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A Guide to

International Real Estate Investment

INTRODUCTION

Real estate is a significant sector in most countries - as part of the built environment, an integral part of many businesses and because property is an important asset class for investors. Most countries recognise something close to outright ownership (or 'freehold' in the United Kingdom) as well as various forms of lease (where an occupier can use and occupy property for a fixed period in return for rent). However, there are wide variations between jurisdictions on how to acquire, hold and invest in property. Some countries restrict the ability of overseas investors to invest in real estate. Accordingly, legal expertise and local market knowledge is essential.

As a pocket guide this is intended as a brief introduction to the legal aspects of commercial property in different jurisdictions across the world. As the law is subject to constant change, this should not be relied upon as a complete statement of the position and does not constitute legal advice. For individual transactions it is important to get specific, expert advice. Details of ADVOC experts for each jurisdiction who have contributed to this guide are contained in each section.

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ABOUT ADVOC

ADVOC is the leading international network of independent law firms with 90 members in 66 countries. We can provide real estate advice on a global basis - but with local knowledge. Each member of ADVOC is an expert in commercial law in its geographical regions - with a proven track record of delivering prompt, practical, common sense advice to clients.

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AUSTRALIA

Australia has the twelfth largest economy in the world. By total area it is the world's sixth largest country. A federation of six states and a number of territories, Australia has its central government established under the Constitution of Australia, usually described as the Commonwealth Government or Federal Government. Each state has its own constitution and Parliament with power to make its own laws for any matters not controlled by the Commonwealth Government under the Constitution.

Australia has a sophisticated real estate market which attracts significant numbers of overseas investors. The Australian legal system is a combination of statute-based law made by Parliament and common law predominately based on the English legal system. In addition, local laws and planning schemes apply to real estate transactions in each area of Australia.

Each state and territory has its own land laws with different rules applying when purchasing real estate throughout different areas in Australia. This guide deals only with real estate transactions in the state of Queensland and advice from local experts with experience in the relevant state should be obtained. However, when investing there is a broad consistency in approach across Australia with land law in each state and territory being based on the Torrens principle of registration of title. Each state has a central register of land in its area which confirms the owner of the property and key information, for example details of mortgages and rights over the land.

Ownership of commercial property

Ownership of commercial real estate in Queensland is predominately based on a freehold system where the owner of land registered with the state government has indefeasible title to property superior to all other interests.

Outside of the main population areas, farms and livestock properties can be held on a leasehold basis from the Queensland government and conditions apply to the granting of those leases. The Queensland Department of Natural Resources and Mines has a centralised land registration system which records details of land ownership and leasehold interests as well as foreign ownership. Registration on the land titles register is evidence of an owner's interest in land.

Rules apply to ownership of property in Queensland by overseas investors. There are restrictions on purchasing residential property that is not newly constructed. Developers are able to obtain permission to sell a certain percentage of developments to overseas investors but specific advice needs to be obtained in respect of any proposed purchase to ensure that there is no impediment to the purchase and that no foreign ownership rules and regulations are broken.

Different rules apply to the purchase of commercial property, farms and livestock properties by overseas investors and specific advice needs to be obtained before any purchase transaction is entered into.

Acquiring commercial property

Purchase of land and buildings is done by way of a written contract of sale which is a binding document between seller and buyer subject to a number of conditions.

Depending upon the type of property purchased, there can be a period of one month or several months between the contract being signed and settlement of the contract occurring.

Typically, purchases of commercial property involve a due diligence period during which a buyer will carry out investigations with respect to the property being purchased and a decision is then made as to whether the purchase proceeds or the buyer terminates the contract.

During a due diligence period, title to the property is investigated and commonly tests and investigations are carried out with respect to the physical condition of the property being purchased, with regard to structural integrity of buildings, condition of plant and equipment, and an examination of the financial return that the property offers an investor.

Settlement occurs when the buyer pays the purchase price in exchange for title to the property. A transfer of land is then registered and the buyer's details are entered on the register as the owner of the property purchased.

Town planning approvals

Planning permission is required for most enterprises carried on from commercial property in Queensland. Matters covered by planning laws include the purpose for which a property can be used, any building or construction work that is proposed to be carried out, and changes in the use of a property.

Planning legislation is different in each state and territory in Australia and each local area has its own planning scheme with restrictions on how different properties in different parts of the locality may be used. Specialist planning advice should be obtained before any proposed use is made of a property. This work might include advice on making planning applications, negotiating conditions with local government and appealing unfavourable decisions in court.

Leasing

Real estate transactions in Queensland also involve the leasing of property by commercial enterprises for business purposes.

Typical properties that are leased comprise offices, factories, transport depots, warehouses, industrial properties and other facilities from which a business is carried on.

These transactions are documented in a lease between the landlord (the owner of the property) and the tenant and the lease contains the terms and conditions relating to the transaction, including the rental payable, restrictions on use, and other conditions that apply to the occupation of the premises.

Leases are registered on the land titles register and are publicly available.

Taxation and other costs

A number of different taxation laws apply to real estate transactions in Queensland.

A goods and services tax is applied to a transfer of commercial property in most circumstances. This is a national tax which is similar to value add taxes in other countries.

In addition, contracts for the purchase of property are assessed with transfer (stamp) duty. This state based tax is calculated by reference to the value of the purchase or transfer price included in the contract of sale.

When a commercial property is sold, capital gains tax may become due. This is a national-based tax, with the tax being payable essentially on the difference between the price paid for a commercial property when originally acquired and the price achieved when the commercial property is sold, subject to certain rules.

In some cases, it may be possible to structure real estate tax to minimise the tax payable. It is essential before a property is purchased that the correct structure is applied because the consequences of using a structure that does not optimise the buyer's taxation position can be very costly.

Cooper Grace Ward

Cooper Grace Ward is one of the largest independent law firms based in Brisbane, with a team of more than 220. The firm offers the full range of commercial legal services, particularly in corporate, commercial, property, litigation and insurance law.

Cooper Grace Ward has dedicated specialists in real estate, planning, infrastructure and property tax and has acted in some of Queenland's landmark property transactions.

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AUSTRIA

Despite its relatively small size, Austria's real estate market attracts numerous domestic and foreign investors. Austria is an attractive destination for international real estate investors due to its central location, stability and the strength of its economy. All the indications are that the market will continue to grow.

Austria consists of nine administrative provinces. The legal framework regarding real estate is generally the same in all provinces with only minor differences between regions. Austria is a member state of the European Union. EU law applies and takes precedence over Austrian law.

Vienna, as the capital city of Austria, is the largest and most important market. Vienna's commercial property market remains one of the most stable in Europe. Vacancy rates have remained modest and are still among the lowest in Europe. The development over the last years shows that the Viennese office market has recovered from the global economic and financial crisis. There is still high and increasing demand for space in the city centre and other key locations, particularly at premium locations and in the premium price segment.

Owning Commercial Property in Austria

The Austrian legal system permits ownership of all the interests in land as well as ownership of parts of the land (co-ownership). Physical persons and legal entities may hold property individually or jointly.

All forms of property in Austria are formally registered with the Land Register. The Land Register is

administrated by the district courts and contains detailed information regarding the property:

- Section A: location and size of the property
- Section B: legal owners
- Section C: mortgages and other encumbrances i.e. rights of way, rights to use pipes, liens, pre-emption rights, options to repurchase, restraints on alienations.

Lease agreements may be but are generally not registered with the Land Register.

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. There are two exceptions to this general rule: (i) superstructures (Superädifikat) and (ii) building rights (Baurecht).

Superstructures are structures and works that are erected with no intention to leave them on a permanent basis. The relevant aspects for this legal structure are the type of construction and the intent of the parties. There is no need to register the erection of a superstructure with the land register. However, any subsequent transfer of ownership of the superstructure to a third party must be registered. With other works, superstructures cannot always be seen by consulting the Land Register.

A building right is the right to erect a building on a plot of land. Such right becomes existent only upon registration in the Land Register. The right lasts from ten up to 100 years. Upon expiration of the building right, the property owner must compensate the previous owner of the building right, if not agreed otherwise, with 25 per cent of the residual value of the building.

Property Acquisition

In Austria real estate transactions are governed by both federal law and state laws which vary from province to province. For the transfer of ownership of a property from the seller to the buyer the transfer must generally be registered with the Land Register.

Contact and first negotiations

The seller and the potential buyer of a property often meet through real estate agents, but also through the internet or newspaper advertisements. The parties will usually first negotiate the main commercial aspects of the deal, including the sale price of the property and the warranties that are to be provided.

Formal Contract, Notarisation of Signatures and Handover

On the basis of the negotiated price and any warranties, normal market practice is that a lawyer or a notary is will be instructed to draft a formal contract. In Austria it is very common that the buyer chooses the lawyer/notary, because generally it is legal custom that the buyer fully pays for the lawyer's or notary's work.

The contract should provide for the sales price, financing terms, the condition of the property, the handover date and warranties. The contract normally states that the buyer has to transfer the purchase price to an escrow account of the lawyer/notary before signing of the contract and before notarisation of signatures by a notary public. It is the seller's duty to hand over all documents listed in the contract to the escrow agent 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 escrow agent to file an application with the Land Register for the registration of the buyer's ownership. After registration of the new owner the escrow agent forwards the purchase price from the escrow account to the seller's bank account.

In Austria all properties are formally registered with the Land Register and a buyer in good faith may basically rely on the accuracy of the information that is registered with the Land Register.

There is a general rule in Austria ,that the buyer of land or a building has the right to terminate the lease agreement by observing the statutory notice period (Section 1120 of the Austrian Civil Code). However, by agreement the buyer will normally accept the duty to take over any existing lease agreements and, consequently, in most cases the buyer will not be free to terminate the existing lease agreements. If the lease agreement is, however, registered in the Land Register or if the Austrian Rental Act applies (in whole or in part) to the lease agreement, the buyer will automatically step 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 ninety percent of the lease agreements in Austria, the general rule (which allows the owner to terminate leases) will normally not have significant implications for a transaction. If the buyer has the right to terminate the lease agreement, the tenant has the right to demand compensation from the seller of the property.

Permits and Approvals

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 usually required for the acquisition of property by non EU/EEA residents or entities. The 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

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 the due diligence before acquiring the property.

Vienna has the most liberal rules of the provinces. 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.

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. It is possible for applicants to apply for a change of the zoning plans, but there is no statutory right to force the authorities to change such plans.

A number of further permits will usually be required for any development of commercial property. However, the required permits differ from case to case.

Land Tax

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 1% 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.

Real Estate Transfer Tax

Real property transactions are subject to real estate transfer tax corresponding to basically 3.5% of the purchase price. Real estate transfer tax is also levied in case 100% of the shares of a corporation owning real property are transferred or in case unification of 100% of the shares of a corporation takes place. In most such cases taxation can be avoided by retaining a minimum shareholding.

Value Added Tax

The general rule for real estate transactions is that no VAT is payable. However, there are certain exceptions to this rule. The parties may also choose to transfer the property with VAT (at a rate of 20%) in order to be entitled to deduct pre-tax.

