estate. According to TCL, independently usable units such as flats, apartments, offices, shops, stores, cellars and

storages can be made subject to independent ownerships although constructed over a unified land or building ownership right over the real estate.

Condominium owners are mutually responsible for the use of their independent, additional and shared parts in compliance with the requirements, and they are to pay the utmost attention in order not to disturb each other or violate each other's rights. Also, they are legally obliged to comply with the terms of the management plan. The terms concerning the debts of the apartment owners are applied to the people who live in the independent parts or to people having the right to reside or to the ones who take advantage of these parts continually in some way or another. Therefore, the people who do not pay their debts have joint and several liabilities for the obligation.

The majority of the residences in Turkey are condominiums. Condominium owners have certain obligations such as maintenance and protection of the main real estate and responsibility for damages, equal participation in the payment of any staff for cleaning, security and gardening, and obligation to give permission for necessary works.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Yes, the legal system in Turkey permits joint ownership of real estate. You may refer to our detailed explanations given under question 2 above. All legal entities (public or private) can be owners of real estate in Turkey.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

You may refer to our detailed explanations relating to the condominium ownership given under question 2 above.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

Title to real estate is evidenced by registration at the public register, which is kept by the General Directorate of Land Registry and Cadaster, and which is open to the public. Registration at the public register constitutes the acquisition of a right in rem over the relevant real estate.

As regards the domestic legislation, Article 1023 of the Civil Code enshrines the principle of good faith and the principle of trust in Public Register. Article 1023, which governs the situation of third parties acting in good faith, reads as follows: 'If a third party becomes entitled to a right to property or any other right in rem by way of relying, in good faith, on registers in the Public Register, such acquisition shall be protected.'

When the wording of Article 1023 is interpreted, it might be concluded that the registers in the public register inform the public about the status of the rights in rem over real estate. In this connection, third parties who rely on such registers, even if they are of an illicit character, and thereby acquire a right in rem are considered to be lawful right holders.

On the other hand, it should be expressed that the good faith safeguarded by the principle of trust in the public register is of a subjective character. Pursuant to Article 1024 of the Civil Code, those who have not acted in good faith – in other words, who were aware, or should have been aware, of the invalidity of the register – cannot avail themselves of the principle of trust in the public register. The notion of good faith manifests itself as such that the illicitness of the public register was unknown or that it was impossible to be aware of it under the relevant circumstances and conditions. Under Article 3 of the Civil Code, as the existence of good faith is a presumption, the concerned third party is not required to prove the existence of his or her good faith.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

Acquisitions of large-scale real estate portfolios are generally financed by a combination of equity and debt, in which case the lender would normally require a first degree mortgage (that is, a mortgage that has priority over all mortgages and liens except those imposed by law) over the relevant real estate. Alternatively, the relevant company may prefer to go public through an IPO. This method has recently proved to be successful. The IPO of Emlak GYO real estate investment trust (REIT), which is the largest REIT in Turkey, has attracted a record number of offers from domestic and institutional investors, evidencing the increasing interest in the market.

Apart from the reliable investments made by foreign investors on the basis of companies, investments in real estate investment funds ('REIFs') are also advantageous and safe. This is because there is a serious level of regulation over these funds. REIFs are exempt from corporation tax. They also have advantages in terms of withholding and income tax. Furthermore, the new possibility for foreign investors to acquire shares in the REIFs in our country is also a big advantage. Thus, when compared with buying real estate directly, investing in real estate funds and buying real estate indirectly could be safer, faster and less costly.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

Foreign real estate investors should act together with consultancy companies who know the region and the procedure. This is because the legal procedures, interest rates and purchase of real estate in most countries differ. Therefore, attention needs to be paid to the following during the process of choosing the real estate which carries the required characteristics for investment:

- Research should be carried out to determine the status of real estate. Analyses of the technical or legal problems which have been experienced should be performed. Any non-compliance with the relevant legislation which has emerged or may emerge needs to be resolved, the impact of this on the value of the real estate needs to be determined, and recommendations for a solution within the system in Turkey need to be put forward.
- The total area of the real estate acquired by foreign national real entities (those which are not companies) and their independent and permanent limited real rights may not exceed 10% of the surface area of the district which is the subject of private ownership, and also may not exceed 30

hectares per person in the country in general. However, the President has the authority to increase the limit of land which can be acquired by a person in the country in general to double this amount.

- Certain challenges and risks must be considered. For example, as stated below, when real estate is to be sold to a foreign person, the General Directorate of Land Registry and Cadaster communicates with the relevant army commandership to receive the required piece of information on such real estate. This practice causes loss of time to both the foreign buyer and the seller. In addition, despite the principle of equality between foreign investors and local investors under the law on foreign direct investment, the regulation on the land registry law imposes an application process to the governorship which needs to be followed by foreign legal entities when acquiring real estate in Turkey.
- It must also be noted that foreign real persons who have real estate in Turkey are required to renew their residence permit annually. This is also another aspect for foreign real persons that must be taken into consideration. Inheritance ambiguities and liquidation risk are also a complication for foreign buyers.
- The required criteria for real estate for the purposes of investment need to be formulated, and a place which is suited to the characteristics required by the investment should be selected.
- A project needs to be developed, and the practicality of the project should be verified and feasibility analyses should be performed.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

Real estate acquisitions in Turkey are subject to real estate transfer tax ('RETT'). A charge of 4% (2% for the transferee and 2% for the transferor) is applied either over the purchase price of the real estate or over the official value of the real estate for real estate tax purposes, whichever is higher in the determination of the RETT base. Despite 2% RETT liability on the transferor imposed by law, in practice, the 2% tax liability of the transferor would be borne by the transferee in addition to his/her RETT liability of 2%. Thus, 4% RETT related to the acquisition of the real estate would be paid by the transferee.

Real estate sale transactions are exempt from stamp duty. However, if the parties want to annotate a preliminary sale contract at the public register, then a stamp duty at the rate of 0.825% is payable. Additionally, a public register fee is payable of 0.59% of the contract price (provided that the contract price is not lower than the real estate tax value of the relevant real estate).

Sales of real estate owned by individuals acting with no commercial purposes are not subject to VAT. Real estate transactions taking place within the context of commercial activities (i.e. sales of real estate owned by companies) in Turkey are subject to VAT at the rate of 18%. Yet, for certain residential real estate with a net surface of less than 150 m^2, the VAT rate is 1%. The buyer shall pay the VAT to the seller, who in return shall pay it to the tax authorities. If a company is not active in the real estate business, it will be exempt from VAT depending on certain conditions (i.e. if the real estate is held for two years).
Under Article 80 of the income tax law, apart from real estate which was gratuitously acquired (e.g. inheritance or donation), if the real estate is sold before being held for five years as of its acquisition, capital gains tax will apply to the sale transaction. Capital gains tax is calculated based on the producer

price index (ÜFE) rates. The calculation is made based on the ÜFE rates of the date of acquisition and date of sale of the real estate. The tax rate varies between 15%, 20%, 27% and 35% depending on the value of the sold real estate.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

Under Article 80 of the income tax law, apart from real estate which was gratuitously acquired (e.g. inheritance or donation), if the real estate is kept for five years as of its acquisition, capital gains tax will be exempted while selling that real estate. Sales of real estate gratuitously acquired are always exempted from the capital gains tax.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

There are no general rules or restrictions on repatriation of funds from Turkey under normal circumstances involving a sale of real property, provided that the capital gains tax explained under question 8 and 9 above is paid following the transfer of the real estate.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

If sold, the new owner of the real estate automatically becomes a party to the lease agreement. For roofed business leases, the owner may only terminate the contract in very limited cases.

In accordance with Article 347 of the TCO, which regulates the lease agreements for roofed workplaces, with respect to a lease agreement with a definite term, unless the lessee gives notice of termination at least 15 days prior to the expiration of the lease agreement's term, the lease agreement will be deemed renewed for one year with the same terms and conditions, and the lessor may not terminate the agreement based on the expiration of the lease agreement. The same article regulates that, at the end of the tenth extension year, the lessor may terminate the definite-term lease agreement by serving written notice three months prior to the expiration of each year of extension, without cause.

As to indefinite-term lease agreements, the lessee may always terminate the lease agreement by giving 15 days' prior written notice without any reason whatsoever, whereas the lessor must wait until the end of the tenth year as of the beginning of the lease.

Moreover, the owner may terminate the lease agreement based on the below reasons:

- If the month's rent is not paid within 30 days from the owner's written notice, the owner may terminate the contract and evacuate the premises with a court order.
- If the rent is not paid two times within a lease year, the owner may request termination of the lease and evacuation of the lessee one month prior to the end of the term.
- If the lessee promises in writing to evacuate the premises at a specific date, the owner may request the evacuation one month prior to the end of the term from the court within one month of the promised date.
- If the new owner needs to use the real estate for his/her own or his/her next of kin, he/she should notify the lessee within one month of the acquisition, and with the notification he/she may request

the evacuation of the lessee within six months starting from the notification or within one month from the term's end.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

TCL regulates the limitations of using an independent section as an office space. Article 24/2 of TCL states that, in order to use a space that is registered as a residence in the public register as a cinema, theatre, coffee shop, music hall, pavilion, bar, club, dancing hall and such entertainment and meeting places, bakery, diner, patisserie and such food places, manufacturing plant, paint shop, print shop, shop, gallery, market etc., a unanimous decision of the condominium owners is required. This decision can be annotated to the public register at the request of one condominium owner. There is liberty to choose the purpose of the independent section, if the business that is wished to be opened in the space registered as a residence does not fall within the scope of mentioned provision.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million?

If a foreign investor buys a real estate in Turkey, he usually pays the following costs:

- Advising lawyer (due diligence): Legal due diligence in relation to real estate can be carried out by the buyer through researching the land registry record of the real estate at the public register, including the annotation, declarations and registration sections. The existence of a building use permit must also be researched since no mortgage can be granted over buildings without a building use permit. Depending on the agreement with the lawyers, they normally act for international clients on hourly rates. Most specialised law firms have ranges of rates between €250 and €400. Legal assistance for transfer for such due diligence would take about five to six hours.
- Estate agent: As per the relevant legislation, estate agents receive 2% + VAT of the real estate purchase price from both the seller and the buyer. In other words, for a purchase price of €5 million, €100,000 (+18% VAT) shall be paid by the buyer and €100,000 (+18% VAT) shall be paid by the seller. Parties may agree in writing that the estate agent fee will be fully paid by one party.
- RETT: Real estate acquisitions in Turkey are subject to RETT as explained above under question 8. A charge of 4% (2% for the buyer and 2% for the seller) would be applied either on the purchase price of the real estate or on the official value of the real estate for real estate tax purposes. Whichever is the higher amount would be taken into account in the determination of the RETT base. The 2% RETT liability of the seller imposed by law would in practice be borne by the buyer in addition to his/her RETT liability of 2%. Thus, in the case of a purchase price of €5 million, provided that the official value of the real estate is not higher, 4% RETT of €5 million (i.e. €200,000) would be paid by the buyer.
- VAT: sales of real estate owned by non-commercial individuals are not subject to VAT. Real estate transactions taking place within the context of commercial activities (i.e. sales of real estate owned by companies) in Turkey are subject to VAT at the rate of 18%. Yet, for certain residential real estate with a net surface of less than 150 m^2, the VAT rate is 1%. The buyer shall pay the VAT to the seller, who in turn shall pay it to the tax authorities. If a company is not active in the real estate business, it will be exempt from VAT depending on certain conditions (i.e. if the real estate is held for two

years). In our case, provided that the net surface of the real estate is not less than 150 m^2, 18% of the purchase price of €5 million (€900,000) should be paid as VAT.

- Public register fee. This is set at 3.3% of the tax value of the real estate (provided that such value is not lower than the declared purchase price). The buyer and seller share the cost equally; thus, the buyer pays approximately 1.65% of the real estate's tax value. Accordingly, we can say that 1.65% of €5,000,000 (since we do not know the tax value, we are taking into consideration the purchase price), i.e. €82,500, would be paid.
- Circulating capital fee (*'döner sermaye harcı'*): This is currently about TRY 65 multiplied by the local coefficient (between 0.5 and 2.5, depending on the location of the real estate). This should be paid jointly by the parties, but it is usually the seller who pays.
- Notaries costs: Unless a power of attorney is issued by the buyer for a third party to carry out the transactions before the public register, there will be no notary costs. However, if a third party needs to act on behalf of the foreign buyer, then a power of attorney is required by the public register. Notary costs depend on the volume of the power of attorney, but these costs are usually negligible.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

Owners of real estate are liable for certain taxes, namely:

- Real estate tax: this tax is paid to the competent municipalities. The real estate tax rate varies between 0.1% and 0.6% depending on the type of real estate (land, household or business premises). The rate for business premises is 0.4%.
- Environmental cleaning tax: This tax is equivalent to water bills in houses. However, business places should pay it to the competent municipality. Environmental cleaning tax is calculated based on the consumed water amount. The metropolitan municipalities calculate this tax as TRY 0.26 per cubic metre of consumed water, and the standard municipalities calculate the same as TRY 0.20 per cubic metre of consumed water. The person liable to pay this tax is the person using the real estate.
- Electricity and gas consumption tax: the rate for this tax varies between 1% and 5% of the price of electricity and gas consumed. Electricity and gas generation and distribution companies are exempt from this tax. Electricity and gas distribution companies collect the tax and transfer the money to the relevant tax office.