Capital Gains Tax

In Austria, an owner had to hold the property for 10 years calculated from the signing of the contract to avoid speculation tax that was triggered if the resale price of the property exceeded the acquisition price. For real estate property this legal situation changed as of April 1, 2012: Basically property sales are subject to the new capital gains tax (Immobilienertragsteuer) of 25%.

Real property which was bought after March 31, 2002 is subject to the new capital gains tax (in case of sale) of 25% 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 at 25% so that effectively a capital gains tax of 12.5% must be paid.

Real property which was bought before April 1, 2002 is subject to an effective tax-rate of 15% or 3.5 % of the sales price (not the capital gain) depending on certain circumstances.

Land Register Fee

The fee for the registration with the Land Register is 1.1% of the purchase price.

Stamp Duties

Written lease agreements trigger a 1% stamp duty assessed on the gross rent for a period of 36 months (if the lease agreement is concluded for an indefinite period) or for the definite period for which the lease agreement is concluded (up to a maximum of 36 months).

Fiebinger Polak Leon & Partners

Fiebinger Polak Leon Attorneys-at-Law is a full service business law firm based in Vienna/ Austria.

The main focus of Fiebinger Polak Leon Attorneys-at-Law lies on domestic and international transactions, as well as complex litigation. The firm regularly supports leading Austrian organisations in the domestic market and multinational companies in Austria and Eastern Europe, whilst also advising leading Austrian companies on their long-term projects abroad.

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FRANCE

Located at the crossroads of Europe, France is a founding country of and one of the principal players in the European Union. France is presently in sixth place as an economic power worldwide. The French economy is primarily a service economy, with more than two thirds of the working population being in the tertiary sector. France has a dynamic real estate market which is attractive for both domestic and foreign investors.

The French legal system is essentially a codified one, but case law plays an important role, since it is used to interpret and apply laws. Judges sometimes show initiative and have been known to create law through their rulings in this way.

The main feature of the way in which justice is organised in France is the separation between two jurisdictional branches: an administrative branch in charge of ruling on cases in which the administration is involved, and the judicial branch in charge of cases between private individuals and companies. These two jurisdictional branches are separate, and each has its own hierarchy of jurisdictions.

Real estate law, which involves public bodies and private individuals and companies, can fall under the scope of both of these branches of law. European Union law applies across France and, in common with other European Union countries, prevails over French domestic law.

Owning Commercial Property in France

In France, commercial property is acquired by legal agreement, or more exceptionally through acquisitive prescription. Acquisitive prescription allows a person who is in possession of a property, and who has acted like its actual owner in the eyes of all for a period of 30 years, to have it recorded that he or she has acquired the ownership of this property.

Anyone can purchase property in France. However, for foreign investors, there will be a more in-depth verification of the origin of the funds, within the framework of the system intended to combat money laundering.

Property prices in France are variable depending on the region. For example, there is a clear difference between residential real estate prices in Paris (median price of €7,960/m² in 2014) and the prices for residential real estate in the major French cities (median price ranging between €3,605 and €1,000/m² in 2014).

Property Acquisition

The acquisition or sale of commercial property is generally performed through a professional real estate broker. A purchase or sale can be carried out with or without a lawyer, whereas a notary is essential. As a judicial officer, a notary confers particular strength on deeds and collects the transfer duties, which are then remitted to the tax department.

As part of the due diligence process, the seller is required to take certain steps in order to inform the potential buyer of the property's condition. The following documents are mandatory in the event of a sale: an energy performance appraisal, a report on the lead exposure risk, an asbestos report (for buildings with a building permit issued prior to 1 July 1997), a parasite report regarding termites, a

report on indoor gas installation, a report on indoor electrical installation, a report on the non-collective sanitation installation, and a report on natural and technological risks.

Property deeds on sale are then recorded with the Land Registration Service, in order for them to be enforceable on third parties. A copy of any property deed can also be obtained from the Land Registration Service.

Generally, there is a two-step procedure on property sale and the process can take several months. An undertaking to sell is first prepared between the parties; then, once all of the conditions stipulated in this undertaking have been met, the sale must be confirmed in a notarial deed, before a notary.

Two specific features should be noted. First, ownership can be divided, in which case different rights are granted to the legal owner, who has the right to dispose of the asset and the beneficial owner, who has rights to the proceeds from the asset.

Secondly, a law of 10 July 1965 established the co-ownership status applicable to buildings whose ownership is divided between several owners, by lots whereby each owner has a private part and a share of the common areas, namely a share of the corridors, courtyard, roof, land and the structural work. This status can have a significant impact on premises used for commercial or professional purposes.

For example, the authorisation of the co-owners is generally required before performing any works affecting the common areas or the external appearance of the building, or changing the intended purpose of the premises.

Leasing

The status of commercial leases is regulated by French law which prevents the parties from deviating from certain prescribed terms by agreement.

The legislation applies to all premises used for commercial, industrial or craft purposes, leased to an individual or corporate entity listed in the Trade and Companies Register, intended for the operation of a business.

Under the law, a commercial lease has a term of 9 years. However, the tenant can terminate the lease early, at the end of each 3-year period.

The status of commercial leases confers significant rights on the tenant, such as a lease renewal right on expiry of the original lease.

Where there is a lease renewal, in principle the rent for the renewed lease should correspond with the rental value of the property. However, if the rental value is higher than the rent of the expired lease up for renewal, the rent will be capped according to the increase of the index of commercial rents since the rent under the expired lease was initially determined, unless the landlord can manage to have the cap set aside. If the rental value of the property is less than the rent of the expired lease up for renewal, then the rental value must be used when the lease is renewed. A further feature of commercial leases is that the tenant will have the right to assign the lease and is entitled to an eviction indemnity in the event of notice to quit being given by the lessor. This indemnity is intended to compensate for the damages suffered by the tenant as a result of the non-renewal of the lease.

Permits and approvals

A building permit must be obtained from the City Hall responsible for the area in which the relevant land or building is located for any new or significant construction (addition of a surface of more than 20 square metres). Where the proposed construction involves an area of more than 170 square metres, there is a mandatory duty to engage an architect.

The City Hall will issue its decision in the form of a municipal order after a minimum timeframe of two or three months for the examination of the request. In principle, the lack of a response from the City Hall within the allotted timeframe can mean that the building permit has been granted. However, there are a certain number of exceptions to this principle, the number of which is on the increase.

Where consent is refused, the applicant can initiate an optional free appeal within two months following the refusal. A judicial appeal before the administrative courts must be initiated within two months of the new refusal, or of the initial refusal.

The permit obtained must be displayed on the plot of land in question and in view of third parties, who then have a timeframe of two months during which to dispute it before the administrative courts.

It should be noted that building permits are granted without prejudice to the rights of third parties. This means that the municipality verifies compliance with the town planning rules, but without looking into the rules on the private rights of neighbouring properties.

Where there is a property dispute, one particular difficulty in this area is that it is advisable to refer the matter to the administrative courts in case of non-compliance with the administrative town planning rules, but to the judicial courts in case of any violation of third party rights. The same procedure outlined above applies with regard to applications for a demolition permit.

The regulations on changes of purpose only apply to communities with more than 200,000 inhabitants and to the départements of Ile de France. These regulations are intended to protect housing, and therefore only apply to residential premises converted for some other purpose: into offices, business, furnished tourism rental, etc. No authorisation is needed to convert premises intended for economic activities into residential premises.

The possible intended uses of real estate property will be exhaustively listed in the local town plan (PLU) determined by each community: housing, hotel accommodation, offices, businesses, crafts, industry, warehouses, etc. A town planning authorisation is needed for any change of intended purpose. The application for authorisation can take the form of a building permit if the change of intended purpose is coupled with construction work that creates more than five square metres of floor area, or that modifies the load bearing structures or the building's façade; otherwise, it can take the form of nothing more than a prior declaration.

Tax

Various taxes apply to French property owners.

When a property is purchased, the notary collects transfer duties from the buyer, which are then remitted to the tax authorities.

The sale of a pre-existing property results in total taxation of 5.81% of the sale price that includes a département land registration tax, an additional tax for the benefit of the community, and the collection and recovery costs payable to the State.

The sale of a new property, however, is subject to 20% VAT plus the land registration tax at the rate of 0.71% of the pre-tax price, and to the real estate security contribution of 0.10% of the sale price.

These rates apply to all sales, whether involving individuals or companies.

The notary's fees, which represent approximately 10% of the asset's acquisition expenses, are in addition to the above taxes.

Certain sales are subject to a special regime, resulting in either:

- The application of sales tax at the reduced rate, or
- An exemption of the proportional duty (either across the board, or only in the départements that voted for it), or
- In the application of an abatement to the tax base.

The seller, on the other hand, can be required to pay tax capital gains tax on the profit from the asset's sale. However, an abatement applies for each year of ownership, meaning that no taxation will be applied after 22 years of ownership, and no social security levy after 30 years of ownership.

Each year, every owner of a commercial real estate property is subject to property tax on the assets owned as at 1 January. In addition, a municipal household waste collection tax will be payable. Similarly, for individuals, a housing tax is applicable every year, whether as owner or tenant, for the main residence occupied by this person on 1 January.

The Corporate Property Tax (Cotisation Foncière des Entreprises) is owed by companies or persons habitually performing a non-salaried professional activity, irrespective of their legal status, activity or tax regime.

Cornet Vincent Segurel

Established as one of France's 25 leading independent law firms (Decideurs juridiques, 2014 ranking), Cornet Vincent Ségurel has 185 members, including more than 130 lawyers.

In its offices in Paris, Nantes, Rennes and Lille, Cornet Vincent Ségurel applies the same values of professional commitment and business ethics to all its clients, be they large or small companies, local authorities and public bodies, or individuals.

Our business and our client base now extend both nationally and across Europe. However, our distinctive approach remains unchanged to this day: client focus, commitment, inventiveness and transversal approach are the keys of our practice.

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GERMANY

The Federal Republic of Germany is a founding member of both the European Union and the Eurozone. Germany is a parliamentary democratic republic which comprises 16 federal states each with its own constitution. Germany has the largest national economy in the European Union and the largest population in Europe.

Germany has an established property market much of which is focussed on the major cities of Berlin, Dusseldorf, Frankfurt, Hamburg and Munich. Across the country, the Land Register (Grundbuch) provides a detailed record of property ownership. The Land Register is kept at the local courts and contains records on each property including details of ownership, any easements or rights, mortgages and land charges. Legal ownership is generally established by a copy of the Land Register.

Owning Property in Germany

In general there are no legal restrictions on the acquisition of property in Germany by domestic or overseas investors but there are different forms of ownership.

Sole ownership

The most common form of ownership by an investor in Germany is full ownership as a sole owner. This provides permanent ownership of both the land and any buildings upon the land with the legal owner having the full rights to use, develop and dispose of the property.

Joint ownership

Property can be owned together by a number of individuals, companies or other investors as co-owners. Generally, there is no restriction on the number of co-owners but there will be agreements between them which regulate use, ownership or disposal of the property.