Real estate may also be subject to other taxes, such as entertainment tax or advertisement tax, which are paid to the municipality.

The following taxes should also be considered by real estate owners:

- Lease income tax: those who gain income by leasing their real estate should pay the lease income tax in the following year. Each year an exemption limit is set and lease gains under that limit are not subject to the lease income tax. It was set as TRY 3,900 (yearly) for 2017; therefore, for yearly lease gains equal to or less than TRY 3,900, no tax needed to be paid in 2018. The tax rate varies between 15%, 20%, 27% and 35% depending on the amount of the lease gain.

- Capital gains tax: if the real estate is sold before being held for five years as of its acquisition, capital gains tax will apply to the sale transaction. Sales of real estate that is gratuitously acquired are exempted from the capital gains tax. Capital gains tax is calculated based on the producer price index (ÜFE) rates. The calculation is made based on the ÜFE rates of the date of acquisition and date of sale of the real estate. The tax rate varies between 15%, 20%, 27% and 35% depending on the value of the sold real estate.

- Inheritance and transfer tax: individuals receiving Turkish property through inheritance are subject to taxes in Turkey. Inheritance tax is levied on the inheritance of each beneficiary at progressive rates. The rates vary between 1%, 3%, 5%, 7% and 10% depending on the taxable inheritance and the relationship between decedent and beneficiary.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

The costs of a professional property manager differ from real estate to real estate and are normally calculated on the basis of the rentable space of the real estate. Professional property manager costs vary from TRY 20 (approximately €3) to TRY 100 (approximately €16) per each apartment. The costs for the property management are usually charged to the lessees as part of the general operating costs.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country?

There are factors to consider when investing in real property, as the prospects of capital gains can vary depending on where the property is located. Potential purchasers should make their own financial enquires as to whether the investment best suits them. Purchasers should seek advice from licensed financial advisers, who are the only professionals allowed to give advice on financial products.

Common structures used for investing in real estate in Turkey are:

- Direct acquisition of real estates,
- Acquisition of shares of companies that own real estates,

Investing in REITs.

REITs: REITs have recently become the key players in the Turkish real estate market. REITs are not engaged in construction work in Turkey according to the capital market legislation. They could provide works to construction companies, to control them, and to enable them to operate at a certain level owing to their strong, accountable management structure and power of carrying out large projects. REITs in Turkey are strictly regulated by the Capital Markets Board, including in relation to minimum capital requirements (TRY 30 million), permitted investments and certain portfolio restrictions. The IPO of Emlak GYO (REIT), which is the largest REIT in Turkey, has attracted a record number of offers from domestic and institutional investors, evidencing the increasing interest in the market. This interest placed the transaction in the top five IPO transactions by value in Turkey to date.

Institutional investors: Investment by institutional investors is not very common in Turkey, as the market has been dominated by large family enterprises until recently. However, there is an increasing number of institutional and international investors that are active in the market.

Private investors: Private investors have played a major role in the market so far. However, more recently, REITs are taking over their position in the market.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

In Turkey, a body of laws composed of land law, foreign direct investment law, military forbidden zones and security zones law, as well as the regulations issued by the relevant ministries, should collectively be taken into account with regard to any real estate acquisition in which foreign individuals or legal entities are directly or indirectly involved.

A foreign-related real estate acquisition in Turkey may be realised in three different manners:

- The acquiring party may be a foreign individual who does not have Turkish nationality,
- The acquiring party may be a foreign legal entity which is incorporated outside of Turkey subject to the applicable foreign law, or
- The acquiring party may be a Turkish company incorporated in Turkey in accordance with Turkish law whose shares are partly or wholly owned by foreign individuals and/or legal entities.

The total area of real estate and limited rights over real estate that a foreign individual can acquire throughout the country may not exceed 30 hectares. Specifically, this area may not exceed 10% of the country where the respective real estate is located. However, the President may increase this size up to 60 hectares if it is in the public interest. The President determines which countries' citizens are allowed to acquire real estate in accordance with the limitations under the law.

Foreign legal entities (entities incorporated and operating under the laws of foreign countries) may also acquire real estate and limited rights in rem over real estate in accordance with provisions of certain laws, such as tourism encouragement law, petroleum law and industrial zones law. Those restrictions do not apply for establishing mortgages over an immovable in Turkey in favour of foreign legal entities. Foreign legal entities wishing to acquire real estate or limited rights in rem in Turkey must apply to the governorship where the real estate is located, by presenting the required documents for their approval. To grant the approval, the governorship must determine whether the real estate is in a military forbidden zone or a military security zone. If so, the governorship will not approve the acquisition.

While companies with foreign investment established in Turkey in accordance with the provisions of the Turkish Commercial Code (TCC) and hence deemed to have Turkish nationality are not subject to any restrictions in the acquisition of real estates and limited real rights as a general rule, some exceptions to this rule are laid down in article 36 of the land law. Within this context, in the first three paragraphs of the mentioned provision, it is stated that where the majority of the shares initially belong to or afterwards

are transferred to foreign partners or where the power of appointment or dismissal of the management organ belong to them, those companies may acquire and use real estate or limited real rights to achieve the goals defined in their articles of association. Furthermore, they need to get permission if the real estate or the limited real right is within the boundaries of military prohibited zones, military security or special security zones. In the fourth paragraph of the same article, it is stated that those foreign-invested companies out of the scope of the first three paragraphs may acquire and use the real estate and limited real rights under the provisions that domestic capital companies are subject to.

Accordingly, special permissions are required in the following cases:

- Permission of the commission of the relevant governorship if the land is located in special security areas.
- Permission of the General Staff (Turkish Armed Forces) or the commandership that has been authorised if the land is located in a high military zone or a security zone.

In light of the foregoing, there is no way to organize a domestic entity for the purchase on a valid legal structure in order to circumvent the restrictions set forth by the relevant legislation, considering that once the shareholding or management structure change as explained above, the company will be subject to article 36 of the land law.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

There are no official approvals required of a foreign investor acquiring real estate in Turkey (other than as referred to under question 17 above) that do not apply equally to a resident.

19. Could your firm assist foreign investors in

- Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?
- Developing construction projects?
- All legal aspects involved in these contexts?

As a law firm, Gün + Partners offers legal assistance to a foreign investor interested in investing in real estate in all aspects of real estate projects, as the case may be with external legal professionals in tax law and administrative law.

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UKRAINE
ASTERS

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

In Ukraine, details of registered properties are held in the state register of the ownership rights to real estate. The register contains title information relating to registered real estate, including the details of the registered owner, the address and description of the property, and details of any registered third parties' interests such as mortgages, leases, liens, arrests etc.

Potential purchasers and sellers may appoint agents or find out the offers on their own. The parties would normally agree heads of terms between themselves setting out the basic terms of the transaction. The parties then may prepare the draft sale and purchase agreement on their own, or with the assistance of their legal consultants and/or a notary. Assuming that both parties have agreed on the above draft sale and purchase agreement, then each respective party (or their authorised representatives) would normally appear on the agreed date and time before the notary for signing of the agreement and its notarisation.

The formal registration of the ownership rights of the purchaser in the register is usually performed by the notary immediately after signing by the parties and notarisation of the sale and purchase agreement, or later, subject to provisions of the sale and purchase agreement. The parties may agree on the timing and conditions for the transfer of the ownership rights to the purchaser. For example, the transfer of ownership rights may be subject to certain conditions precedent (e.g. full payment, additional owner's works regarding the property, obtaining of consent from mortgage holder if applicable etc.). In such situations, the purchaser's formal ownership will be registered later, subject to provisions of the agreement.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

The Ukrainian legal system permits different sorts of ownership, whether full or partial.

The building and the underlying land plot may be owned by one person or may have different owners, each owning part of the building or land plot (joint ownership). Such joint ownership may be in equal parts or may be divided in kind with indication of the part of the land plot or part of the building owned by each person.

For example, the owner of the building may sell a part of the building, resulting in joint ownership of the building divided in kind. The owner may divide the building into the separate real estate objects (e.g. each floor level of the building may become a separate real estate object, subject to technical possibility

of separate functioning, prior to sale). After such division, each buyer may become the sole owner of the separate floor level. In addition, two or more buyers may purchase the separate floor level resulting in its joint ownership. In multi-apartment buildings, condominiums and townhouses, the owners usually have right of ownership to each separate unit. At the same time, there are no limitations regarding the possibility of ownership to the part of such real estate objects or through holding shares in the legal entity with registered right of ownership to such property.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Yes, the Ukrainian legal system permits joint ownership of the real estate property. Generally, any entity having the legal capacity to enter into a contract can own the real property, with certain exceptions regarding title to agricultural land and foreign persons.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

Ukrainian land law is based on the principle whereby the owner of the building is also the owner of the underlying land, or its part directly underlying the building, in cases when the area of land exceeds the area of building. Nevertheless, formal ownership of the underlying land is not automatic. Therefore, in practice, it is possible to have different owners of the land and the building erected on it. The seller may alienate the building and retain formal ownership to the land. However, under the imperative rule of law the owner of the building is the owner of the underlying land or its part on which the building is erected. Formally, the land and the building are separate real estate objects.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

Yes, information about ownership rights to immovable property should be in the register. Certain contracts and acts in respect of immovable properties are to be registered in the register, e.g. arrests, mortgages, liens, leases etc.

Until 2013, the ownership rights to land and other immovable property were registered in separate formal registers. Therefore, if the ownership rights of the seller appeared before 2013, information confirming its title to the property should be obtained from historic registers.

A good-faith purchaser may practically rely on the accuracy of the information contained in the register. However, for the purposes of real estate acquisition, it is recommended to engage a local consultant to carry out the legal audit of the property. In practice, for purchase decision-making, not all needed information is available in the register and the state land cadaster. The entries in the register confirm information about the current owner of the property and registered encumbrances. Information about pending or ongoing litigation, non-registered third-party interests, historic transactions and/or other possible issues or defects which may influence the decision regarding purchase may be obtained from an independent legal audit performed by a qualified consultant.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

Purchasing of real estate may be structured through asset or equity acquisition. Asset acquisition is subject to transaction payments in Ukrainian currency (hryvnia). The buyer will be required to open a bank account in Ukraine and transfer financial resources into it for the purposes of transaction payments. Equity acquisition may be structured without transfer of funds to Ukraine if the purchaser acquires shares in a local or non-resident entity holding ownership rights to real estate in Ukraine directly or through its Ukrainian subsidiary.

Purchases can be financed through real estate purchase contracts. For the Ukrainian banks, mortgages are the typical way of coverage.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

Ukrainian tax law is based on the principle whereby foreign legal entities owning real estate in Ukraine are obliged to have permanent representation in the country for the purposes of operation of such real estate and taxes. Therefore, foreign legal entities should consider the acceptable way of local representation (permanent representative office, local company, local agent).

Foreign individuals will be obliged to register as the taxpayer with the tax authority for tax purposes.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

There is no real property transfer tax in Ukraine. The purchasing of real property is subject to 1% state pension fund tax and 1% state duty.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

The sale of residential real estate by an individual is exempt from personal income tax if the individual owned the property for more than three years before the sale, and provided that tax exemption is applicable only to the first such sale during one calendar year. The mentioned tax exemption for individuals is not applicable to non-residential real estate. There are no limitations regarding buying and selling property on a short-term basis.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Subject to money laundering, tax and bank regulations there are no general restrictions on repatriation of funds.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease

contract(s) or which restrictions have to be taken into account?

The lease agreements will remain in effect. The new owner and the existing tenant(s) will benefit and comply with the rights and obligations under the existing lease. Neither party can terminate the lease unilaterally unless the lease agreement contains relevant termination provisions to this effect.

According to Ukrainian law, the tenant has a pre-emptive right to purchase the leased property in case of its sale by the owner. We recommend obtaining written statements from the tenant(s) confirming refusal (waiver) of the pre-emptive right prior to acquisition. Such waivers may be included into the existing leases.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

Changing of the use of the building from residential to office space (non-residential) or vice versa is not prohibited subject to relevant official approvals from construction regulation authorities and city planning regulations. However, we recommend checking precisely for every purchase separately. Issues regarding land zoning/designation, historic status of the building etc. may apply.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- **notarial costs?**
- **land register?**
- **real property transfer tax?**
- **advising lawyer (due diligence)?**
- **estate agent?**
- **others?**

Notarial costs: Freely determined by the parties.
Real estate register: from around €15 for registration within five business days to €600 for registration within two hours.
Real property transfer tax: not applicable.
Advising lawyer (due diligence): As agreed but normally the fee is based on hourly rates. Specialized law firms have rates around €100 to €350 per hour. The final legal cost depends on the nature of the case and the complexity of the transaction but typically, it is in the range of €15,000 to €25,000 in a €5 million transaction.
Estate agent: Not obligatory to engage the estate agent in Ukraine. If engaged by purchaser, the level of costs would depend on the deal (in practice, between 1% and 3%).
Others: State pension fund tax – 1% (€50,000) and state duty – 1% (€50,000).

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

Owners of real estate in Ukraine are obliged to pay the land tax and the tax for real estate (not land). The

amount of the land tax and the tax for real estate are established every year by the local municipalities and may be different from city to city.

The land tax cannot exceed 3% of the normative value of the land per year (normative value is usually less than market value of the land). Usually the land tax for residential and commercial land ranges from 1% to 2% of the normative value of the land per year.

The real estate tax cannot exceed 1.5% of the official minimal salary per square metre per year. In 2019 the real estate tax should not exceed approximately €2 per square metre per year (e.g. for a building having 1,000 m^2, the real estate tax for 2019 shall not exceed approximately €2,000). Residential apartments exceeding 300 m^2 and residential houses exceeding 500 m^2 are subject to additional real estate tax in the amount approximately equal to €800 per year. The above figures in euros are subject to currency exchange rate fluctuations between the euro and the Ukrainian hryvnia.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

A property managing agent may be appointed. Their charges will depend on the level of service required and the type and number of properties that they are being asked to manage.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country directly in real estate?

- **through real property funds, open or closed ones?**
- **through other clear and secure financial products?**
- **In commercial real estate or in residential property?**

The most transparent form of investment at present is direct purchase. As regards commercial real estate it is also rather common to invest via equity deals; enhanced legal and financial due diligence is recommended regarding such deals.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

Ukrainian legislation does not contain the mentioned restrictions. Foreign investors are generally allowed to buy property in Ukraine without hindrance, except as regards agricultural land. Certain limitations apply regarding possibility of privatisation of the state and municipal property or purchase of the real estate by entities whose beneficiary owners are from Russia. Individuals or companies can purchase property without necessarily needing Ukrainian nationality or a registered office in Ukraine.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

Sale of state-owned land to foreign legal entities is subject to prior consent from the Parliament. Sale of land owned by the municipality to foreign legal entities is subject to prior consent from the Government. In practice, prior obtainment of such consents is a rare, complicated and time-consuming process. Therefore, for the purposes of state and municipal land acquisition, foreign investors usually use local Ukrainian companies. Certain limitations may apply regarding the possibility of land purchase by entities from the aggressor country. In other cases, foreign investors need to comply with the same procedures as apply to Ukraine-based investors. This may include permissions in relation to city planning and construction consents and environmental impact assessment as appropriate. There would not be any additional requirements placed on the investor because of its country of origin (except, in some circumstances, Russia). The approvals and consents required would depend on the proposed use of the land but the requirements would be no different from those applicable to Ukrainian investors.

19. Could your firm assist foreign investors in

- Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?

- Developing construction projects?

- All legal aspects involved in these contexts?

Yes, our firm is capable in advising foreign investors in all of the above aspects should they require our assistance.

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UNITED KINGDOM
WEIGHTMANS LLP

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

A seller usually markets its property by engaging property agents who will advertise the property for sale and who will facilitate inspection of the property on enquiry by prospective buyers. A property cannot be marketed for sale unless the seller provides an Energy Performance Certificate certifying that the energy efficiency of the property has a rating of E and over.

The parties would normally agree the basic terms of the transaction such as the price and the date of completion of the transaction via the property agent (if applicable) but can agree terms direct. Such basic heads of terms are generally not binding and either party can withdraw from the transaction at anytime before the contract for the sale of the property is entered into and exchanged.

Having agreed terms, the buyer will, if necessary, arrange finance for the purchase, usually by approaching lending institutions. The lending institution will arrange for the property to be surveyed to ascertain the value of the property. The buyer should ensure that the property is surveyed by suitably qualified surveyors to examine the physical state and condition of the property and should be aware that a valuation survey arranged by the lending institution may not be sufficiently detailed.

If satisfied, the lending institution will issue an offer of finance to the buyer with terms for repayment of any borrowing and a requirement that if there is default in repayment, the lending institution will have the right to sell the property and recover the borrowing from any proceeds of sale, such right to be secured by way of a legal charge over the property.

The seller and buyer would normally instruct conveyancers (usually but not always solicitors) to act on their behalf in relation to the legal transaction. Details of the conveyancer's legal costs and anticipated disbursements, Land Registration fees and statutory taxes payable in respect of the transaction should be requested at the outset of the transaction.

There are generally four basic stages to a property transaction:

1. Pre-contract
2. Exchange
3. Pre-completion
4. Completion

1. Pre-contract

The seller's conveyancer will supply details of the seller's title proving the seller's ownership of the property, replies to enquiries in relation to the property, and the form of the contract for sale.

The buyer's conveyancer will investigate the title and carry out conveyancing searches which include making enquiries with the local and planning authorities and search of public registers as to any matters that may affect the property and will report the results to both the buyer and the lending institution (if any) or its solicitors.

The parties' conveyancers will negotiate the contract for sale having regard to such investigations. Where a transaction concerns leasehold interests, the contract may be conditional on obtaining the consent of the landlord or other third party.

2. Exchange

Following satisfactory the reports, the parties will enter into a legally binding contract to sell and buy the property on a date specified in the contract and the parts of the contract signed by the respective parties will be exchanged by the parties' conveyancers in accordance with established protocols. The contract for sale must be in writing and satisfy certain statutory requirements in order to be valid.

On entering into the contract, the buyer will usually pay a deposit of 10% of the purchase price to the seller. This deposit will be repaid to the buyer if the seller defaults on completion, but will be forfeited if the buyer defaults on completion.

On entering into the contract (subject to any conditionality or other provision to the contrary in the contract), the parties will be contractually bound to complete the sale and purchase on the date specified in the contract regardless of the state and condition of the property at the date of completion.

Subject to any provisions to the contrary in the contract, the buyer should arranging building insurance for the property following entering into the contract.

It is not always necessary to enter into a contract for sale, and parties can proceed straight to completion.

3. Pre-completion

The buyer's conveyancer will prepare the deed of transfer of the property and the transfer (and if appropriate any legal charge) will be executed by the parties in readiness for completion.

If the seller's interest in the property is charged, the seller's solicitors will obtain a redemption statement from the seller's lender setting out the monies required to be paid to the lender for release of the charge over the property and will make arrangements for the deed of release to be signed by the lender to enable completion of the sale free from the charge

The buyer's conveyancer will carry out pre-completion searches and confirm the practical arrangements for completion with the seller's solicitors, including ensuring satisfactory undertakings are given by the seller's solicitor to discharge and remove any charge registered by the seller affecting the property, and to send the title documents and the transfer to the buyer's solicitor immediately following completion.

Where the transaction requires the consent of any third party or is subject to any conditionality, completion will not take place until such consent or conditionality is satisfied and there may be

contractual provisions to procure satisfaction of such conditionality by the date of completion.

The seller's conveyancer will supply a statement setting out the monies required to be paid by the buyer on completion. The buyer's solicitor will then send the buyer a completion statement, including costs and disbursements and taxes required to be paid in respect of the transaction following completion. If the purchase is being financed by a loan, the buyer's solicitor will request funds from the lender and the balance from the buyer

4. Completion

On the completion date, the buyer's conveyancer will arrange for the agreed completion moneys to be transferred to the seller's conveyancer to be held to the order of the buyer's conveyancer.

Both conveyancers will then complete and date the transfer in accordance with established protocols, and the completion monies will be released to the seller's conveyancer. The buyer's conveyancer will also complete the legal charge (if any). The seller's conveyancer will arrange for keys to be released to the buyer and the buyer will take possession of the property.

If the seller's interest in the property is charged, the seller's conveyancer will transfer to the seller's lender the monies required to release the property from any charge and comply with the undertaking given to the buyer's conveyancer in relation to the charge. Both conveyancers will comply with undertakings given in relation to the title deeds.

If the seller's title to the property is registered at the Land Registry, the legal estate remains vested in the seller until registration of the buyer's title has been completed, although once the buyer's application for registration of its title has been completed at the Land Registry, the effects of registration are backdated to the date of the application for registration. Until completion of the registration the seller will hold the property on trust for the buyer. If the property is not registered at the Land Registry, the legal estate passes from the seller to the buyer on completion.

5. Post completion

Where the property is situated in England, the buyer must, within 14 days of completion, file a Stamp Duty Land Transaction Return to notify HM Revenue & Customs (HMRC) of the transaction and pay stamp duty land tax on the price if applicable. Where the property is situated in Wales, the buyer must, within 30 days of completion, file a Welsh Land Transaction Return to the Welsh Tax Authories and pay Welsh Land Transaction Tax. The buyer's conveyancer will prepare and submit the return where authorised by the buyer. Penalties apply in the event of default.

The buyer's conveyancer will apply for registration of the transfer (and legal charge if any) at the Land Registry. Until completion of registration of the buyer's title, the seller of registered land will continue to hold the legal title, but will hold this on trust for the buyer. If the property is unregistered, the legal estate will pass to the buyer on completion but the transfer will trigger compulsory first registration at the Land Registry. If the buyer fails to apply for compulsory registration at the Land Registry within 2 months of completion, the transfer of the legal estate will be void. The legal estate will revert to the seller who will hold this on trust for the buyer. There are time periods for the application to the Land Registry

2. Does your legal system permit different sorts of ownership like ownership of the whole land and construction or ownership for example only of one unit or lots of units (condominium) of the improvements?

There are only two forms of ownership of a legal estate in land, namely ownership of a freehold estate or ownership of a leasehold estate.

Ownership of the freehold estate in land is effectively absolute ownership. Subject to any matters affecting the title, the freeholder will own the whole of the land and buildings within the freehold estate.

The owner of the freehold estate, as landlord, may grant a lease to a tenant giving the tenant a right of exclusive possession and use of the land for the time period (the Term) granted in the lease. The lease can relate to the whole or any part of the property, and can include the whole or any part of the structure or fabric of a building or part of a building. The lease will contain provisions for the tenant to pay rent to the landlord, and provisions regulating the repair, alteration, insurance, user, rights of the tenant to use adjoining land, rights of the landlord in respect of the leasehold property and transfer of the leasehold property, and commonly allows the landlord to control such matters by requiring the landlord's consent in certain circumstances. In the event of breach of such provisions the lease will contain provisions for termination of the lease and other remedies for default. A lease is a legal estate in land and can be transferred and sold by the tenant.

Historically where parties enter into an agreement to perform a positive obligation (such as an obligation to keep property in repair), such obligation is only enforceable between the parties to the agreement. This means that the burden of positive obligations cannot be enforced against new owners of freehold property. Whilst the burden of positive obligations can be enforced against new owners of leasehold property (by virtue of the relationship of landlord and tenant) the value of leasehold property reduces as the term runs downs.

To address the problem of enforceability of positive obligations and some of the issues inherent in leasehold property, Commonhold ownership was introduced in 2002. This is not a new type of estate in land (in the sense of freehold or leasehold). It is a type of freehold interest. Commonhold combines freehold ownership of a single property within a larger development, with membership of a company limited by guarantee (commonhold association) that owns and manages the common parts of the development.
However Commonhold ownership is rare; the legislation is complex and lenders in particular were not convinced that commonhold would offer sufficient security. The Government has recently published its consultation paper to examine why commonhold has not been successful with a view to proposing to reforms

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Yes. In England and Wales there are two main types of joint ownership in property, joint tenants and tenants in common.

Under a joint tenant arrangement, each individual owns the whole of the property as opposed to a share in it. When an individual dies the property passes to the surviving joint tenant automatically. This would be the case even if the deceased person has left a will; the property will still pass to the surviving tenant.

In contrast, where there is ownership as tenants in common, each owner owns a separate and distinct share in the property in accordance with specfied percentages. On the death of one of the tenants in common, their share can pass to their chosen beneficiary under a will or otherwise.