Condominium ownership

Ownership by separate owners of a shared building is permitted by the German Condominium Act. For example, with a block of flats this would allow individual ownership of separate flats or apartments with all the owners acquiring a share of the common parts and structure of the building. Condominium ownership will be registered at the Land Register and a condominium owners association will be formed to deal with maintain and upkeep of the building.

Hereditary Building Rights

This involves an owner of the Hereditary Building Right having full ownership of the property but for a fixed period of time. Similar to long leasehold ownership in the UK, the term of ownership can be freely agreed between the owner of the land and the party acquiring the rights but the duration will typically be a term of between 30 and 99 years. These rights require registration at the Land Register and can be sold, transferred or mortgaged by the owner.

Property Acquisition

Real Estate can be acquired either by purchasing the property itself (asset deal) or by acquiring the shares in the legal company owning the property (share deal). The decision on whether the transaction proceeds by way of an asset or share deal will depend on the specific circumstances including the tax position.

In an asset deal, the contract for the sale of the property must be authenticated by a public notary. This notarial deed must contain all the essential terms of the deal and this requires registration at the Land Register. Failure to comply with the notarial requirements or to include all the essential terms can mean the document is void.

After concluding a valid sales contract the buyer will seek to protect his legal position by means of entering a priority notice into the Land Register. It is generally not advisable for a buyer to pay across the full purchase price before a priority notice in favour of the buyer has been entered in the Land Register.

The transfer of ownership is actually completed once this is registered at the Land Register. The necessary time for entering the transfer of ownership into the Land Register may vary depending on the state in which the property is located and the additional permissions needed. For a normal transaction this can take between 2-6 months. The application with the Land Register falls into the notary's responsibility. The notary will also apply for the necessary permissions and attestations (i.e. regarding eventual claims for restitution of the property, pre-emption rights, and development zones). The total fees with the Land Register can amount to approximately 0.7% of the purchase price.

Usually the property purchased is to be delivered free of encumbrances such as mortgages and land charges. As the property may be subject to encumbrances, the sales contract will typically include special provisions in order to make sure that all claims underlying these encumbrances can be settled using the purchase price so the encumbrances can be cancelled.

For this reason, the purchase price is often paid into an escrow account. The notary will set up an according escrow account for each individual sales contract.

Notary's fees are statutory fees and are calculated in relation to the purchase price (Example: purchase price €500,000; fees: approx. €2,562 + expenses and VAT without escrow account or €3,708.50 + expenses and VAT including escrow account; an extra €807 + expenses and VAT will become due if the purchase price is bank financed and the loan is secured by a charge on the land). The notary is not allowed to operate below these fees.

On formation of the sales contract, land acquisition tax amounting to 3.5% (Berlin 4.5%) of the purchase price will be due. However, the buyer may apply for extension of the term of payment.

Due diligence on acquisition

Typically, due diligence will be carried out on behalf of the buyer to check the title, ownership, permits and zoning of the property as well as any actual or potential liabilities. When investing in the eastern states (Bundesländer) of Germany, investors can sometimes face practical problems in assessing potentially suitable land.

For example, some industrial properties may be subject to significant pollution. This can entail significant additional costs as under the German Ground Protection Act (Bundesbodenschutzgesetz) the new proprietor will be liable for the removal of contamination which may have existed even before the German reunification in 1990. Another example of practical rather than legal obstacles is price control regarding some urban, often historical, development areas. Although Germany offers a high level of stability, it is advisable to discuss any large scale investments with competent German legal advisers.

Brokerage costs

As in many European countries, estate agents play an active and important role in the property market in Germany and many of them provide excellent services. However, it should be borne in mind that, where a sales contract is concluded, brokerage amounting to about 3-6% of the purchase price (+ VAT) may be due even if the estate agent has done little more than informing the buyer of an offer and naming the seller. If not agreed otherwise the role of an estate agent will be limited to supplying information which could lead to the conclusion of a contract with a third party. From a buyer's perspective it can sometimes be prudent to formally reject any information or offer which the buyer already has from another source in order to minimise the agents fees that will be due.

Leasing

A lease agreement for a fixed term of more than one year must comply with the written form requirements prescribed by the German Civil Code. If these requirements are not satisfied generally the lease will still be effective but it will be for an indefinite term and capable of termination at any time.

The parties to a lease are free to negotiate the length of term of a lease but a typical duration for a lease of commercial property will be a fixed term of between 5 to 15 years.

Rental of commercial property will normally be negotiated by reference to an agreed amount per square metre of lettable space with rent reviews often linked to increases in the Consumer Prices Index.

Under German statutory law, the landlord is usually responsible for the major costs of repair and maintenance and the rental paid by the tenant will be regarded as a gross payment to include all these operational costs. Whilst it is possible to agree alternative provisions in the lease which allocate specific responsibilities to the tenant, the courts will declare void any terms which they regard as unfair or which unfairly prejudice one of the parties.

Detailed case law has developed over the years which show how the courts will interpret certain lease clauses. When acquiring investment property in Germany it can be important for investors to review any repair and maintenance obligations and consider whether the contractual terms in the lease are valid.

Permits and Approvals

Local authorities in Germany are responsible for the regulation of planning and development in their areas. Each authority will develop a local development plan which deals with zoning and use of land. This will set out details of the size of buildings and types of permitted use. All major projects, new buildings and significant alterations to an existing property will generally require a building permit.

Schellenberg Unternehmeranwalte

Schellenberg Unternehmeranwalte is a leading firm of lawyers based in Berlin with specialist advisors in real estate and tenancy law, business and corporate law, finance, banking, construction, labour law and notarial services.

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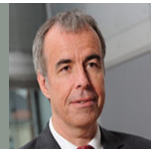

ITALY

Italy has always been an important country for real estate investment. It is recognised worldwide for its rich cultural heritage and beautiful cities. After the past few years of recession, the Italian real estate market is now a significant component of the improvement of the Italian economy. The Italian Parliament has recently implemented new rules with the aim of encouraging investment in real estate.

The Italian Republic ("Italy") is based on a Constitution adopted on December 1947 and effective as of 1 January 1948. Italy is divided into 20 regions and each of them has a specific Regional Council which may adopt law on limited matters. The National Parliament has exclusive competence in the adoption of law regarding the most important matters, such as competition, health and transport.

The Italian legal system is a civil law system, based on statute law and legal codes; therefore, the relevance of the case law is less strong in comparison with the common law systems as courts apply statute law to the case submitted to them. Decisions taken by the Supreme Court (Corte di Cassazione), which is the highest Italian Court, are de facto relevant for the decisions of the Tribunal (first level of civil jurisdiction) and of the Court of Appeal (second level of civil jurisdiction).

Italy is a founding member of the European Union and, therefore, it is also subject to the EU regulations and directives.

Owning Commercial Property in Italy

The Italian Civil Code provides a broad regulation on real estate properties. The ownership of the land extends from the subsurface to the space above ground. Unless otherwise specified in the title, the ownership of a building implies the ownership of the land on which it stands. However, it is possible to split the ownership of the land from the ownership of the building.

Within the limits prescribed by Italian law, the owner of a property has the right to enjoy and dispose of the property. One of the limits established by the law is in the respect of the property's authorised use: the owner of a property must use and enjoy the same in compliance with the zoning regulation issued by the Region or by the Municipality, as the case may be. Any modification to the property's use may require formal permits from the local authorities and the ability to secure permission will usually depend on the zoning regulations in force.

Commercial properties are registered at the Italian Land Registry (Catasto). This is a centralised registry for all real estate properties located in Italy. In the Land Registry each property is specifically identified. Registration provides evidence of an owner's entitlement to the property along with any other real estate rights (diritti reali) relating to the property.

Both European and non European residents can own commercial properties in Italy. A foreign investor can invest in Italian real estate directly or through a vehicle which best meets the investor's financial or operational needs. It is quite common for foreign investors to establish an Italian company as a special purpose vehicle to purchase and manage real estate assets. The procedure for incorporation of an Italian limited liability company is quick and quite cost effective. Whichever approach is taken, it is always advisable, when investing in real estate, to choose a tax efficient structure.

Property Acquisition

The starting point for many investors is to engage a licensed broker to undertake a property search. Real estate agents must be registered with the local Chamber of Commerce. When the commercial property has been selected it is customary to enter into negotiations with the seller aimed at signing a Preliminary Agreement (compromesso).

In the case of more complex acquisitions, this may be preceded by a LOI subject to due diligence of the property.

The signing of a Preliminary Agreement very often involves the purchaser making an initial down-payment usually in the order of 20% of the purchase price or, in case of more complex transactions, the delivery to the seller of a bank guarantee for the same amount.

The Preliminary Agreement may be signed by the parties as a private deed or before a notary. For larger transactions, the Preliminary Agreement will normally be signed before a notary as this involves the registration of the agreement with the Land Registry, which gives formal notice to third parties of the existence of the contract with respect to the property. The final deed of sale must be executed before a notary who has the responsibility to provide for the mandatory registration of the relevant change of ownership at the Land Registry.

Before executing the deed of sale the purchaser will carry out with his/her lawyers a due diligence on the property. This involves checking a substantial number of documents to verify the seller's ownership of the land. In addition to checking that the seller has good title to the property and the absence of any encumbrances, limitations, easements, mortgages etc. affecting the real estate, other issues to be considered during the due diligence are the compliance with the town planning, hygiene and security regulations, the absence of environmental problems (e.g. the presence of polluted land in the real estate purchased for industrial activities), the certification of any plant (such as electric plant, gas methane plant and similar) and any possible condominium restrictions established in the condominium regulations etc.

The acquisition of a real estate property of historic and heritage value is subject to the pre-emption right of the Italian Ministry of Cultural Heritage. Accordingly, the Preliminary Agreement for this type of property must contain the mandatory condition precedent of the lack of exercise of the pre-emption right by the State.

Leasing

Commercial leases in Italy are regulated by the Law 392/1978, the so called "Tenant Law", and by the provisions contained in the Civil Code. Tenant Law is very protective of tenants that are considered the weaker party of the landlord and tenant relationship and provides for a number of mandatory provisions that cannot be derogated by the parties.

However, the Italian Parliament has passed a law, effective as of 12 November 2014 (Law no. 164/2014) by which, among other things, a revolutionary reform has been introduced in non-residential lease agreements. According to the new rules, parties entering into a lease agreement providing for annual rents in excess of €250,000.00 may fully derogate from the Tenant Law. In other words the parties of a lease agreement are allowed, in this case, to depart from a number of rules which, until recently, were mandatory and could not be changed even with the agreement of both parties.

The first major amendment relates to duration: the mandatory mechanism which provides for a minimum 6-years duration with an automatic renewal for 6 additional years, with a withdrawal right for landlords that can be exercised only in a limited number of instances, may now be derogated. This implies that lease agreements with a much shorter duration and no renewal rights will be legitimate.

Rents may freely vary from year to year (previously, only indexation of rent linked to the inflation rate was permitted).

The withdrawal right in favour of the tenants "due to serious reasons" may be cancelled, along with the mandatory indemnity due at termination of the lease in favour of tenants who had contacts with the general public of consumers (equal to 18 or 36 months worth of rent depending on the use of the space after termination).