Joint tenancy is commonly adopted between married couples, as there is believed to be no advantage in defining separate shares in the property. Tenancy in common however can be used in situations between business partners, unmarried couples and even friends as it can be the desired effect for each owner.
Property can be owned by individuals, companies, trustees and partnerships

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well and/or is it possible to have different owners of the land and the building erected on it?

It is implied that the owner of freehold land owns all of the buildings erected on it and any mineral rights below the surface of the land. It is possible for this to be expressly excluded in the title. Exclusion of mineral rights and rights of light and air (which have consequences on the ability to develop the property) are not unusual. However registration of rights to mines and minerals on the registered title are not compulsory, and the presumption that registered land includes mines and minerals can be rebutted by contrary evidence.

It is possible to have different owners of freehold land and buildings, by precisely describing the extent of the property in the transfer deed. By way of example there may be different freehold owners of upper parts of a building and lower parts of a building (known as Flying Freeholds). However this is not common due to the problem of enforceability of positive obligations for repair and payment for maintenance of structural parts of the building against other owners.

The extent of the ownership of the land and buildings within leasehold land will be set out in the lease. The lease can relate to the whole or any part of the property, and can include the whole or any part of the structure or fabric of a building or part of a building, often shown by way of plan.

It is possible to have different owners of leasehold property; the owner of a leasehold interest can grant sub-leases provided the duration of the sub-lease is shorter than the duration of the lease out of which it is derived.

5. Is the land and/or the building registered in a formal register and is a good faith purchaser protected with regard to the entries in this formal register?

The vast majority of land in England and Wales is registered.

HM Land Registry holds title information relating to registered properties, including the details of the registered proprietor (being the owner), the address/description of the property, the legal estate held by the registered proprietor and details of any registered third party interests such as mortgagees, and details of restrictions, rights or covenants.

A transfer of land already registered at the Land Registry must be registered at the Land Registry. The grant of a leasehold interest must be registered under its own title number at the Land Registry if it is a lease of a term of seven years or more.

Ownership of registered land is evidenced by the title registers held by the Land Registry. Selling land that is registered simplifies conveyancing, making transactions easier and with potentially less cost. A bona fida purchaser acting in good faith is protected in regards to anything that was not published on the registered title of the land, save for matters or third party interests which do not require registration or noting on the registered title and would be discoverable on a reasonable inspection of the property. In order to protect a purchaser as far as possible, his/her conveyancer would make enquiries of the seller and would investigate the title to the property in order to keep the risk of future problems down.

Not all property has been registered, as historically ownership of property was evidenced by title deeds. The national system for registration of ownership was brought into force in 1925.

On the purchase of land that is not yet unregistered the seller must show a good root of title of at least 15 years to prove the seller owns the land. This can be found in the title deeds and epitome of title. When unregistered land is purchased, there are rules for compulsory first registration of any freehold land transferred for value, and leases assigned with more than seven years to run. Failure to comply with compulsory first registration rules will render the conveyance of the legal estate of unregistered land void

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

Property investors requiring finance generally approach established lending institutions such as banks and building societies.

The lender will require a legal charge over the property to secure the borrowing. This will grant the lender powers to arrange for the property to be sold and the proceeds of sale applied for the repayment of the loan, if there is an event of default on the part of the borrower. The legal charge will be registered at the Land Registry at the same time as registration of the deed of transfer.

The legal charge will contain provisions designed to ensure the property does not fundamentally change during the life of the borrowing so as to reduce the value of the property. It will contain provisions as to insurance and restrictions against alterations, granting of leases, and assignments, except with the consent of the lender

Depending on the type of property, the type of investor and the investor's financial status, the lender may require a fixed charge over plant and machinery located at the property, assignment of key documents relating to the property, assignment of rental income, a floating charge over the assets not covered by the legal mortgage/charge, assignment and fixed charges, and guarantees.

The lender will generally issue an offer letter or facility agreement setting out the main commercial terms of the funding in advance of formal charge documentation, including repayment terms and financial covenants relating to the rate of loan to value of the property and the events of default. The investor must consider such commercial terms carefully with its financial advisors and where appropriate negotiate such terms with the lender.

The offer letter/ facility agreement will contain preconditions including requirements for valuation and structural reports of the property and satisfactory certificates of title.

A prudent borrower will ensure that the necessary financing offer is satisfactory and, if so, accepted and that preconditions are satisfied at exchange stage, or are capable of satisfaction before completion, as any delay or failure to complete will entitle the seller to claim for penalties for delayed completion or damages for failure to complete.

III. Costs for transaction

7. What tax aspects are directly involved in a purchase of real property, for example real property transfer tax and what is the percentage of it?

The principal "property" taxes in relation to the purchase of real property in England and Wales are VAT and Stamp Duty Land Tax in England and Welsh Land Transaction Tax in Wales

England

In England, on the purchase of any real estate interest, the purchaser has to pay Stamp Duty Land Tax (SDLT) based on the purchase price (which is widely defined to include any non-cash consideration or assumption of debt).

Where the parties to the transaction are located is irrelevant. SDLT is a self assessed tax for which the "purchaser" (the person obtaining the benefit) is liable for paying the tax and complying with the reporting obligations.

A land transaction (SDLT) return has to be prepared and submitted to HM Revenue & Customs along with payment of the SDLT within 14 days of completion of the transaction, with interest and penalties for any late filing or payment.

The rates differ depending upon whether the transaction involves residential or non-residential (commercial) property interests. Where the transaction involves a mixture or residential and commercial properties it is subject to the non-residential rates.

A guideline as to the current SDLT thresholds in relation to purchases of non-residential freehold land (and premiums in relation to non-residential leasehold transactions) is below:

CONSIDERATION	SDLT Rate
Not more than £150,000	0%
More than £150,000 but not more than £250,000	1%
More than £250,000 but not more than £500,000	3%
More than £500,000	4%

In relation to leases, SDLT is charged on both the premium (as if it were a freehold transaction) and the net present value (NPV) of any rent.

Rent is charged at 1% of NPV of total rent due over term (discounted at 3.5%) in excess of nil rate band (2% in relation to the NPV in excess of £5m in relation to commercial leases).

Wales

In Wales, the purchase of any real estate interest is subject to Welsh Land Transaction Tax (LTT). This operates on a similar basis to SDLT but with the land transaction return to be submitted to the Welsh Tax Authority within 30 days of the transaction.

A guideline as to the current LTT thresholds in relation to purchases of non-residential freehold land (and premiums in relation to non-residential leasehold transactions) is below:

CONSIDERATION	LTT Rate
Not more than £150,000	0%
More than £150,000 but not more than £250,000	1%
More than £250,000 but not more than £1,000,000	5%
More than £1,000,000	6%

In relation to non-residential leases, LTT is charged on both the premium (as if it were a freehold transaction) and the net present value (NPV) of any rent as follows:

NET PRESENT VALUE	LTT Rate
Not more than £150,000	0%
More than £150,000 but not more than £2,000,000	1%
More than £2,000,000	2%

Details as to the current SDLT thresholds and rates in relation to purchases of residential property interests can be found at the following link (note that there are higher rates for the purchase of second homes, certain residential investment properties and the purchase of residential properties by corporate entities) https://www.gov.uk/stamp-duty-land-tax/residential-property-rates

VAT

In relation to the acquisition of non-residential properties, Value Added Tax (VAT) may also be payable on the acquisition. The principal cases where VAT is payable are the purchase of the freehold of new (less than 3 years old) or uncompleted commercial buildings and the purchase of non-residential properties that have been "opted to tax" by the seller. Any VAT payable on the purchase may be recoverable depending upon the purchaser's intended use of the property.

8. Do you have to hold the property for a specific time with respect to tax reasons or is it in this context no problem to buy and sell property on a short term basis, for example within a year?

If and when a chargeable asset (such as UK property) is sold or gifted and that asset has increased in value, tax may be charged on the gain / profit.

The UK tax implications differ depending upon whether the property is held as a trading or investment asset. This is ultimately a question of fact based upon a number of factors. The tax rules and potential applicable reliefs also differ depending upon whether the property is residential or commercial.

Buying and selling a property within a short time frame may indicate a trading rather than investment motive, meaning any profit on the disposal may be subject to UK income tax / corporation tax rather than capital gains tax.

The UK tax rules have also recently changed so that from 6 April 2019 the disposal by non-UK residents of all UK real property (inclding commercial properties and indirect disposals) are brought within the UK capital gains tax net (but in relation to the disposal of commercial properties and indirect disposals this will generally only be on any post 5 April 2019 increases in value of these assets).

Specific tax advice would need to be sought from a suitably qualified tax adviser.

Any income (eg rental income) generated from UK real estate is subject to UK income tax / corporation tax.

9. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Subject to money laundering and tax regulations there are no general restrictions on repatriation of funds.

10. If you buy real estate that is leased to one or more persons are you allowed to terminate the lease contract(s) or which restrictions have to be taken into account?

When a landlord transfers its reversionary freehold interest to another party, that interest is sold subject to any leasehold interests. The leases would therefore remain in force. The new landlord and the existing tenant would benefit from and be subject to the same benefits and obligations under the lease. The lease cannot be terminated unilaterally by the landlord unless the lease contains termination provisions (including circumstances where the tenant is in breach of its obligations) or break provisions to this effect.

Statutory provisions regulate termination and possession of both commercial and residential leases.

Unless excluded by the consent of the landlord and the tenant before the grant of the lease, tenants of business premise have rights of renewal of their leases under statutory provisions. If the terms of the new lease are not agreed between parties, the courts can make an order as to the terms of the new lease.

There are several types of residential tenancies. At the end of a fixed term assured tenancy, the tenant has the right to remain in the property unless the landlord can establish a statutory ground for possession. More commonly, an assured shorthold tenancy, which is a type of assured tenancy, allows the landlord to repossess the property at the end of the term, subject to compliance with relevant statutory conditions and procedures.

It is an offence to evict an occupier of residential premises without a court order or to harass an occupier of residential premises

Tenants of long leasehold residential flats and houses have complex statutory rights of enfranchisement (extending the term of the lease or right to acquire the freehold) and pre-emption (right of first refusal to buy).

11. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so or is it not allowed at all?

The change of use of a building from residential use to office space is a material change of use from Class C3 to Class B1 which requires express planning permission from the planning authorities.

The change of use of a building from office space to residential use is a material change of use, but normally does not require express planning permission as this is deemed to be granted as a permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015.

However the local planning authority can make a direction withdrawing the permitted development right so that such change of use will require express planning permission from the local planning authority. A local search against the property will reveal if such direction has been made in relation to the location of the property.

A planning permission or a planning obligation affecting the property may contain conditions restricting the use or change of the property and planning searches will reveal if such conditions exist.

The title of the property may contain restrictions as to the use of the property, and the title needs to be investigated to ascertain the position.

Where the property is leasehold, the lease often contains provisions regulating the use of the property, and usually provides that any change in use of the property (if permitted) will require the consent of the landlord. There is no real property transfer tax (SDLT/LTT) on the change of use of a building (although certain reliefs granted on the acquisition of the property based upon the relevant use could be clawed back or withdrawn). There may however be VAT implications and specific advice would need to be sought from a suitably qualified VAT adviser.

12. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of EUR 5 Million, particularly
– notarial costs?
– land register?
– real property transfer tax?
– advising lawyer (due diligence)?
– estate agent?
– others?

Obviously it depends on the exchange rate (from time to time) between the Euro and the Pound but:
Notarial costs: It is thought that there would not be any English notarial costs although it is likely that there may be foreign notarial costs relating to the country of origin of the investor
Land registry fees: the land registry fee would be around EUR 1,150
Real estate transfer tax:
The rates of Stamp Duty Land Tax and Welsh Land TransactionTax vary depending on whether the property is freehold or leasehold, commercial or residential, in England or in Wales. With regards to residential property the rates vary depending on whether purchaser owns more than one residential property and whether the purchaser is an individual, or a corporate entity. Please refer to the detailed reply to Question 8
Advising lawyer (due diligence): This would depend on the nature of the proposed transaction and the level of work involved although it is thought that legal costs would be around EUR 25,000 – 30,000
Agent: The level of costs would depend on the deal. The agent can charge up to 2% of the value of the transaction but in some instances, land agents will charge up to 15% if they had introduced the land to the purchaser.

IV. Costs for holding real estate

13. What tax aspects are directly involved when holding a property, for example yearly land tax after the transfer of ownership and what is the percentage of it?

Business rates need to be paid by occupiers of most non-domestic/business properties.

These are calculated and collected by the local council and are based on the rateable value of the property, which means the open market rental value on the relevant valuation date (generally updated every 5 years with the last one being 1 April 2015), based on an estimate by the Valuation Office Agency (VOA).