The automatic transferability of the lease agreement together with the transfer of the business unit, which has been used quite often to transfer the "location" from tenant to tenant, may now be freely derogated by the parties.

The tenants' rights of first refusal for new rents and sale of the real estate contained in the Tenant's Law may now also be derogated.

This new law brings a substantial liberalisation in an area which was tightly regulated with vast protection for tenants and opens the market to negotiation between the parties.

Another approach often used in commercial real estate transactions is granting a lease of a going concern: involving both a business and the land or building where the business operates. This type of transaction is very flexible as it is less regulated by the law. For example, the law here does not impose limitations as to the duration of the lease, rent increases or termination rights. This is the main reason why this approach is commonly used in commercial real estate in Italy, especially by the landlords of shopping malls but also in city centre business premises. The lease of a going concern in most of the cases also includes the temporary assignment by the landlord, for the duration of the lease, of the trade license necessary for the tenant to perform operate in the business unit.

Permits and approvals

Development of commercial real estate may require different permits and approval depending on the type of works, on the geographical area (city centre or non- urban locations) and on the type of building.

As a general rule, the development of a commercial property including building works must comply with the local planning regulation, established by the Region or by the Municipality.

The application for a building permit is filed with the Sportello Unico dell'Edilizia (one-stop shop) at the competent Municipality.

The applicant must file proof of title of ownership to the property for which the building permit is requested, together with the project design drawings signed by an engineer or an architect, including the drawings relating to electric utilities, air conditioning systems, and fire protection devices. The applicant must also request project clearance from the Fire Department and from the Public Health Agency.

The release of the building permit requires the payment of certain fees by the applicant which are calculated on the basis of the urbanisation costs and on the building value. The issuing of the building permits usually takes more than 100 days from the filing of the relevant application. In the case of significant infrastructure projects which involve other public authorities, the timescale for issuing of the building permit may be longer and can involve the filing of more complex documentation. If the construction works have significant effects on the environment, the building permit may be released only after the evaluation of the environmental impact assessment, in line with the EU directive 2011/92.

The Italian Parliament recently tried to simplify the procedure for the release of building permits by means of the introduction of the so called "consent by silent" instrument: this provides that, where the Municipality does not send any positive or negative feedback to the applicant within 90 days, the building permit shall be deemed to have been released. However, the silent consent instrument does not apply in case of restrictions on the land/ building for historical, landscape or cultural reasons. Furthermore, the time frame above indicated does not take into account any extension of time necessary for any request of integration of documents or changes to the project by the competent authority.

Another step towards the simplification concerns the elimination of the building permit request for the execution of extraordinary maintenance works which do not change the shape or dimensions of the building and do not involve structural parts of it: in this case the applicant will file the so called CILA (Comunicazione Inizio Lavori Asseverata) before the Municipality and may immediately start the works, save for the right of the public authority to control the documents and project filed and order the suspension of the works in case they are incomplete or not in line with the applicable regulation. The ordinary maintenance works are also subject to the so called CIL (Comunicazione Inizio Lavori), which contains a similar procedure.

Finally, before the commencement of any activity it is necessary to file with the competent Municipality a certified notification of starting activity ("SCIA") which is a declaration that the building is in compliance with applicable regulations.

Tax issues/hurdles

Taxes in Italy are collected centrally by the National Tax Agency, with the exception of the local taxes that are paid to the Municipality and which represent one of the sources of financing the local services (such as refuse collection, maintenance of local road network, public parks etc.)

Taxation on purchase of commercial real estate varies depending on the nature of the seller: if the seller is a physical person, not subject to VAT, the purchase involves the payment of a registration tax equal to 9% on the purchase price, in addition to a fixed amount of €50 as mortgage tax and €50 as cadastral tax. If the seller is a company, the purchaser will pay the VAT (22%), in addition to the mortgage tax equal to 3% and the cadastral tax equal to 1% on the purchase price.

When purchasing a commercial property, on top of the taxation indicated above, the notary's fees and stamp duties for registration of the deed must be also considered by the purchaser.

The ownership of a commercial property will also involve the payment of certain taxation to the Municipality (IMU - TASI) which applies to both Italian citizens and foreigners.

Leasing of commercial properties is subject to registration tax, to be paid on a yearly basis, which is equal to 1% of the yearly rent (if the landlord is a company) and 2% of the yearly rent (if the landlord is a physical person not subject to VAT).

In case a notary must be involved (e.g. for lease agreements having a duration longer than 9 years or for leases of a going concern) the registration and the payment of the registration tax is made by the notary, who will receive in advance the relevant amount by the contracting party in addition to the stamp duties and his/her fees.

Pursuant to the Tenant Law in Italy, the registration tax on lease agreements must be equally split between landlord and tenant. However, it is not uncommon that it is entirely paid by the tenant. This is normal in case of leases of a going concern. However, both landlord and tenant are jointly and severally liable vis-à-vis the National Tax Agency for the payment of the registry tax.

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Cocuzza & Associati is an independent law firm which provides to its clients a wide range of services in a timely, efficient and professional manner. We always take a problem-solving approach with each of our clients, also via an in-depth understanding of our clients' sectors of activity in order to relate as well as possible to the legal and business context in which they take their decisions. Real estate is one of our main practice areas. We have acquired vast knowledge and experience in this field and are constantly on the lookout for changes in the real estate market.

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MALAYSIA

Malaysia comprises two geographical regions which are, Peninsular or West Malaysia and East Malaysia on the island of Borneo.

The country is a federation of thirteen states and three federal territories, namely the Federal Territory of Kuala Lumpur, Labuan and Putrajaya.

Malaysia has three parallel legal systems namely, a common law system, an Islamic or Sharia legal system and in the East Malaysia states, a native law system.

The common law system was introduced in the 19th century by the British and forms the foundation of the country's constitutional, administrative, criminal, civil and commercial laws. It has an extensive jurisdiction whereas the Islamic or Sharia legal system and the native law system have a much narrower jurisdiction both in content as well as people who are subject to them.

The common law system of courts consists of the Magistrate's Court, Sessions Court, High Court, Court of Appeal and at the apex, the Federal Court. Appeals to the Privy Council have since been abolished.

Ownership of Real Property

Malaysian law consists of both statutes and case law.

The main legislation on land law in Malaysia are the National Land Code 1965 and the Strata Titles Act 1985 which apply throughout Peninsular Malaysia, the Sarawak Land Ordinance which applies only to the state of Sarawak and the Sabah Land Ordinance which applies only to the state of Sabah. Contract law is also important and impacts upon conveyancing of real estate property in Malaysia.

Under the Malaysian system of government, land is designated a state matter by the Federal Constitution.

Land may be held in perpetuity (that is, freehold land), for terms not exceeding 99 years (that is, leasehold land) or via temporary occupation licences (TOL).

Restrictions on the use of the land may be imposed by the state. There are three categories of land use which are, agriculture, building and industry. Conditions may also be attached to each category of land use.

Private ownership may be acquired through alienation from the state or by transfers from existing owners. There may, however, be restrictions on alienation or ownership of land imposed by the state.

Acquisition of Real Estate by Non-Citizens and Foreign Companies

Under the National Land Code 1965, any disposals or other dealings in alienated land or interests in land in favour of a non-citizen or foreign company require the prior approval of the State Authority.

Each state may also have its own requirements for the acquisition of properties by overseas investors. For instance, in the state of Selangor, a foreigner is only permitted to acquire a commercial property or an industrial property which is priced at a minimum of RM3,000,000.

In addition, the following are some general guidelines issued by the Economic Planning Unit, Prime Minister's Department (EPU) for the acquisition of properties by foreigners:

1. All property transactions, except for residential dwellings, that require the approval of the EPU are as follows:

(a) direct acquisition of property valued at RM20 million and above, resulting in the dilution in the ownership of the property held by bumiputera interest (which essentially means Malay individual) and/or government agency.
(b) indirect acquisition of property in specific circumstances.

2. All property acquisitions by 'foreign interest' (as defined below) which do not require the approval of the EPU but fall under the purview of the relevant Ministries and/or Government Departments are as follows:

(a) acquisition of commercial units valued at RM1,000,000 and above.
(b) acquisition of agricultural land valued at RM1,000,000 and above or at least five acres in area for specific purposes.
(c) acquisition of industrial land valued at RM1,000,000 and above.

(d) transfer of property to a foreigner based on family ties is only allowed amongst immediate family members.

3. Acquisition of residential dwellings by foreign interest valued at RM1,000,000 and above do not require the approval of the EPU but falls under the purview of the State Authorities.

4. A person or company who falls within the definition of foreign interest is not allowed to acquire:

(a) Properties valued less than RM1,000,000 per unit,
(b) Residential dwellings under the category of low and low-medium cost as determined by the State Authority,
(c) Properties built on Malay reserved land,
(d) Properties allocated to bumiputera interest in any property development project as determined by the State Authority.

The above guidelines have defined "commercial unit" to mean an area, premises or building used for business purposes.

"Foreign interest" is defined to mean any interest which comprises:

(a) Individual who is not a Malaysian citizen; and/or
(b) Individual who is a Permanent Resident; and/or
(c) Foreign company or institution; and/or
(d) Local company or institution whereby the parties as stated in item (a) and/or (b) and/or (c) hold more than 50% of the voting rights in that local company or institution.

Transfers and Charges of Real Property

Transfers of land are effected by proper instruments of transfer provided under the National Land Code 1965. The title of the seller will vest in the purchaser upon the registration of the transfer with the Land Registry.

The National Land Code 1965 also provides for the creation of charges as security over land for loans. The charges are also registrable.

The Malaysian system of registration is based on the Torrens system. Titles and dealings over land are indefeasible once registered except in cases of fraud, misrepresentation or forgery.

However, there are also interests in respect of real estate properties for which individual titles or strata titles have yet to be issued. This type of interests is not registrable under the National Land Code 1965 and arises simply by contract. Typically, this happens in a development project when pending issuance of individual titles or strata titles, the developer sells the individual lots or parcels in the development project separately to various purchasers.

Sale and Purchase Agreements and Assignments

The majority of real estate properties which are the subject of transactions in Malaysia would have been originally purchased from property developers, who may be housing developers of residential accommodation (and governed by the Housing Development (Control and Licensing) Act 1966 with the terms of the Sale and Purchase Agreement statutorily prescribed by the Act) or non-housing developers of, for instance, commercial or industrial real properties (and not governed by any specific legislation with the terms of the Sale and Purchase Agreement negotiated between the parties).

The terms of a Sale and Purchase Agreement in a sub-sale is structured based on whether the real property has an individual title or strata title issued, or the real property has yet to be issued with an individual title or strata title.

Beneficial interest in a sub-sale of land or buildings without individual title or strata title is conveyed using an assignment of the buyers rights in the property; whereas title to real estate with individual title or strata title is conveyed using a statutory form of instrument of transfer.

The assignment does not require registration with any public authority but will require notice to be given to the housing developer or the endorsement of consent by the non-housing developer, as the case may be; whereas an instrument of transfer must be registered with the Land Registry.