There are certain rate relief schemes available from central government; some are automatically applied whilst others need to be applied for.

See https://www.gov.uk/introduction-to-business-rates/how-your-rates-are-calculated

Where the landlord of a UK property is non-UK resident, the application of the Non-Resident Landlord (NRL) Scheme, a system to help collect tax on UK rental income of non-resident landlords, will also

need to be considered. Under the NRL scheme the letting agent / tenant must deduct tax basic rate tax from the rents (less certain deductible expenses) unless the landlord has registered under the NRL scheme and is approved to receive the rental income with no tax deducted.

14. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

A property managing agent can be appointed. Their charges will depend on the level of service required and the type and number of properties that they are being asked to manage.

V. Foreign investors

15. Would you advise foreign investors at the moment to invest in your country
– directly in real estate?
– through real property funds, open or closed ones?
– through other clear and secure financial products?
– In commercial real estate or in residential property

Obviously we are not financial advisors or investment advisors but it could be argued that this is a very good time to invest in real estate particularly where the investor is financially able to do so as property prices have fallen in England and Wales. There are also some excellent residential property portfolios that are available as well as some part built schemes. Bank sales are also worth considering in particular. Inevitable there is no guarantee that prices will not continue to fall.

16. Is any individual person and legal entity allowed to buy property in your country or are there restrictions with regard for example to nationality or registered office of legal entities? If there are restrictions are there ways to organize a domestic entity for the purchase on a valid legal structure notwithstanding?

There are no general restrictions on foreign ownership of land. Property can be bought by private individuals or companies without necessarily needing British nationality or a registered office in England and Wales.

17. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed and what time and effort are needed normally to get it?

If anybody is buying property in the UK then they would need to comply with the same procedures as would apply to UK based investors. This may include permissions in relation to planning and building consents and environmental consents as appropriate. There would not be any additional requirements placed on the investor because of its country of origin. The approvals and consents required would depend on the proposed use of the land but the requirements would be no different than to those applicable to UK based investors.

18. Could your firm assist foreign investors in
– Finding interesting real estate and related valid investment products in real property in your

country where required through personally known estate agents and other advisers?
– Developing construction projects?
– All legal aspects involved in these contexts?

Yes. We are happy to assist foreign investors in all of the above aspects should they require our assistance.

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UNITED STATES OF AMERICA
BELL NUNNALLY

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

Within a few days following the execution of the purchase agreement, the purchaser usually deposits earnest money with a third-party escrow agent (typically the purchaser's title company in Texas). The earnest money is refunded if the purchaser uncovers a defect in the property or otherwise chooses to terminate the contract before the expiration of the due diligence period. The deposit will be held in escrow and not disbursed to the seller before the closing.

If the earnest money is timeously deposited, the purchaser is typically afforded a diligence period to investigate various aspects of the property and to terminate the purchase agreement and receive a refund of its earnest money deposit if it finds any matters unsatisfactory in its sole discretion. The purchase agreement will include a detailed protocol for the purchaser to terminate the agreement during the due diligence period. This protocol usually includes a formal written communication from the purchaser to the seller before a specified date and time.

At some point during the contract period, or sometimes even before the contract signing, the purchaser receives a title commitment that reflects the results of the title search conducted by the title company on the property. The title commitment represents the title insurance company's commitment to issue a title insurance policy in the name of the purchaser once the premium is paid and certain other conditions and requirements in the commitment are satisfied. The purchase agreement will include a section governing the purchaser's review of title and the survey of the property. The purchaser and its counsel should carefully analyse the title commitment and the underlying exception documents to identify: (i) any rights or obligations imposed by agreements affecting the property, and (ii) whether any additional actions or documents are needed to facilitate the purchaser's intended use of the subject property after the closing. The purchaser will also have the right to terminate the purchase agreement if its objections to title and survey are not satisfied.

The purchaser and its counsel should also determine whether any third-party consents are required under any underlying title exception documents and evaluate the necessity of obtaining estoppels from any third parties, such as tenants under leases. An amendment to the purchase agreement may be necessary if the purchaser discovers the need for the seller to obtain any third-party consents before the transaction can close.

If debt financing is being obtained, the purchaser's and lender's counsel negotiate the loan documents. If the existing financing is being assumed, the seller's counsel also reviews the assumption documentation to ensure that the seller and its guarantors are released or sufficiently protected from post-assumption liability

The purchaser's counsel is typically responsible for drafting all closing documents relating to the transfer of title and property. The closing document that transfers the ownership interest in the property is a deed, which will be recorded in the county records where the property is located at closing. In Texas, the form of deed typically used is a referred to as a "special warranty deed". The form of each closing document is usually attached to the executed purchase agreement as an exhibit that must be finalised when the closing date is set. If not, the seller's counsel should prepare each individual closing document and circulate the execution copy for the purchaser's counsel's approval before closing.

On or prior to the closing date, purchaser and seller will provide executed counterparts of the agreed-upon closing documents to the third-party escrow agent to hold in trust pending the final disbursement of the funds. After the escrow agent has complied with the written instructions provided by both purchaser and seller, the escrow agent will release the funds and fully executed copies of the closing documents to finalise the transaction.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Yes. Condominiums are an important segment of residential development and also some office developments. New condominium development is robust in the United States. This is especially true for major urban areas, where high demand meets limited land, including New York, Miami, San Francisco and Chicago. A condominium is a form of real estate ownership that is usually a multi-unit property in which each unit is owned exclusively by an individual with the property's common elements owned by all of the unit owners as tenants in common. A condominium form of ownership allows multiple parties to own and use distinct portions of a building or project independently of one another while collectively owning and using common areas, facilities and systems serving the entire building or project. Condominiums are created under and governed by the state and local law of the project's location.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Yes. In Texas two or more persons or entities can jointly own real property. For purposes of most investor transactions, co-ownership is generally considered a tenancy-in-common, although several other ownership regimes exist. Tenancy-in-common means that each co-tenant owns an undivided interest in the property. The co-tenants typically enter into an agreement to govern the operation and disposition of the property.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

In the United States, a deed transferring real property typically also transfers rights to all improvements located on the property. However, it is possible to separate ownership of the land and improvements. One example is a long-term lease of land or "ground lease". The tenant typically retains ownership of the improvements until the expiration or earlier termination of the ground lease and the landlord owns the land. In the United States, it is also important to understand that the mineral estate can be severed from

the surface estate. Ownership of the surface estate grants to the surface owner all rights to the use and enjoyment of the surface of the real property. The owner and holder of an interest in the mineral estate owns all rights to oil, gas and other minerals below the surface. Given the abundance of oil and natural gas in Texas, it is not unusual for the mineral estate to have been severed from the surface estate, and the mineral estate is the dominant estate in Texas.

5. Is the land and/or the building registered in a formal register, and is a good faith purchaser protected with regard to the entries in this formal register?

In the United States, ownership interests in real property, and any other documents that could affect title to real property, including mortgage documents, must be recorded in the county where the property is located. Once a document is recorded, it is of public record and is discoverable by anyone reviewing or searching the county's land records. Any third party is deemed to have knowledge of all filings made of record regarding the ownership of the property.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

Sponsors of real estate projects often seek investors to finance real estate projects. A real estate operator or developer partners with an investor to form a joint venture that provides the equity required to develop a real estate project. Often the sponsor will receive a carried interest or additional distributions once a specified return is received by the investors.

The seller may finance all or a portion of the purchase price by taking a purchase money mortgage or entering into an instalment land contract.

Permanent loans from lenders provide the largest source of commercial real estate financing and are used to fund both the acquisition and refinancing of improved real property generating a stabilised income stream. A security instrument that secures the debt by creating a lien on the real property, improvements and fixtures can take the form of a mortgage, deed of trust or vendor's lien. In Texas, a deed of trust is the most common instrument for placing a lien on real property. Deeds of trust commonly include a power of sale, which allows for a speedier, non-judicial mechanism for foreclosure. A deed of trust is a three-party instrument with the borrower as grantor, the lender as beneficiary, and an individual or business organisation as trustee.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

The appropriate form of financing available to commercial property owners depends largely on the development stage of the real property.

Borrowers use construction loans when developing or significantly renovating real property. Construction loans are traditionally short-term, high-interest loans, generally with a loan term ranging from one to three years. The proceeds of a construction loan are disbursed in stages over the term of the

loan to fund the costs of construction. Each advance made under a construction loan is conditioned on the borrower successfully meeting certain development milestones and satisfying other requirements and conditions set out in the loan documents. Often, mezzanine loans are used to provide additional funding until permanent financing is obtained.

Bridge loans are short-term loans with maturities ranging from one to three years. They are often used to pay off construction loans if the property is not yet eligible for permanent financing.

Permanent loans are generally long-term loans with maturities typically ranging from 10 to 30 years or more. As mentioned above, permanent loans provide the largest source of commercial real estate financing and are used to fund both the acquisition and refinancing of improved real property generating a stabilised income stream.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

Texas has no transfer, stamp or similar taxes in connection with transfers of real property or ownership interests in real property. A few states do have mortgage or transfer taxes, although this is not common.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis, for example within a year?

Under US federal income tax laws, income from the sale of property "held primarily for sale to customers in the ordinary course of a taxpayer's trade or business" (e.g. condominiums) is taxed at ordinary income rates (up to 37%). Any income from the sale of property outside this classification is considered capital assets and is taxed at the preferred long-term capital gains rate of up to 20%, if the property is held for more than one year.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

There are no specific restrictions on the repatriation of funds out the US after a real estate transaction. However, the Foreign Investment in Real Property Tax Act (FIRPTA) subjects foreigners investing in US real property to US taxation on gains realised on a sale or other disposition of a US real property interest (USPRI). In other words, the foreign person is taxed on gain as if the person were a US corporation or US citizen or resident. To ensure the collection of tax under FIRPTA, FIRPTA imposes a withholding obligation on certain transferees of USRPIs and certain entities that distribute, or dispose of, USRPIs.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s) or which restrictions have to be taken into account?

Except for limited circumstances, such as the purchase of real property out of foreclosure, the purchaser of a piece of real property takes the real property subject to a valid lease and must comply with the terms of that lease. The purchaser may not terminate the lease, except as may be provided pursuant to the express terms of that lease.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

Zoning laws in Texas place limitations on how an owner may use and develop its property. The ability to use a property for a particular purpose is a core issue for any real estate transaction or project. Zoning therefore is a vital part of the analysis that parties must undertake before proceeding with a deal. Zoning ordinances create zoning districts, such as residential, industrial or commercial, regulating the types and kinds of uses specifically allowed in each.

Zoning is state-specific and controlled primarily by local municipal ordinances. In Dallas, Texas, for example, if the lot you want to build on is not properly zoned for your proposed development, you must obtain the proper zoning by filing an application for a zoning change, which must be approved by the city manager. The process takes approximately 12 weeks and includes two public hearings.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly
– notarial costs?
– land register?
– real property transfer tax?
– advising lawyer (due diligence)?
– estate agent?
– others?

Notarial costs are nominal, generally $5 or €4.47 per signature. Recording fees for deeds and other title transfer instruments vary by county. Dallas County charges $26 or €23.27 for the first page of each document and $4 or €3.58 for each additional page. Real estate attorneys typically charge by the hour, so the fees will depend on the complexity of the real estate transaction. Real estate agents or brokers typically charge a fee of up to 6% of the purchase price, which may be split between purchaser's agent and seller's agent if both are represented.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example yearly land tax after the transfer of ownership – and what is the percentage of it?

In Texas, there are no state-level real property taxes. Property taxes are assessed and administered locally. The rate for taxes is a product of assessed value multiplied by the tax rates set by:

- the county;
- the city; and
- special districts, such as school districts, hospital districts and municipal utility districts.

By way of example, the annual property tax rate for an office building in downtown Dallas in 2018 was 2.845% of the appraised value of the property.

Real property taxes are billed around 1st October and are delinquent if not paid on or before 31st January of the following calendar year. Penalties and interest accrue beginning on 1st February. Generally, a delinquent tax incurs a penalty of 6% of the amount of the tax for the first calendar month it is delinquent, plus 1% for each additional month or portion of a month the tax remains unpaid before 1st July of the year in which it becomes delinquent. However, a delinquent tax that remains unpaid on 1st July incurs a total penalty of 12% regardless of the number of months the tax has been delinquent. A delinquent tax continues to incur the penalty as long as the tax remains unpaid.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

Professional property management fees vary depending on the value of the property and whether the property is commercial or residential. Property managers for commercial properties typically charge 4% of the rental income from the property. Residential property managers typically charge 10% or higher in Texas.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
– directly in real estate?
– through real property funds, open or closed ones?
– through other clear and secure financial products?
– In commercial real estate or in residential property

In Texas, foreign investors generally prefer an investment vehicle that provides liability protection, such as limited liability companies or limited partnerships. Public REITs are also available for investors. Real estate investments vary greatly on risk, return, control and other factors. Investments should be considered based upon the objectives of the investor and the particulars of the available real estate investments.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

Texas laws do not impose any special restrictions on foreign entities specific to investment in real property.