In addition to the Sale and Purchase Agreement, there is commonly a Deed of Mutual Covenants entered into between the individual purchasers and the developer which contains covenants to observe certain terms and conditions which are deemed necessary for the proper maintenance and management of the development. Deeds of Mutual Covenants are often used in strata title developments and developments with ‘gated and guarded’ features.

Stamp Duty

Under the Stamp Act 1949, stamp duty is payable on the Sale and Purchase Agreement, the Deed of Mutual Covenants, the instrument of transfer or the assignment.

If the purchaser takes a loan to complete his purchase, stamp duty is also payable on the loan and security documents.

The stamp duty payable on the Sale and Purchase Agreement and the Deed of Mutual Covenants is nominal. However, the stamp duty payable on the instrument of transfer or the assignment is based on the higher of the value or price stated in the instrument of transfer or the assignment and the value assessed by the Government Valuation and Property Services Department (that is the market value).

The rates are as follows:

Assessed / Declared Value (whichever is higher)	Stamp Duty Rate
First RM100,000	1%
RM100,001 to RM500,000	2%
Above RM500,000	3%

Generally, documents have to be stamped within 30 days after their execution as evidenced by their dates. Any delay in stamping will attract a penalty. Every instrument presented for registration must be duly stamped. Stamp duty is usually payable by the purchaser, transferee or assignee.

Stamp duty payable on loan and security documents is based on the amount of the loan.

Tax

A disposal of real property may attract real property gains tax or income tax.

In general, any gain from a disposal of real property is taxable as real property gains tax. However, if the vendor or disposer is in the business of trading in real property, then the gain may be assessed as income tax.

The current real property gains tax rates (with effect from 1 January 2014) are as follows:

Individual – Malaysian Citizens and Permanent Residents

Category of Disposal	Tax Rate
Disposal within 2 years after the date of acquisition	30%
Disposal in the 3rd year after the date of acquisition	30%
Disposal in the 4th year after the date of acquisition	20%
Disposal in the 5th year after the date of acquisition	15%
Disposal in the 6th year after the date of acquisition or thereafter	Nil

Company

Category of Disposal	Tax Rate
Disposal within 2 years after the date of acquisition	30%
Disposal in the 3rd year after the date of acquisition	30%
Disposal in the 4th year after the date of acquisition	20%
Disposal in the 5th year after the date of acquisition	15%
Disposal in the 6th year after the date of acquisition or thereafter	5%

Individual - Foreigners

Category of Disposal	Tax Rate
Disposal within 2 years after the date of acquisition	30%
Disposal in the 3rd year after the date of acquisition	30%
Disposal in the 4th year after the date of acquisition	30%
Disposal in the 5th year after the date of acquisition	30%
Disposal in the 6th year after the date of acquisition or thereafter	5%

Real property gains tax is governed by the Real Property Gains Tax Act 1976 and the Finance Act 2010.

Both the vendor and the purchaser must give notice of the sale and purchase transaction within 60 days from the date of disposal by lodging the relevant real property gains tax forms or returns with the Inland Revenue Board.

Compulsory Acquisition of Land

Under the Land Acquisition Act 1960, land can be compulsorily acquired by the State Authority for any public purpose, for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes. However, land can only be compulsorily acquired on payment of adequate compensation.

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- Litigation and Dispute Resolution;
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We are now developing a new core practice area in Arbitration and Alternative Dispute Resolution.

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NETHERLANDS

Traditionally, the Netherlands is known for being a trading nation. Where in ancient times it was especially known for its successful merchant fleet and connections between Europe and Asia, today The Netherlands has more and more become the gateway to continental Europe. This is mainly due to the excellent logistics facilities and the continuous development stimulated by the Dutch government. Shining examples of this continuous development are the International Airport in Amsterdam (Schiphol) and the Port of Rotterdam (Europort), both are among the largest and most modern "transportation hubs" of their kind.

The ongoing logistics development combined with a competitive real estate market, makes more and more investors decide to invest in Dutch real estate. In 2014 a doubling of investment in commercial real estate was measured compared to 2013. Further the logistics real estate area showed a strong recovery. In the last five years investors not only focussed on the purchase of commercial real estate but also increasingly acquire special housing buildings.

Owning commercial property in the Netherlands

The Dutch Civil Code describes the right of ownership as the most comprehensive right a natural person or a legal entity can have in relation to goods. This right must be distinguished from rights that are less comprehensive. Examples of less comprehensive rights are ground rent, the right of superficies or the apartment right. These rights include fewer powers than the right of ownership. By applying these rights the owner has the ability to transfer parts of its powers in relation to the property to another legal entity or natural person. In this way it is possible to split rights to use land from the legal ownership.

Registration

The records of ownership of land and buildings are held by the Land Registry (Kadaster). Besides the description of ownership per plot of land, it also holds information regarding the mortgages resting on the land. Furthermore the notarial transfer deeds are preserved in the Land Registry so that at all times it is clear how the previous acquisition took place.

Property acquisition

All legal entities and natural persons are allowed to purchase land. However, Dutch law imposes the obligation on lawyers and notaries to undertake a thorough investigation of the origin of the parties involved in a real estate transaction. This serves the prevention of money laundering and terrorist financing.

The standard process when buying real estate consists of a written contract, followed by a notarial deed of transfer. In case of private persons, a written contract is required in any case. After the parties have agreed on the terms of sale, and these terms are recorded in a written contract, a notary public will execute the deed of transfer. This deed is then registered at the Land Registry so that the new ownership situation is clear to the public.

Construction

The Dutch construction law is characterised by considerable contractual freedom of the parties. Parties often use general terms and conditions that are well known and prevail within the sector. The advantage of this is that these standard terms and conditions provide regulations relating to specific construction law topics. Many of these conditions

include a choice for jurisdiction and declare the Court of Arbitration for construction to be the exclusively authorised tribunal. This tribunal is specialised in arbitration of construction cases.

However, where parties have contractual freedom within the formalisation of the contract, the preceding stage of procurement, in accordance with European regulations, is strictly regulated by both the Dutch and European public procurement law.

Leasing

Under Dutch law the lease agreement is qualified as a so-called special agreement. This provides that lease agreements are separately regulated and governed by the Dutch Civil Code.

Lease agreements can regulate the lease of different types of goods: movable goods (the operational lease of a car), immovable goods (the lease of an apartment) or property rights. In order to create regulation that fits to all these different types of lease, the Dutch legislation provides for a system of four different legal regimes: lease of undeveloped or movable goods; lease of residential premises; lease of business premises and lease of office premises (factories and warehouses included). Each regime has its own stipulations that regulate the options of terms, termination and tenant protection.

In general, Dutch tenancy law can be characterised as "tenant-friendly". The position of tenants regarding residential or business premises is especially well protected. These regimes provide extensive tenant protection due to limited termination and duration options.

The most extensive form of protection can be found in case of termination of a lease agreement regarding the lease of residential premises. Without judicial intervention a termination takes no effect.

Besides this judicial intervention, the landlord is bound to specific reasons of termination.

In addition the regime of business premises contains considerable protection for tenants under Dutch law. Besides the limitation of reasons on which a lease can be terminated, a lease is bound to strict lease terms. The landlord and tenant can (only) agree on a term shorter than two years or on a term of at least five years. In case parties chose for the five year term, the agreement will be prolonged by operation of law for a conjectural period of five years. Termination by the landlord after the initial period is only possible on (limited) grounds.

Parties can also agree on a two year (maximum) term. However, any prolongation of this term leads to the effect that the agreement will be converted into a five year term, with the consequence of an additional term of five years in case the agreement is not terminated by parties. Therefore, the business premises regime can easily lead to a situation of long-term commitments.

These rules with regard to termination and duration of a lease will only be disapplied if the court has approved a clause deviating from the legal system. Such an approval can be obtained in case of large retailers occupying retail premises.

The regime of lease of office premises (factories and warehouses included) offer parties more contractual freedom than the before mentioned regimes. There are no standard lease terms and parties can terminate the agreement without any obligation to terminate on specific grounds. In some cases the Tenant can apply for a so called eviction

protection for the duration of one to three years maximum.

Finally, there is the regime of lease of undeveloped or movable goods. Only the general Dutch tenancy law applies to this regime. There is only very limited rent protection.

Permits and approvals

Permits and approvals are required in the context of construction projects and the implementation and modification of environmentally damaging activities. For example, for the realisation of a construction project an environmental permit to be requested from the local authorities is obliged. Such a permit is an integrated permit for construction, housing, monuments, space, nature and the environment.

Certain business functions can lead to additional conditions requested by the competent authority. For example, a startup company starting its activities is obliged to file a report to the competent authority before commencing trading activities. This could lead to the request of additional permits and/or approvals.

Another notable subject is contaminated land and the obligation of remediation. Given the fact that more and more land has been contaminated by commercial use in the past, it is important to note that the competent authority may impose an obligation to remediate the contamination. For buyers of land, this may entail considerable expense. It is therefore highly recommended to arrange for an extensive soil survey before purchasing real estate.

Tax

Both the possession and transfer of property are subject to taxation.

Boels Zanders

We are among the top 25 law firms in the Netherlands. The 130 employees, which includes 75 lawyers, offer full-service legal advice to a large group of national and international clients. Among our clients, there are several multinational companies, governments and non-profit institutions, but also SME's know how to find their way to our services.

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PANAMA

Panama's real estate market has been growing during the last 10 years due in part to an increase in the promotion of Panama as a tourism and retirement destination. On any given day, Panama City's skyline is beaming with construction cranes for high rise buildings, comprised of both commercial and residential property. In recent years, the Pacific side beach areas are also being developed and marketed as second homes for residents and investments for overseas investors.

Panama is a country with population of 3.7 million divided into ten provinces, each of which is further divided into districts and corregimientos. Additionally, there are five comarcas, or special indigenous areas, for Panama's aboriginal tribes. The main cities are Panama City, the capital located in the Province of Panama, where most of the commercial activities of the country take place, Colon City located in the Province of Colon, home to the Colon Free Zone, and David, capital city of the Province of Chiriqui, where a significant part of the country's agriculture, cattle and farming activities are carried out.

Panama has the second largest and fastest growing economy in Central America, and also boasts the largest per capita consumption in Central America. Revenue from the Panama Canal tolls continues to be a significant portion of Panama's GDP, although commerce, banking, financial services and tourism are major and increasingly growing sectors.

The legal system in Panama is based on civil law with some influences from Spanish legal tradition and Roman law.

The Supreme Court of Justice is the highest judicial authority in the country.

Provinces: Bocas del Toro, Chiriquí, Coclé, Colon, Darien, Herrera, Los Santos, Panama, Western Panama and Veraguas.

Regions: Embera, Guna Yala, Ngobe-Bugle Comarca, Kuna de Magugandi y Kuna de Wargandi.

Owning Commercial Property in The Republic of Panama

The two main ways to acquire property rights in the Republic of Panama are: (1) Through the purchase of a title of property, which applies to properties duly recorded and with title in the Public Registry of Panama; or (2) through a process of obtaining title over a right of possession ("derecho posesorio") for property in areas without recorded titles.