While some states impose restrictions of their own, foreign investment is mainly regulated under federal law. The following federal statutes impose certain requirements on foreign entities:

- The Hart-Scott-Rodino Antitrust Improvements Act of 1976. This regulation imposes reporting requirements for some substantial foreign investments, including acquisitions of real property.
- The International Investment and Trade in Services Survey Act of 1976. This regulation specifies forms that must be filed with the Department of Commerce to report the acquisition or ownership of

any US real property (except residential real property held for personal use) and imposes reporting requirements on investors.
- The Agricultural Foreign Investment Disclosure Act of 1978. This regulation requires a foreign person or entity acquiring or transferring an interest, other than a security interest, in agricultural land (with some exceptions for small properties) to file ownership reports.
- The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). This regulation imposes federal income tax liability on income earned from transfers of US real property by foreign owners.
- The Exon-Florio Amendment. This regulation allows the President of the United States to suspend or block the foreign acquisition of a United States-based company for reasons of national security.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed and what time and effort are needed normally to get it?

State permission is not required for foreign investors to acquire real property in Texas. If a foreign entity is "transacting business" in the state of Texas, the foreign entity must register and be issued a certificate of authority by the Texas Secretary of State. Purchasing real property in and of itself does not constitute "transacting business" in Texas. A foreign entity therefore does not need to obtain permission to do so. However, collection of rents by a foreign company, even where another entity manages the property, will likely be considered transacting business. A foreign entity serving as a general partner in a partnership transacting business in Texas therefore must register with the Texas Secretary of State.

19. Could your firm assist foreign investors in
– finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?
– developing construction projects?
– all legal aspects involved in these contexts?

Bell Nunnally & Martin LLP's clients retain us for a broad spectrum of real estate-based legal needs, including acquisitions and dispositions; development and construction; commercial leasing and management; a wide variety of real estate financing matters; tax advice, including complex property tax valuation appeals; real estate-related litigation matters, entity structuring; acquisition, development and disposition of oil, gas and other mineral interests, and related energy matters; and resolution of troubled real estate interests, including loan workouts, debt restructuring, foreclosures, and other dispositions of problem assets and debt.

Our experience extends to a wide variety of real estate assets, including retail, office, residential and mixed-use developments; manufacturing, warehouse and industrial facilities; and farm and ranch properties. Our relationships and contacts are at your disposal and we are happy to provide you with introductions to developers, general contractors, landlords, lenders and other players in the Dallas marketplace.

CONTACT

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UNITED STATES OF AMERICA
LINDBORG & MAZOR LLP

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

In the United States, real estate transactions are governed by both state and local laws which vary from jurisdiction to jurisdiction. What follows is a general description of real property transactions in the United States based loosely upon the laws of California. While it accurately describes the parameters of a real estate transaction almost anywhere in the United States, local laws and practices will impact the specifics of any given transaction.
The buyer and seller, often through the use of real estate agents or brokers acting as their representatives, first negotiate and agree on the terms of the sale. A contract is drafted, often by one of the real estate agents, for the buyer and seller to sign. The contract includes terms such as the sales price, financing terms, the condition of the property, and any warranties. The contract often states a date for the "closing" to occur, which is the actual transfer of ownership. To effectuate the closing, the buyer and seller usually enter into a 3-way contract with an "escrow" company, which facilitates the exchange of money and the property deed (the official document that indicates ownership). At the closing, the seller signs the deed and has it notarized by a notary public, then transfers the deed to the buyer. The buyer must then record the deed by filing it with the local County Registrar-Recorder, or similar official depending upon the state in which the property is located. The date of the closing is normally also the date when possession of the property is transferred, although the contract can specify a different date when possession transfers. The transfer of possession of a house, condominium, or building is usually accomplished by handing over the keys. The contract can also specify which party pays for what closing costs. After the closing, the escrow period ends and the transfer of ownership is completed. The state of the title to the property at closing is typically insured by “title insurance” issued by a company for which the escrow company acts as agent.

2. Does your legal system permit different sorts of ownership like ownership of the whole land and construction or ownership for example only of one unit or lots of units (condominium) of the improvements?

Yes. The legal system of the United States permits ownership of the whole land or ownership of only one or more portions of the land. A "condominium" is the primary form of ownership in which specified parts of a piece of real estate, often called "units," are separately and individually owned.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Yes. The legal system of the United States permits joint ownership of real property by two or more persons, corporations, partnerships or trustees. There are various forms of joint ownership, some of which allow an owner's interest to pass to his or her heirs upon death ("right of survivorship"). The main forms of co-ownership are: (1) Community or Marital Property (spouse's co-ownership over marital

property which typically passes to surviving spouse upon death); (2) Joint Tenancy (co-owners of equal interest in entire property with right of survivorship); or (3) Tenancy in Common (co-owners have no right of survivorship and can own unequal fractional interests).

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well and/or is it possible to have different owners of the land and the building erected on it?

Unless otherwise specified, ownership of the land includes ownership of the buildings and other improvements upon the land, as well as the mineral rights below the surface. It is possible, however, to separate ownership of the land from the improvements or minerals.

5. Is the land and/or the building registered in a formal register and is a good faith purchaser protected with regard to the entries in this formal register?

Property deeds, as well as mortgages and other documents effecting title to real estate, are typically recorded in the County Registrar Recorder's office in order to protect the owner from losing title to a subsequent good faith purchaser (or "bona fide purchaser") who purchases the property without notice of the current owner's title to it.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

Absent some extraordinary circumstance, such as during the financial crisis which began in 2007-08, almost all transactions for commercial and multi-family real estate in the United States involve some combination of equity (cash delivered by the buyer at closing) and debt. The equity portion of the transaction is usually 20% to 30% of the total purchase price which a purchaser will typically raise by selling shares in the entity which will own the property. The remainder of the purchase price in the form of debt is either wholly or substantially a loan from a bank or other financial institution secured by a mortgage, the priority of which is insured by a title insurance company. If additional funds are needed to raise the remainder of the purchase price or supply construction financing, the buyer/owner will typically acquire those funds from a “mezzanine” lender which secures its loan by taking a security interest in the shares of the company that owns the property. If the seller is going to finance the purchase of the property, then the transaction will be accomplished through the use of a real estate contract pursuant to which the seller deposits the deed to the property into an ongoing escrow and the buyer makes its payments to the seller through the escrow. Once the buyer has satisfied the portion of the purchase price owed seller, then the deed is released from escrow and will be recorded in buyer’s name in the real property records of the county in which the real estate is located.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

If the investor is acquiring an existing, operating project, legal, financial and engineering/inspection due diligence costs, in addition to costs of acquisition, will be incurred. The more complex the project, the

higher the due diligence costs will be. If the investor will be developing a new project on the property, potentially significant costs may be incurred before construction begins to obtain all the governmental permissions (entitlements) necessary to construct and operate the project. Such entitlements may require the owner to perform studies assessing the potential impacts of the project on the surrounding area. As the studies may take significant time to perform, and the governmental review process can involve multiple levels of inquiry, the investor must include sufficient funds in the project budget to not only cover the costs of obtaining the entitlements, but also those involved in the holding of the property while the entitlements are obtained and construction is performed.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property, for example real property transfer tax and what is the percentage of it?

Property taxes and transfer taxes vary greatly depending upon the locality. In California, property taxes are levied and paid annually according to the value of the property as of the date it was acquired or the date of completion of any new construction. Currently, the maximum annual tax on real property is limited to one percent of the market value ("base") of the property at the time the property was sold, plus a maximum of two percent for annual inflation. When the property is sold, the tax can increase because it will then be based on the new market value. Also, upon sale of real property in California, county governments can impose a transfer tax at the rate of $0.55 for each $500.00 of the selling price, plus additional transfer taxes may also be imposed by the specific local jurisdiction.

9. Do you have to hold the property for a specific time with respect to tax reasons or is it in this context no problem to buy and sell property on a short term basis, for example within a year?

Gains realized on the sale of real property are taxed at a person's ordinary income tax rate if the property is held for less than a year. If the property is held for more than a year, then gains are taxed at a preferential rate which is currently 15%.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

There are no general restrictions on repatriation of funds from the United States.

11. If you buy real estate that is leased to one or more persons are you allowed to terminate the lease contract(s) or which restrictions have to be taken into account?

When a landlord transfers its interest in leased property to a third party, the lease remains in force and effect, and the new landlord and the tenant generally have the same rights and obligations with respect to each other as did the prior landlord and tenant. The new landlord cannot terminate the lease while the lease is still in effect unless the lease contract allows such termination.

12. Are you allowed to change the use of a building from residential use to office space or vice versa or do you need official approval for doing so or is it not allowed at all?

Most cities and counties divide their jurisdictions into land use districts, or "zones." Within each zone a specific set of rules control the use of land. There are often zones for single-family residences, multi-

family dwellings, commercial uses, industrial activities, open space or agriculture and, sometimes, mixed uses. If a property owner desires to use property in a manner not permitted under the applicable zoning rules, the owner may seek a variance or conditional use permit, or seek to amend the zoning rules.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of EUR 5 Million, particularly

- notarial costs?
- land register?
- real property transfer tax?
- advising lawyer (due diligence)?
- estate agent?
- others?

Notary public charges in California are usually less than $20.00 U.S. Dollars. The fee to record real property records can vary from county to county but is approximately $125.00 U.S. Dollars. In California, county governments can impose a transfer tax at the rate of $0.55 for each $500.00 of the selling price, and local entities impose a similar tax of up to $4.50 per $1000 which means the transfer tax (always paid by the seller) for a purchase price of EUR 5 million can be up to approximately $30,000.00. Real estate attorneys typically charge by the hour, so the fees are a function of the complexity of the transaction, but will typically average $15,000 to $20,000 in a transaction of this size. Real estate agents charge approximately 5 percent of the sales price, which is approximately $275,000 U.S. Dollars to be divided evenly between the buyer's agent and the seller's agent (agent's fees are deducted from the proceeds paid to seller). Title insurance premiums are approximately 0.1% of the purchase price and escrow fees are approximately 0.075% of the purchase price.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property, for example yearly land tax after the transfer of ownership and what is the percentage of it?

There is a property tax on real estate in the United States, which is usually levied by local governments at the county level. The forms and rates of the property taxes vary between jurisdictions. There is a property tax in California, which has to be paid yearly. Currently, the maximum annual tax on real property is limited to one percent of the market value ("base") of the property at the time the property was sold, plus a maximum of two percent for annual inflation. There may also be special assessment taxes, which are levied for the cost of specific local improvements such as streets, sewers, irrigation, and drainage. Special assessments may be due periodically to improvement districts or be levied only once by the city or county for a particular work or improvement.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management firm for the purchased property? How does the property management firm normally charge for their work?

When you hire a property management company, the service can range from showing your property to

an all-in-one package. An ongoing monthly fee charged to the owner by the property manager can vary from 3% to over 15%, usually 8% to 10%, of the monthly gross rent.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
- **directly in real estate?**
- **through real property funds, open or closed ones?**
- **through other clear and secure financial products?**
- **In commercial real estate or residential property?**

Real estate prices have fully recovered in most parts of the United States from the decreases experienced during the financial crisis which began in 2007-08 and, in some parts of the country, are even exceeding pre-crisis levels, which shows the inherent stability and resiliency of the United States real estate market, which always makes real estate a good investment for foreign investors. Any of the investment mechanisms described above can be used for real estate investment in the US and currently, both residential and commercial property present excellent opportunities for investment.

17. Is any individual person and legal entity allowed to buy property in your country or are there restrictions with regard for example to nationality or registered office of legal entities? If there are restrictions are there ways to organize a domestic entity for the purchase on a valid legal structure notwithstanding?

Currently there are no restrictions on foreign ownership of land in the United States, although the sale of real estate by non-resident aliens is subject to certain special taxation rules. In generally, however, it is not difficult for foreign investors to purchase property in the United States.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed and what time and effort are needed normally to get it?

If the property is not located in a commercial district appropriate for the type of business being operated, the foreign investor may need to seek a variance or conditional use permit, or seek to amend the zoning rules, to allow the business to operate in that district. The requirements and amount of time necessary to obtain a variance can vary depending on the locality, type of variance sought and other factors, but takes approximately six months. The investor will also need to register the business with the Secretary of State and obtain a seller's permit and business license from the city in which the business will operate, which can take anywhere from a few days to several months depending on the locality and other factors. Just as importantly, if a foreign investor is seeking citizenship in the United States, the EB-5 visa program offers a path to citizenship for non-citizens able to invest $1,000,000 in a business in the United States. Such investment must be in an operating company which generates jobs and therefore, investment in real estate, by itself, does not qualify for this program.