Panama has one of the most reliable and technologically advanced public registry systems in the region. The Public Registry Office retains records of all titled properties in the Republic of Panama, and information on titled properties is readily accessible through the Public Registry's website and access at their offices.

While most properties may be owned by foreigners or nationals, Panama's constitution forbids foreign ownership of property within ten kilometres on either border of the Republic of Panama. Additionally, it restricts private ownership of islands, save for those titles legitimately acquired prior to the entry

into effect of the Constitution, which may lawfully be expropriated by the government through the payment of the corresponding indemnity.

With respect to beach-front properties, property within 22 meters from the highest tide line on the Pacific coast and 10 meters on the Atlantic coast may not be titled, nor may permanent improvements be built on them, although concessions for their use may be granted.

Property Acquisition

The process to acquire a titled property in Panama is generally carried out in the following manner:

Due Diligence of the property - The buyer should complete a title search at the Public Registry, review the property maps in the Land Authority ("Autoridad Nacional de Tierras"), verify tax good standing of the property at the Ministry of Economy and Finance, verify that no late payments are due or accrued on utility bills, as well as verify any recorded limitation of the property, liens, and encumbrances over the property, which should appear registered at the Public Registry.

Promissory Purchase Agreement - This agreement is generally executed to secure the property, through a down payment of approximately 10% to 30% of the total purchase price, in order to have time to execute the due diligence on the property and obtain bank financing for the acquisition. The promissory purchase agreement may be a private document or it may be recorded in the Public Registry in order to affect third parties.

Purchase and Sale Deed - A definitive purchase and sale agreement is executed by way of a public deed before a notary public in the Republic of Panama, where the terms and conditions of the sale are recorded. The seller of the property will be responsible for providing evidence of payment of property transfer taxes, which will be reviewed by the notary public, and providing free and clear certificates for property taxes, utilities and condominium fees (if applicable). The buyer of the property is generally responsible for paying notarial fees and expenses, as well as the registration fees at the Public Registry. A copy of the notarial public deed is then filed for registration at the Public Registry. Upon registration, title to the property will have effectively transferred to the buyer.

Rights of Possession ("Derecho Posesorio") - For land and properties that are not titled, a separate process to obtain title over rights of possession must be conducted in order to hold a valid property title of the land. Rights of possession grant land use privileges which are essentially acknowledged based on the occupation, maintenance and use of the land over a period of time; however, they do not grant their holder title over the property. Rights of possession may be transferred to a third party through a public deed to sell the rights of possession.

The process of obtaining title over rights of possession may be a long and cumbersome process, within which its holder must prove to the Land Authority that he has used and maintained the land for a continued period of time. An inspection of the land is conducted, testimonies of neighbours may be required, amongst other elements to prove the existence of the rights of possession. Upon recognition of the rights of possession, a resolution from the Land Authority to that effect is registered at the Public Registry to constitute title on the property.

Leasing

Lease agreements for real estate in Panama are governed by the principle of contractual freedom, the Civil Code of the Republic of Panama and by Law 93 of 1973, as amended to date.

The main types of lease agreements are:

a) Residential Lease Agreements with a monthly rental fee of US$150.00 or less.
b) Residential Lease Agreements with a monthly rental fee of more than US$150.01.
c) Commercial Leases.

Lessees of the residential leases with a monthly rental fee of US$150.00 or less, have preferential rights and protection granted by Law 93 of 1973. For example, if there is a buyer for the leased property, if the lessee is in good standing regarding the payment of rental fees, he must accept the Lease Agreement. In addition, the rental fee cannot be increased by the lessor without prior approval of the Ministry of Housing.

For residential leases with a monthly rental fee over US$150.00 and commercial leases, the parties may contract by the principle of contractual freedom and the contract will only need to fulfill the main requirements stipulated on the leasing laws.

With respect to registration requirements, lease contracts may be private and registered with the Ministry of Housing, which provides a pre-printed lease form and allow the security deposit to be deposited with the ministry; or they may be registered at the Public Registry of Panama.

Lease agreements with a term of 6 years or more must be executed in a public deed before a Notary Public in the Republic of Panama and recorded at the Public Registry. Registration of the lease at the Public Registry is carried out to give notice of the existence of the lease to third parties.

Lease payments for commercial lease agreements are subject to a 7% service tax known as "Impuesto de Transferencia de Bienes Muebles y Servicios", or by its acronym ITBMS, payable by the tenant and reported to the tax authorities by the landlord.

Permits and Approvals

In Panama, development and construction upon properties requires a series of permits, which will vary depending on the nature, scope and type of the project.

The following permits are the principal authorisations to take into consideration before starting a project:

Environmental Impact Study (EIS) - Obtained before the Ministry of Environment, this study is required in order to obtain a construction permit from the Municipality where the property is located. The process of completing an EIS may take from 15 to 30 days or more and the study may vary depending on the type of project that is going to be developed. The EIS must be prepared by an independent environmental consultant duly certified or registered with the Ministry of Environment and submitted for approval of the said Ministry.

Construction Permit from the Municipality - Obtaining a construction permit is required prior to beginning any work on the property. The application is generally filed by the licensed architect of the project and reviewed by the Work and Construction Department, who must be provided with, amongst other items, the evidence of ownership of the property, evidence of existence and good standing of the companies who will develop the project, land use certification, approvals issued by the Fire Department Safety office, two copies of the blueprints of the project, approval of the Ministry of Public Works, and Ministry of the Environment, proof of registration of the applicant with the Technical Board and the municipal good standing certificate. The cost of the permit is usually 1% of the project value.

Occupancy Permit - Upon the completion of the project, an occupancy permit is required prior to use of the property or registration of any special property regimes. The Fire Department Safety Office conducts routine inspections during construction and must issue a final approval before the occupancy permit is granted by the Municipality, who will also inspect the construction. Once all the permits are issued, the owner of the property must register the improvements in the Public Registry, and apply for any special property regimes.

Special Property Regimes - Commercial and residential buildings in Panama are generally subject to the Horizontal Property Regime, where each individual apartment is granted a property number and each owner is part owner of the common assets of the buildings, such as the land in which the building is located and common areas. Application for this special regime is made before the Ministry of Housing and the resolution of approval of the regime must be recorded at the Public Registry.

Taxes

Taxes in Panama are collected and managed by the General Direction of Income of the Ministry of Economy and Finance. Panama has made paying taxes easier for companies, allowing for payments of property taxes and transfer of property taxes to be made at the National Bank of Panama and other banks with a banking license.

When purchasing property in Panama there are several taxes to take into consideration, namely:

Property Transfer Tax - Transfer tax must be paid by the seller at the moment of transfer of the property. This tax is approx 2% of either the sale price stated in the purchase and sale contract or the registered property value, whichever is higher.

Capital Gains Tax - Capital gains tax is payable on the profits made by the sale of property at the rate of 10%. The seller of the property has the obligation to pay 3% on the sale price or the registered property value, whichever is higher, as an advance on the income tax payable on seller's capital gains.

The seller has the option to consider the 3% tax payment as the definitive income tax to pay for the capital gains. If the sum withheld exceeds the amount resulting from the application of the 10% rate to the gain obtained from the sale, the seller may file a special tax return to credit the sum retained and claim the excess resulting as a credit in his favour.

Real Estate Taxes ("Impuesto de Inmueble") - All land located within Panamanian territory as well as improvements to them are subject to this tax, save the following properties intended for:

- The State, municipalities or association of municipalities.
- Autonomous or semi-autonomous entities, subject to its own regulations.
- State-sanctioned worship or churches.
- Public or social welfare programs.
- Family Homesteads.
- Treaty exemptions or State contracts.
- Labour unions, provided the real estate is not used for profitable activities.
- Those with taxable base (including improvements) not exceeding US$30,000.00.
- Agriculture or cattle farming, if the registered value (valor catastral) does not exceed US$150,000.00.

Private educational institutions undertaking to offer scholarships to needy students and private hospitals undertaking to assist needy patients may deduct these sums from the tax amount to be paid.

The progressive combined tax rate and base for calculation is the following:

- 1.75% of the excess of US$30,000 of taxable base, up to US$50,000.00.
- 1.95% of the excess of US$50,000 of taxable base, up to US$75,000.00.
- 2.10% of the excess of US$75,000 of taxable base.

The alternative tax rate and base for calculation of this tax, applicable to properties that have requested an appraisal for this purpose, is the following:

Up to US$100,000.00 in land and improvement	0.75%
Over US$100,000.00	1.0%

Real Estate tax must be paid according to the official assessment value, which is usually the declared value on the sale document. The maximum annual percentage of assessment is 2.10%, which is based on the value of the land and plus the declared value of the improvements built on it.

The taxable base will depend upon the total value of the land plus all improvements. Real estate transactions at prices of more than the appraisal value will automatically increase the value of the said properties for tax purposes. Certain properties and improvements to them are exempt or can obtain exemptions from real estate taxes according to special incentive tax laws.

Newly built properties may further benefit from exemption of payment of real estate tax over improvements (but not land).

Patton, Moreno & Asvat

Patton, Moreno & Asvat has more than 30 years' experience in providing legal services to both local and international clients. Established in May 1981 in Panama City by the partners who give their names to the firm, the practice has a strong Central and Latin American focus. Being totally bilingual, the firm forms a natural bridge between clients in Europe, the Far East and North America wishing to develop business, acquire property, establish corporate structures or resolve issues in the Caribbean and Central America or with the countries of Latin America.

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POLAND

Poland is a unitary state located between the Baltic Sea on the north and the Sudeten and Carpathian mountains on the south. The country's total surface area is 312,679 square kilometres which makes Poland the ninth largest country in Europe. Poland is divided geographically into sixteen administrative areas, known as voivodeships.

In Poland codified law applies to both the public and private sector. In addition, by virtue of being a member state of the European Union, Poland applies the EU law in accordance with the principle of primacy so EU law takes precedence over the national law.

Since 1989 Poland has shown stable development and economic growth. An accession to the European Union in 2004 has confirmed its position and increasing importance in Europe. With one of the more stable European economies, Poland has a solid foundation for further economic and social development.

Owning Commercial Property in Poland

Polish law recognises two main types of property rights to land and buildings: the ownership right (prawo wlasnosci) and the perpetual usufruct right (prawo uzytkowania wieczystego).

Ownership - Ownership represents the fullest right to hold and control land and buildings. This generally provides the owner with the sole right to use, occupy and dispose of the property to the exclusion of others. The owner will also be entitled to collect any profits and revenues from the property.

The ownership of land extends to any structures on the land, such as buildings and permanent fixtures (subject to certain exceptions provided for by the law). The right is transferable and may be encumbered.

An agreement for sale of the ownership right to a property must be executed in the form of a notarial deed. Under Polish law, a transfer of the ownership right does not have to be entered into a land and mortgage register. However, the buyer is required to file an application for registration of his ownership in the land and mortgage register to secure his rights as a bona fide purchaser.

Perpetual usufruct - The perpetual usufruct represents a concept of more limited ownership rights. Within certain legal limits this form of ownership provides the owner of these rights (the perpetual usufructuary) with the sole right to use and dispose of their land to the exclusion of others. These rights arise only in relation to land owned by the State Treasury, local government bodies or their associations. Nevertheless this is an important part of the Polish real estate market as these entities own large areas of land within Polish cities. As a general rule, a perpetual usufruct right can be established for maximum of 99, but not less than 40 years.

Perpetual usufruct is linked to the accessory right of separate ownership to buildings and structures which, at the time of the perpetual usufruct right being granted, already exist on the property or are

erected by a perpetual usufructuary. Following the expiry of the term, the ownership reverts to being vested in the owner of the land, and the exiting perpetual usufructuary is entitled to compensation.

The perpetual usufructuary right is transferable, and may be encumbered. Unlike the case of ownership, an entry into the land and mortgage register is required in order to confirm and evidence the transfer of the right to the perpetual usufruct. The perpetual usufructuary is required to pay a one-off fee for acquiring the right, which normally amounts to about 15% to 25% of the price of the relevant property, and annual fees thereafter. The level of those fees will depend on the contractual purpose agreed by the owner and the perpetual usufruct. Where the relevant property is used for a business purposes, the annual fee would typically amount to 3% of the value of that property. However, the fee may be adjusted once every three years if the value of the property has changed over that period.

Acquisition of real estate property

There are two common approaches to buying real estate in Poland: through an asset sale and purchase or the sale and purchase of shares in a company owning property.

Regardless of how the purchase is structured, it is advisable to carry out due diligence beforehand. The legal status of the land and structures can be examined as regards ownership status, environmental aspects, the existence of tenants, restitution claims, compliance with laws and the existence of encumbrances. Before the execution of the sale agreement, prospective parties will often exchange letters of intent, heads of terms and other (binding or nonbinding) documents necessary to work on the acquisition.

Asset sale and purchase - The ownership right or perpetual usufruct right may be acquired directly through an agreement for sale, which, if the real estate is situated in Poland, will be governed by Polish law.

There is a requirement for the sale agreement to be executed in the form of a notarial deed. In the majority of cases, the process itself will be divided into two stages. First, a preliminary purchase agreement will be signed (this agreement does not have to be in a form of a deed), and secondly, the final deed will be executed. If the preliminary agreement is executed as a deed, the parties may enforce it before Polish courts. Otherwise, the parties' actions are limited to claiming damages to the extent of incurred loss.

The ownership of a real estate property cannot be transferred on a conditional basis or for a limited period of time. Consequently, it is common for the preliminary agreement to contain conditions, for example on satisfactory due diligence, obtaining a building consent etc. before the transfer of ownership. Fulfilment of such conditions, will not automatically lead to a transfer of the ownership or perpetual usufruct, and the parties will need to enter into a separate unconditional transfer agreement to effect this.

The costs incurred during the execution of the agreements, for example, notary costs, land and mortgage register fees, tax on civil law transactions or value added tax, are customarily paid by the buyer. In order to ensure that the payment is going to be made it is common practice for the buyer to make an advance payment of approximately 10% of the purchase price of the relevant property at the time of execution of a preliminary agreement.

Share sale and purchase - Instead of direct acquisition of a real estate property, an alternative approach may be an acquisition of shares of a company owing that property. With this approach, notary and registration fees are lower in comparison with the costs payable in a direct acquisition but a transaction via a share deal mechanism, including financing, is generally more expensive and time consuming. A further drawback with a share acquisition is that an investor is exposed to existing risks such as undisclosed liabilities of the company which may be passed onto the buyer.

Other property interests

Leases - The lease (najem) provides a tenant with a right to use the relevant property for a fixed or unspecified period of time for a payment of an agreed rent. Under Polish law there are relatively few mandatory provisions in relation to leases.

Accordingly, the terms of a lease will largely be determined by negotiation between the interested parties. Commonly, rent is calculated by reference to the usable area of the premises and adjusted every year by reference to increases in the Euro Area Consumer Price Index. Rents are often expressed in Euro and paid in Polish Zloties, but payment in Euro is possible. Operating expenses, service charges and other applicable fees are paid by the tenant in addition to the basic rent. A commercial lease may be in place for a maximum term of 30 years. If this term is exceeded, the lease is deemed to be a lease for an unspecified period of time and statutory notice periods will apply.

Tenancies - Under a tenancy agreement (dzierzawa) the tenant has the right to use and occupy land and buildings for a fixed term, or for an unspecified period of time, for a payment of an agreed rent. The tenant also has the right to collect any revenues

generated from the property, which distinguishes this agreement from a lease. However, the same regulations concerning leases will be applied to a large extent to a tenancy. A tenancy agreement for a fixed term may last for a maximum period of 30 years.

Leasing Contracts - A leasing contract is defined in the Polish Civil Code as a transaction under which the financing party commits to purchase a specific property from a third party and to transfer that property over to the new user, who can use, or collect revenue from it. Such transfers will be for a fixed term, and in exchange of monetary consideration in agreed instalments equal to at least the price of the property, or the costs at which the financing party acquired it. The parties may agree that the financing party is obliged to transfer the ownership of the leased property after the lapse of the leasing period specified in the contract, without any additional (or only nominal) payment. A leasing contract must be made in writing, or otherwise it will not be enforceable.

Co-operative ownership rights - The catalogue of limited property rights (ograniczone prawa rzeczowe) under Polish law includes: usufruct, easement, pledge and mortgage. In addition, the co-operative ownership right to premises should be mentioned (spółdzielcze wlasnosciowe prawo do lokalu). This category of rights originate from the communist era and are similar to the housing association structure in the UK. They provides the holder with similar rights to the ownership right but the holder is obliged to pay fees to the co-operative and seek the co-operative's consent in certain situations.

Usufruct (uzytkowanie) and easement rights (sluzebnosc) may be established over real estate and entitle the holder of such rights to use the property in a specified, limited manner.

Easements - There are two types of easements recognised by Polish law. One attaches to a property and the other to an individual.

A property easement is established over land or buildings (the encumbered property) in favour of the owner or the perpetual usufructuary of another property (a dominant property), and imposes (passive) obligations on the owner or perpetual usufructuary of the encumbered property. A property easement may, for example include a right of way, across the encumbered property. Where these rights of way exist an encumbered property cannot be developed in a manner inconsistent with its use as a road. A personal easement may be established in favour of a specified individual and generally corresponds with the content of a real property easement but is not transferable.

Pledges and mortgages - The pledge (zastaw) is a limited property right which may be established over chattels, whereas the mortgage (hipoteka) is a limited property right which may be established over the real estate property, perpetual usufruct rights (together with buildings situated thereon), co-operative ownership right to premises or receivables secured with a mortgage. Both, pledge and mortgage, can be used to secure creditor's claims and may be enforced over the encumbered property regardless of any subsequent transfer thereof.

Permits and approvals

Acquisition permits - Generally, the acquisition of land and buildings situated in Poland by an oversees investor requires a permit. The permit is issued by way of an administrative decision of the minister of internal affairs. The Minister of National Defence and, in case

of agricultural real estate property, the Minister of Rural Development have a right to object to the issue of the permit. However, Polish law provides for numerous exceptions to these requirements.

Since Poland has become a member of the EU, in general, citizens or businesses from member states of the European Economic Area no longer need to obtain the relevant permit. In relation to an acquisition of agricultural or forestry land, a permit is required but only within transitional period which ends on 1 May 2016. Nevertheless, there are various exceptions and permits are not required if the land is used by an overseas investor from the EEA. Where a permit is required, an acquisition of a real estate in Poland without the required permit will be invalid and not capable of being remedied.

Decisions related to requirements of a development - Development of real estate property in Poland requires compliance with all applicable planning regulations. In many areas of the country there are no plans showing the local zoning. Currently, only approximately 30% of Polish territory is covered by such plans. If a zoning plan is missing, the determination of the development and any requirements occurs via decision imposed by a competent local authority.

Anyone can apply for a decision relating to the requirements of the development. The applicant does not need to have any right to the related site, and the decision does not confirm any rights to the land. Local authorities will issue their decision only when the relevant property and the intended development satisfies a number of requirements specified by law (for example, the property has access to a public road and to utilities, the planned development is in conformity with the existing development etc.)

Building permits - In general, building permits will be required before commencing any construction works. Only secondary structures, recognised by Polish construction law as such, do not require a building permit, although these may still require a notification, including an investor's intention to

build that structure, addressed to the competent local authorities. If the relevant local construction authority does not make any objections within 30 days following such notification, construction works may be commenced.

The local construction authorities are obliged to grant a building permit if all statutory requirements are satisfied. When applying for a building permit, the investor must give an undertaking that he has the right to use the land for construction purposes .This undertaking should not be given lightly by an investor as a false declaration attracts criminal liability and the already issued building permit may be voided. For certain works a building permit may only be issued after completion of a process relating to environmental impact assessment (as required by the relevant regulations on environmental protection) and/or security or the permits, arrangements or opinions of other authorities.

Occupancy Permits - For certain categories of buildings specified under Polish construction law, a building facility may be occupied only after an occupancy permit has been issued by the competent authorities. In other cases, i.e. where the occupancy permit is not legally required, it is sufficient to simply notify the authorities of the date of the completion. If the relevant construction authority does not object within 21 days following the notification, the occupation of the property may commence.

Tax

There are various taxes, which need to be considered when it comes to investing in real estate in Poland. A brief overview of those generally applicable types is as follows.

Corporate Income Tax (CIT) or Personal Income Tax (PIT) - This is income tax payable on gains from the sale or the lease of the land and buildings. Net income received by corporate taxpayers is taxable at the general tax rate of 19%. For CIT purposes, the net income is determined as the total revenue collected by the taxpayer minus the tax deductible expenses, i.e. costs. Among many others, the tax deductible costs consist of the interest paid and cost of third parties' services, or depreciation. In case of an individual person who owns the land (as opposed to a corporate entity), the tax rate of PIT fluctuates from 8.5% to 32% of revenue depending on the particular circumstances.

Transfer taxes - Value Added Tax (VAT) or Civil Law Activity Tax (CLAT) - In most cases, the supply of real estate is taxable with the VAT calculated on the basis of the market value of the property. However, the VAT treatment of the sale of a property situated in Poland depends on the number of conditions and consequently, the tax implications for each planned transaction should be carefully considered beforehand. The primary VAT rate is 23% and is recoverable under the standard VAT rules. The other possible VAT rates for the sale of properties are 8% (e.g. supply of residential buildings qualifying for social housing program) or full VAT exemption.

When a sale of a real estate is exempt from the VAT, the CLAT tax is applicable at the rate of 2% of the market value of the property. Unlike VAT, the CLAT is not recoverable. Leases of real estate property will generally also be taxed at the standard VAT rate of 23%. However, VAT exemptions may apply in particular circumstances such as agricultural land or residential buildings.