19. Could your firm assist foreign investors in
- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?**
- **Developing construction projects?**

- All legal aspects involved in these contexts?

Yes. Our office is capable of assisting clients in all aspects of real estate and construction projects. In addition, our managing partner, Irina Mazor is also a licensed real estate broker in California (CalBRE: 01978062). Please contact Irina Mazor or Peter Lindborg at:

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URUGUAY
HUGHES & HUGHES

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

The typical real estate transaction involves the execution of the following documentation:

- Preliminary agreement ('Boleto de Reserva');
- Promise to purchase agreement ('Compromiso de Compraventa');
- Sale and purchase agreement ('Compraventa').

Preliminary agreement ('Boleto de Reserva')

The purchase procedure normally starts with the execution of a preliminary agreement by which the parties agree the basic terms and conditions of the transaction (object, price, terms, penalties etc.) and the term within which the parties should execute the sale and purchase agreement (or the promise to purchase agreement, depending on how the transaction is structured).

The buyer shall deposit with its notary an amount equal to 10% of the purchase price as a deposit (guarantee).

This agreement is non-registrable, and in case of breach the parties are entitled to claim penalties and damages, but not specific performance.

Promise to purchase agreement ('Compromiso de Compraventa')

When the transaction cannot be structured as a cash payment transaction (due to a need for payment in instalments, delayed delivery of possession etc.) it is typical to execute this kind of promise to purchase agreement. This agreement is registered with the real estate register and, in case of breach by the seller, provides the buyer with the possibility to claim for specific performance. Additionally, any lien (mortgage, attachment etc.) generated post-registration at the real estate register does not affect the property.

The agreement should provide for the execution of a sale and purchase agreement once the conditions precedent are met.

This document needs to be executed either as a public deed by a notary public or as a private document with signatures certified and protocolised by a public notary.

Sale and purchase agreement ('Compraventa')

The procedure ends with the execution of a public deed by a notary public containing the sale and purchase agreement. Title over the property is transferred once this deed is executed.

This document is registered with the real estate register and is effective before third parties upon registration.

With respect to forms of payment in real estate transactions, Act 19.210 and its regulatory decrees expressly regulate this matter. In this sense, as of 1st April 2018, cash may not be used to make payments in real estate property transactions in which the price is greater than 40,000 indexed units (US $4,660).

The law states that such payments must be made electronically, by common cheques or deferred crossed cheques, or by crossed bill of exchange letters issued by a financial intermediary institution under the name of the buyer.
The real estate register will not register promise to purchase agreements or sale and purchase agreements that do not contain the details of the form of payment and the abovementioned specifications, or if such documents provide for a different form of payment than those established by the law.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Our legal system permits different sorts of ownership, as follows:
- Traditional ownership, by which the same owner owns the land and the buildings constructed on top of such land.
- Surface rights ('Derecho de Superficie') by which a party owns the land and a different party owns the constructions built on top of such land.
- Co-proprietorship – a piece of land or building is divided in lots or apartments, with different owners, but sharing common areas.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Yes, our legal system permits joint ownership of real property, either of contractual origin (two or more individuals or entities buy a property) or inheritance origin (the land is inherited by several heirs).
In general terms, both individuals and entities, either commercial (corporations etc.) or civil (civil associations, religious entities etc.) can own land.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

The general rule is that the owner of the land is the owner of the constructions built on top of such land. However, there is an exception named surface rights ('Derecho de Superficie') by which a party owns the land and a different party the constructions built on top of such land.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

Sale and purchase agreements are registered at the real property register.
Additionally, our law provides that certain contracts and acts in respect of real properties are to be registered at the real property register in order to be opposable to the legal owner, i.e. expropriations, mortgages, attachments, liens, leases etc.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

There are two ordinary ways of financing real estate transactions: with loans provided by a financial institution or credit (deferred payment scheme) granted by the seller. In both cases, the typical means of coverage are mortgages.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

The banking system is very used to finance real estate transactions, and typically they would only require a mortgage over the same property as collateral.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

The taxes involved in real property transaction are as follows:
- Sales tax – 2% by seller and 2% by buyer, calculated over the fiscal value of the property.
- Income tax – 12% in case of physical persons resident or not and foreign companies, 25% in case of local companies, and 30.25% in case of foreign companies from countries listed by our tax agency as 'low taxation countries', in all cases calculated over the difference between sale value and revaluated cost.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

No problem.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Yes. There are no restrictions at all.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

If the lease is registered at the Real Property Register, the purchaser shall respect the lease until termination. In the case of unregistered leases or leases which contain a clause permitting the sale of the property, the buyer may start judicial actions in order to regain possession of the property.

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

It depends on the zoning regime where the building is located and also the limitations included in the joint ownership regulations of each building.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- **notarial costs?** 3% of purchase price plus 22% VAT (however, this is negotiable)
- **land register?** Not material.
- **real property transfer tax?** 2% buyer, 2% seller, calculated over fiscal value.
- **advising lawyer (due diligence)?** Included in notarial costs.
- **estate agent?** 3% of purchase price plus 22% VAT (however, this is negotiable).
- **others?** Not material

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

The main taxes are: capital tax (in the case of corporations it amounts to 1.5% of purchase value, except foreign corporations from countries listed by our tax agency as 'low taxation countries', in which case it amounts to 3%; in the case of physical persons it depends on the value of the property as it may be exempted), municipal tax and other minor charges (sewage tax, domiciliary tax etc.).

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional property management for the purchased property? How does the property management normally charge for their work?

The caretaker would probably charge a fixed fee, depending on the value and destiny of the property.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country

- **directly in real estate?** Yes.
- **through real property funds, open or closed ones?** Depends on buyer strategy and needs.
- **through other clear and secure financial products?** Depends on buyer strategy and needs.
- **in commercial real estate or in residential property?** Depends on buyer strategy and needs.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

Nationals and foreigners (residents or not) have exactly the same legal treatment at the time of purchasing real property.
A comment must be made in connection to the ownership or exploration of rural real property, as certain restrictions apply in this respect.
Act 18.092 dated 7th January 2007, as amended by Act 18.172 dated 31st August 2007, establishes the general principle regarding the restrictions on rural land acquisition in Uruguay.
According to Act 18.092, rural land can only be owned, and agricultural activities performed, by identified individuals or by entities belonging to identified individuals. The general idea underlying these provisions is that it should be clear who the individuals owning or working on the land are.

As a consequence, a corporation or any other entity with bearer shares is not entitled, in principle, to own rural land or carry out agricultural activities.
Notwithstanding, Act 18.092 established that the executive power is entitled to grant authorisations to own rural land and/or conduct agricultural activities to any corporation with bearer shares, trust, branch of a foreign company and/or fund etc., based on: (i) the number of individuals and/or entities owning the company, fund etc.; and (ii) the special nature of the entity, if according to said special nature it is not possible for it to be owned exclusively by individuals.
Pursuant to said faculty, Decree 225/07 has established that authorisations to own rural land and/or carry out agricultural activities may be granted by the executive power:

- To corporations whose capital stock is owned by: i) pension funds described in Act 17.613; ii) public entities; iii) companies whose paid-in capital has involved public offering of said titles pursuant to stock exchange houses proceedings assuring competitiveness and transparency, at the executive power's sole discretion; iv) trustees for trusts described in Act 17.703 and administrators for funds described in Act 16.774; v) companies and/or entities incorporated abroad whose paid-in capital has involved public offering of said titles pursuant to stock exchange houses proceedings assuring competitiveness and transparency, at the executive power's sole discretion.
- To any corporation, trust, fund or branch of a foreign company with bearer shares, if the activity to be performed by these entities can be deemed to be in the best interest of the development of the country from a product perspective.

The authorisations granted are limited to the relevant pieces of land described in the requests. Any time new pieces of land needed to be acquired and/or used for agricultural activity by any of these entities, new authorisations should be requested.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

The kind of restrictions and approvals depend on the type of business/activity the investor wants to do and are the same for both nationals and foreigners.

19. Could your firm assist foreign investors in

- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?** Yes
- **Developing construction projects?** Yes
- **All legal aspects involved in these contexts?** Yes

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Disclaimer: Owing to the breadth of the topic of discussion as well as the complexities involved in the procedures relating thereto, the responses set out below are intended to provide only a general and preliminary description and overview of the laws of Vietnam regulating real property transactions in Vietnam. It is for this reason that the responses herein should not be relied upon solely without proper legal advice for specific cases, issues or projects.

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

As a general matter, individuals and organisations are free to directly enter into and participate in real estate transactions not contrary to Vietnamese law. These transactions commonly involve the sale, assignment, lease, sublease or lease purchase of a real estate property.

With regard to sale and purchase transactions, Law 66/2014/QH13 on real estate business dated 25th November 2014 (2014 Real Estate Law) and related regulations (including Decree 76/2015/ND-CP dated 10th September 2015 (Decree 76)) require the performance of the following steps for the validity and completion of the transaction:

- The parties must enter into an agreement in writing.
- For an agreement between the parties none of which is a registered real estate business, it must be certified by a notary public office. Otherwise (for agreements with a registered real estate business), the parties are not required to but may choose to have the agreement so certified.
- The parties shall fulfil financial obligations towards the state, comprising registration fees and capital gains tax, where applicable, as elaborated on in question 6 below.
- The parties shall then submit to the provincial Department of Natural Resources and Environment (DONRE) where the property is located an application for the issuance of the relevant certificate certifying ownership of any or all of the land use right, residential housing and/or construction on the land, i.e. the certificate of land use rights and ownership of houses and other assets attached to land or, as customarily called, the land use right certificate (LURC).

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Yes. Law 45/2013/QH13 on land dated 29th November 2013 (2013 Land Law), Law 65/2014/QH13 on housing dated 25th November 2014 (2014 Housing Law) and the 2014 Real Estate Law do permit different types of ownership of real property, in particular:

- Although there is no concept of private ownership of land in Vietnam, the Vietnamese state grants the right to use land to qualified individuals or entities either by way of allocation (for long-term use) or lease (for a fixed term) depending on the type of land (e.g. agricultural, residential etc.) and the land

use purpose (e.g. residential use, commercial use etc.).
- As a general matter, the land user is also the owner of the construction on the land. Consequently, ownership or changes in the ownership of (i) both the land use right and the construction on the land; or (ii) solely the construction on the land, are accordingly recorded in the LURC.
- For apartment buildings, a LURC shall be issued for each apartment unit in relation to the ownership of both the floor area (net floor area) of the apartment unit and the common right to use the land where the apartment building is located.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Yes. It is possible under Vietnamese law for two or more individuals or entities to jointly own real property, as, for instance, where there are multiple land users or multiple owners of the construction on the land. Each land user or construction owner, as the case may be, is issued with a separate LURC, with the annotation therein that the land use right or the construction ownership is jointly held.

- The following entities are allowed to own property in Vietnam:
- Vietnamese individuals and organisations;
- Foreign individuals who are legally permitted to enter into Vietnam but not having diplomatic immunity and privileges; and
- Foreign-invested enterprises operating in Vietnam.

For items (b) and (c) above, please refer to question 4 below for further details.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

In Vietnam, ownership of a construction erected on the land generally presupposes and implies land use right to such land, considering that construction works on the land could only be made by individuals or organisations granted the right to use the land, through (i) land allocation or lease from the state; or (ii) land sub-lease in industrial parks, industrial zones or export processing zones. However, it is possible to have the land user different from the owner of the building erected on it whereby the building owner leases or borrows (*i.e.* use without remuneration) the land from the rightful land user. In such case, different LURCs shall be issued separately to the land user and the building owner.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

Vietnamese law requires that the land use right and ownership of the residential housing and/or constructions on the land be registered and certified for the first time (to obtain a LURC) and subsequently thereafter (for any changes thereon) with the Land Registration Office (formerly Land Use Right Registration Office) under the DONRE of the province where the real property is located. The transaction shall only take effect as from the issuance of an LURC or an amended LURC, as the case may be, by the Land Registration Office.

II. Financing tools of the transaction

6. How do investors finance the transaction? Can purchases be financed through real estate purchase contracts? Are mortgages the typical way of coverage for banks?

In addition to the developer's/real estate company's initial equity (which per the 2014 Housing Law must be, at a minimum and at the time of its establishment, not less than VND 20 billion or approximately US $861,000), the following are the common sources of funding for a real estate project in Vietnam:

- in the case of a real estate company in the form of a shareholding or joint stock company, issuance of bonds (both convertible and non-convertible) by the developer/real estate company and issuance of shares to new shareholders; and in the case of a real estate company in the form of a limited liability company, additional capital contribution from new members/investors;
- shareholders' loans;
- payment by purchasers of off-the-plan houses or apartments under sale contracts; and
- loans from domestic banks and finance companies or foreign-owned banks and finance companies or joint venture banks and finance companies that are incorporated in Vietnam (as only such a local credit or finance institution is permitted by law to receive a mortgage of real estate).

Typically, there are two options for commercial real estate investors borrowing funds to acquire or develop real estate in Vietnam, namely mortgage of the equity interest of the investor in the real estate company and/or mortgage of real estate. The second option is generally preferred since, in the first option, the lender assumes the role of a shareholder or member in the real estate company when receiving the transfer of the equity interest satisfying the debt and, from a commercial perspective, the value of the equity interest is generally not secured.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

Where the financing is mainly through the equity of the relevant developer/real estate company, Decree 76 in relation to the relevant regulations of the 2013 Land Law (in particular, Decree 43/2014/ND-CP dated 15th May 2014) requires investors in a real estate project to satisfy certain conditions on equity such that the developers of an investment project using land must have their own capital (equity) for project implementation of no less than (i) 20% of the total investment capital in the case of projects using under 20 hectares of land; and (ii) 15% of the total investment capital in the case of projects using 20 hectares of land or more.

As to residential housing developers, in particular, Decree 99/2015/ND-CP dated 20th October 2015 (Decree 99) prohibits such developers from raising capital by distributing housing products, giving priority to buy houses, paying deposits, obtaining the right to buy houses or distributing land use right of the project to the capital contributors.

In addition, where the financing is through advance payments from purchasers of off-the plan houses or apartments, the housing developer must have satisfied or procured the following per the 2014 Real Estate Law: (i) construction permit, (ii) full project profile, (iii) design of construction drawings approved

by competent authorities, (iv) minutes of acceptance of the completion of the building foundation in the case of condominiums or mixed buildings, (v) acceptance report on the completion of the corresponding infrastructure construction according to the project schedule in case of low-rise buildings, (vi) official dispatch from the Department of Construction confirming to the developer that it is allowed to sell off-the plan houses or apartments and the number of houses or apartments eligible for sale, and (vii) a bank guarantee from a Vietnam-based competent bank to guarantee the developer's timely handing over of the houses/apartments to the purchasers.

The 2014 Real Estate Law also requires that the first payment must not be more than 30% of the value of the contract, with the succeeding instalments being consistent with the house or apartment construction progress but the total value not exceeding 70% of the contract value before the developer's handover of the house or apartment. In case the purchaser has not been granted a LURC for the house or apartment, the developer must not collect more than 95% of the contract value.

Meanwhile, where the financing is through loans from domestic banks, the following must be noted:

- Security over real estate properties can only be given to a local credit institution, meaning a foreign lender is not permitted under Vietnamese law to receive a mortgage over real estate.
- A mortgage of real estate needs to be registered with the Office of Land Use Rights Registration of the Department of Natural Resources and Environment, with the underlying security agreement having been notarised by a notary's office. The registration secures the priority of the lender's security interest over the interests of other creditors.
- Under Vietnam's bankruptcy laws and regulations, a security interest that is converted from an unsecured debt within six months prior to the date a court opens bankruptcy procedures against a borrower is void.
- Under Circular 26/2015/TT-NHNN dated 9th December 2015 (Circular 26), a house construction project must be one of the following to be eligible for mortgage to Vietnam-based credit institutions (subject to the relevant developer's or purchaser's fulfilment of certain requirements): (i) projects for building or renovating an independent residence or a cluster of residences; (ii) projects for building a residential area synchronised with technical and social infrastructure in rural areas; (iii) projects for building urban areas or projects using multi-purpose land which have residential land plots and (iv) projects for building works for both residential and commercial purposes.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

The tax obligations in respect of a purchase of real property are as follows:

- Registration fee of 0.5% on the land/house price, which is calculated as the product of land/house area and land/house unit price (as provided by the provincial People's Committee (PC) but normally much lower than the market price), but not exceeding VND 500 million (approximately US $21,500) per property per transaction;
- Personal income tax of 2% on the transfer price for an individual seller, or exempted if the property

being transferred is the only real property of the seller (not applicable if the property is off-the-plan) or the purchaser is the wife, husband, sibling, child, parent, or grandparent of the seller; or
- Corporate income tax of 20% on the capital gain from the transaction (general corporate income tax rate is applicable from 1st January 2016) for the seller being a legal entity. If the seller incurs loss from the transaction, the loss can be offset with other revenues; and
- Value added tax, for the seller being a registered business, of 10% of the transfer price, excluding the land value (land levy or land rental, and land compensation, clearance cost if any). If selling an apartment, the land value is calculated proportionately between the apartment area and the total building area.

9. Do you have to hold the property for a specific time with respect to tax reasons, or is it in this context no problem to buy and sell property on a short-term basis – for example, within a year?

It is not mandatory for the owner of the property to hold the property for a certain period of time before transferring such property to another party. The tax obligations are still calculated the same, no matter the time of holding the property.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Yes. Foreign investors are free to remit their legitimate profits abroad, provided that they have fulfilled their tax obligations towards the state. The remittance, as well as the initial investment in the property, must be carried out in accordance with Vietnamese regulations on foreign exchange control.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

Under the Civil Code of Vietnam, where the leased property is purchased, the lessee of the property shall be afforded the same rights and obligations as agreed in the lease contract for the remaining term of the contract. The new lessor of the property cannot terminate the lease unless agreed to by the lessee.

12. Are you allowed to change the use of a building from residential use to office space or do you need official approval for doing so, or is it not allowed at all?

The use purpose of a construction project is initially approved by the competent authorities and any change of said approved use purpose must comply with the land use planning of the city/province where the project is carried out and be approved in writing by the local PC, which supervises the use and management of land in its locality on behalf of the state. The use of residential housing for office use or business purpose has been disallowed by the Ministry of Construction. In case of a multi-purpose building for residential and commercial use (e.g. an 'officetel' building, as they are referred to in the Asian region), the building management must specify which floors/units are for residential housing and which floors/units are for commercial and office use.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly
- notarial costs?

- land register?
- real property transfer tax?
- advising lawyer (due diligence)?
- estate agent?
- others?

Working on the assumption that the applicable exchange rate is €1 = VND 25,000, the principal costs would involve the following:

Notarial costs: for any transaction over €200, the costs will be €80, but if the transaction value is less than €200, the rate in the region of 0.05% to 0.1% will be applied;

Registration fees: varies depending on the land and building area and land and building unit price (as provided by the provincial PC), but not exceeding VND500 million (approximately €20,000);

Legal fees: generally chargeable on an hourly basis, these vary depending on the complexity of the transaction and the expertise of the advising lawyers and may be subject to a lump sum amount per transaction, depending on the law firm involved;

Estate agent fees: normally charged at the rate in the region of 1% to 3% of the transaction value; and

Other fees: may include bank charges in terms of escrow arrangements or applicable bank interests, depending on the bank used for the transaction.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

Organisations and individuals holding the property shall be required to pay the land use tax annually, calculated as the product of land area, land unit price (as provided by the provincial PC), and tax rate subject to different land use purpose:

- Residential land:

Land Area	Tax rate (%)
Land area within the land quota (as provided by the provincial PC)	0.03
Land area not in excess of three times the quota	0.07
Land more than three times in excess of the quota	0.15

- Residential land, being an apartment building or an underground building: 0.03% tax rate; and
- Non-agricultural production and business land: 0.03% tax rate.

Organisations and individuals must also pay land use levy if the land is allocated by the state, or land rental if leasing the land from the state, subject to certain cases of exemption or reduction.

- Land use levy is to be paid at once upon receiving the land allocated by the state, calculated as the product of land area and land unit price (as provided by the provincial PC); and
- Land rental is to be paid either (i) fully at once upon receiving the land leased from the state, calculated as the product of land area and land rental unit price (as provided by the provincial PC, taking into account the lease term); or (ii) annually, calculated as the product of land area, land rental unit price and annual rental rate (with rates ranging from 0.5% to 3%, to be determined by the provincial PC).

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional caretaker for the purchased property? How does the caretaker normally charge for their work?

Property management services can be provided by professional property management companies such as CBRE, Colliers, Jones Lang LaSalle, Knight Frank, Savills, etc.

The current market information estimates property management fees to be in the region of US $1 to US $5 per square metre per month. The property management charges normally cover management services such as common area utilities; repair and maintenance; housekeeping services and security services; and general administration. Management fees vary accordingly depending on, among other things, the valuation of the property and facilities available for common use.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country
- **directly in real estate?**
- **through real property funds, open or closed ones?**
- **through other clear and secure financial products?**
- **at the moment not because of the impacts of the worldwide financial crisis?**

Real estate is consistently in the top three most-invested sectors for foreign investors in Vietnam. Overall, 2018 was a great year for the Vietnamese real estate market, with the positive trends in the market to continue in 2019, especially in the segments of industrial, residential and commercial property. Real estate business ranked second in size since early 2019, with a total registered capital of US$6.5 billion in 87 new registered projects. Vietnam's housing development strategy also anticipates that, by 2020, the average housing area will reach 25 m^2 per capita, and so to achieve this goal, about 100 million m^2 of new housing will be built annually, of which 70% will belong to urban areas. Vietnam's economy is currently expected to hit 6.6% to 6.8% GDP growth, with the consumer price index remaining under the target rate of 5%. Foreign direct investment and international and domestic tourism will assist in driving the economy forward.

A foreign developer can invest in real property either by direct investment or indirect investment in Vietnam, in accordance with the provisions of Law 67/2014/QH13 on investment dated 26th November 2014, the 2013 Land Law and the 2014 Real Estate Law.

- Direct investment: Foreign developers invest directly in real property in Vietnam commonly through (i) a joint venture with a Vietnamese partner who contributes the land use right of the land for the project; (ii) direct lease of land from the state; or (iii) taking over an existing project or acquiring interest

in companies licensed to carry out real estate projects, in order to preclude a long and complicated process of acquiring land use right as well as addressing issues on compensation for the existing land occupiers.

- Indirect investment: Foreign investors can invest in real estate in Vietnam by way of indirect investment, including: (i) purchasing of shares, bonds and other valuable papers; or (ii) investing through investment funds or other intermediary financial institutions, whether private or listed in Vietnam or overseas. For instance, Vinaland, a real estate investment fund in Vietnam, is listed on the London Stock Exchange.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

There are no restrictions on the acquisition of real property by Vietnamese citizens and companies. However, in order to conduct real estate business so as to make use of the real property, an enterprise, whether local or foreign-invested, must first be established with at least VND 20 billion capital (around US $900,000).

In the case of foreign-invested enterprises, those that (i) have made constructions on land leased from the state, or on land allocated by the state by way of a joint venture with Vietnamese investor(s), or on land sub-leased in an industrial, economic or high-tech zone, are allowed by law to own such constructions; and (ii) develop commercial residential housing projects are allowed by law to own such houses until the houses are transferred to the new owners.

Foreign individuals (subject to certain limits) who are permitted to enter into Vietnam and not having diplomatic immunity and privileges, and foreign-invested enterprises operating in Vietnam (only if purchasing residential housing for the use of its staff and subject to the term of its business operation) are eligible to purchase apartments or houses in commercial residential housing projects directly from the developers, if such projects are located outside of the national defence or security zones which are to be determined by the Ministry of National Defense and Ministry of Public Security.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

For a foreign investor to acquire land and conduct real estate business in Vietnam, the following approvals must be obtained:

- With respect to the land: acquire land use right either through direct lease from the state or through the capital contribution of the land use right by a Vietnamese partner;
- With respect to the project on the land: approval from the relevant authorities (inter alia, DONRE for the environmental impact assessment report; the Department of Construction for the master planning at 1/500 scale and construction permit; and the local PC for the issuance of an investment certificate); and

- With respect to the conduct of real estate business: issuance of a business registration certificate and/or investment registration certificate from the local Department of Planning and Investment for (i) the registration of the enterprise established by the investors to carry out real estate business, having at least VND 20 billion capital (around US $900,000) and with at least the requisite minimum number of employees satisfying the requisite qualifications; and (ii) the registration of the investment project of the enterprise involving the conduct of real estate in Vietnam.

The timing can take from several months to a year and even longer depending on the locality, the complexity and the schedule of implementation of the investment project.

19. Could your firm assist foreign investors in

- **Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?** Yes.
- **Developing construction projects?** Yes.
- **All legal aspects involved in these contexts?** Yes.

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