Real Estate Tax - The Real Estate Tax is paid by the owners or perpetual usufructuaries on a land, buildings or parts thereof and structures. The amount of tax liability depends on the nature of the property. The tax base for land, buildings or parts thereof is the surface area. On the opposite end of the spectrum, the tax base for structures is 2% of its book value.

BSJP Brockhuis Jurczak Prusak Sp.k

With more than 60 attorneys, legal counsel, patent attorneys, tax advisors and auditors operating in six business locations (Warsaw, Gdansk, Katowice, Poznan, Szczecin and Wroclaw) BSJP Brockhuis Jurczak Prusak provides comprehensive legal services to enterprises. Our main areas include corporate and commercial advice, competition and intellectual property, infrastructure, real estate, litigation and arbitration and tax.

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SINGAPORE

Singapore is an island city state which is located in the heart of South East Asia at the tip of the Malaysian Peninsula.

Despite its small size and lack of natural resources, Singapore has taken advantage of its strategic geographical location, excellent infrastructure and international connectivity to become one of the leading economic and financial hubs in the world.

Singapore is a high-income economy with a national gross income of US$55,150 per capita, as of 2014. The country provides the world's most business-friendly regulatory environment for local entrepreneurs and is ranked among the world's most competitive economies. The city state's commitment to economic and financial excellence has seen the country be ranked third in IMD's World Competitiveness Yearbook and fourth in the Global Financial Centers Index.

As a commonwealth nation, Singapore's legal system has its roots from English common law but has now evolved into a distinct jurisprudence. The Singapore Judiciary is made up of the Supreme Court and the Subordinate Courts.

Owning Commercial Property in Singapore

Singapore is an attractive destination for foreign investors and companies to set up businesses because of its low hassle and non-restrictive policies. As a result, the island sees a significant number of enterprising and established companies setting up operations on its tropical shores annually. The large number of foreign expatriates has created a strong market for high rental value residential properties.

Singapore has freehold and leasehold ownership of land although the majority of Singapore properties are typically 99 year leasehold estates.

Singapore has adopted the Torrens title system of registration, through the enactment of the Land Titles Act. This confirms land ownership by registration of the legal title with the Singapore Land Authority. This system simplifies property transactions because it dispenses with the need for the owner to prove a chain of title ownership, which would otherwise require laborious inspection of title documents.

The Singapore Land Authority handles the registration of all property transactions in Singapore. The extract from the Land Register will show the name of the registered proprietor of the land as well as any encumbrances, such as mortgages and charges, affecting the land. The Singapore Land Authority maintains two co-existing land registers, namely the Register of Deeds for Common Law title under the Registration of Deeds Act and the Land Titles Register for titles land under the Land Titles Act. The former is gradually being phased out.

Acquiring Property

The primary method of acquiring property in Singapore is by contract. This can be done by parties entering a Sale and Purchase Agreement or by obtaining an Option to Purchase from the potential

seller in exchange for an Option fee (usually 1% of the purchase price). The terms of the contract should have been agreed upon by both the seller and buyer before the parties exchange the Option with payment of the Option fee. Once the exchange of the Option is effected, the terms of the contract are deemed to be agreed upon.

After the exchange of an Option to Purchase, the buyer will typically be given two weeks to consider whether to proceed with the purchase. If the buyer decides to proceed with the purchase, he must exercise the Option by signing the Acceptance attached to the Option granted to him and deliver the Acceptance together with a further sum (usually a deposit amounting to 4% of the purchase price) to the seller or its solicitors before the expiry date stated in the Option failing which, the seller is entitled to keep the Option fee and release the property for sale again.

Although the parties are free to decide what terms and conditions they wish to incorporate or vary to suit each party's requirements, the standard practice in Singapore is for the buyer and seller to incorporate the Law Society Conditions of Sale 2012 into their Sale and Purchase Agreement or Option to Purchase.

When the Option to Purchase is exercised or when the Sale and Purchase Agreement is concluded and signed, a caveat will usually be lodged at the Singapore Land Authority for the protection of the buyer's interest. The caveat serves as notice to any third party, including other potential purchasers, of the buyer's interest.

Completion of the entire transaction usually incurs within 8 to 10 weeks from the date of signing of the Sale and Purchase Agreement or the exercise of Option to Purchase. It should be noted that any delay due to the default of either the buyer or the seller incurs liability on the part of the defaulting party for late completion interest.

Within the Singapore real estate market, properties under construction are released for sale by developers prior to completion of construction. The Sale and Purchase Agreement is however in a format prescribed by the regulatory body and the process largely follows the same pattern as mentioned above except that the buyer is usually given three weeks to exercise the option and payment of the purchase price is made by instalments on a progressive basis, depending on the stages of completion of construction. Payments will be called for and generally have to be paid within two weeks of receipt of notification from the developer of completion. Sub-sale of properties under construction is allowed in Singapore, subject to developer's consent.

Leasing

The leasing of commercial property is common and widespread. There are few restrictions or legal obstacles to leasing in Singapore. The terms and conditions for leases are largely left for parties to decide and negotiate upon.

The formal requirements as to leasing in Singapore are that the lease contract must be evidenced in writing and a lease of more than 7 years requires registration. Stamp Duty on leases is payable based on the declared rental or the market rental, whichever is higher at the Lease Duty rates.

Permits and Approvals

Singapore has relatively few restrictions or permit requirements with regard to property transactions for commercial and industrial properties. However, it should be noted that the purchase of residential property is subject to restrictions.

The Residential Property Act stipulates that a foreign person wishing to buy restricted residential property must obtain approval from the Land Dealings (Approval) Unit. A foreign person will include any non-Singapore citizen or a foreign incorporated/registered entity.

There are three main types of restricted residential property: vacant residential land, landed property (i.e. detached house, semi-detached house, terrace house (including linked house or townhouse)) and landed property in strata developments which are not approved condominium developments.

One notable exception is that such approval is not required if the foreign person is merely looking to purchase a leasehold estate in restricted residential property for a term not exceeding 7 years.

A foreign company looking to buy residential land for development would need to apply for a Qualifying Certificate.

The following main conditions must be satisfied before an application for a Qualifying Certificate is made:

- The development must be completed within 5 years;
- All completed units must be sold within 2 years of TOP (Temporary Occupation Period, i.e. the date when the first batch of owners/residents collect their specific unit's keys & are permitted to move into the unit);
- Selling any undeveloped/partially developed land is prohibited; and
- A Banker's Guarantee of 10% of the land price must be provided as security to comply with the Qualifying Certificate conditions.

Stamp Duty

Stamp duty is payable within 14 days from the acceptance of the Option to Purchase or conclusion of the Sale and Purchase Agreement for transactions involving residential, commercial and industrial properties. A penalty of up to 4 times the amount of unpaid stamp duty may be imposed should parties fail to pay.

Stamp Duty for Residential Properties

Seller's Stamp Duty (SSD) is applicable on all residential properties and residential lands that are bought on or after 20th February 2010 and sold within the holding period at the following rates:

- Within 1 year of transfer attracts duty of 16% of consideration or value, whichever is higher;
- Within 2 years of transfer attracts duty of 12% of consideration or value, whichever is higher;
- Within 3 years of transfer attracts duty of 8% of consideration or value, whichever is higher;
- Within 4 years of transfer attracts duty of 4% of consideration or value, whichever is higher; and
- More than 4 years: No SSD is payable.

Buyer's Stamp Duty (BSD) is based on the purchase price or the market value of the property, whichever is higher and is calculated as follows:

- Every $100 or part thereof of the first $180,000: $1 (i.e. up to $1,800)
- Every $100 or part thereof of the next $180,000: $2 (i.e. up to $3,600)
- Every $100 or part thereof of the remainder: $3

In addition to BSD, Additional Buyer's Stamp Duty (ABSD) is applicable to all foreign investors and corporate entities purchasing private residential properties in Singapore, which has been set at 15% of the total purchase price or the market value of the property whichever is higher.

However, foreigners of some nationalities are given the same treatment as Singapore Citizens, namely nationals from:

- Switzerland
- USA
- Liechtenstein
- Iceland
- Norway

ABSD of the total purchase price or the market value (whichever is higher) of the residential property is also applicable to any Singapore Citizen (SC) and Singapore Permanent Residents (SPR) acquiring their second or more property and is applicable to all Singapore Citizens acquiring their third or subsequent property.

The ABSD rates vary as seen below. For ease of reference the table below set out the rates of BSD and ABSD:

Profile of buyer	BSD rates*	ABSD Rates (new)+ From 12 Jan 2013
FR and entities buying any residential property	1% on first $180,000	15%
SPR buying first residential property		5%
SPR buying second and subsequent residential property	2% on first $180,000	10%
SC buying first residential property		Nil
SC buying second residential property	3% on first $180,000	7%
SC buying third and subsequent residential property		10%

* The consideration or value has to be rounded up to the nearest $100 before applying the rate.

+ ABSD is to be rounded down to the nearest dollar.

Other Taxes

Commercial Properties

Goods and Services Tax ("GST")

A 7% GST is applicable on all commercial and industrial property transactions if the buyer is a GST taxable person. Residential properties do not attract GST. The default position is that GST is payable by the buyer, although parties are free to negotiate.

Property tax

Property tax is payable to all properties.

All commercial and industrial properties including office buildings will have a payable property tax rate of 10%. If a building is demolished, the price of the land will be assessed at 5% of its market price.

Property tax rates on owner-occupied and non-owner occupied residential properties are applied on a progressive scale. A building will be exempted from property tax if it is exclusively used for purposes promoting the social development of Singapore, a charity, as a public school and a public place of worship.

This property tax is a percentage of the annual value of the property. The annual value is tabulated from the estimated yearly rate of the property if it were rented out.

The government provides rebates, reliefs and refunds to property owners should they meet certain criteria not only to help keep taxes affordable but to encourage further investments in the future.

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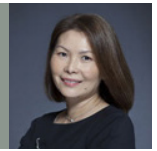

SPAIN

Spain is located in the south west of Europe and, together with Portugal, is the gateway into Europe from the Atlantic Ocean as well as the main entrance to and from the Mediterranean Sea. In addition to the territory of the Iberian Peninsula, the Balearic and the Canary Islands also belong to Spain, together with the two autonomous cities of Ceuta and Melilla.

Spain comprises 17 areas (known as Autonomous Communities) which bring together regions with similar historical and cultural characteristics. As each Autonomous Community is led by a regional government, Spain is a largely decentralised country, often with different legal procedures between regions. Some Autonomous Communities, such as Catalonia, the Basque Country and Galicia, have developed over many years their own laws (autonomic law), applicable in these territories and sometimes different to the central state laws (state law).

Due to its good climate, its strategic geographical position, its cultural and historical heritage, Spain has been a popular tourist destination for many years. As a major economy within the European Union, Spain can also be an excellent location for overseas investors to invest in real estate.

Owning Commercial Property in Spain

For non-residents, just as for the Spanish, acquiring a property (whether as a residence, to run a business or simply as an investment) will usually involve a significant financial investment.

For commercial transactions it is important to take into account both local autonomic laws and state law as well as relevant EU legislation. Set out below are the the key points for successfully purchasing a commercial property.

It is important for non-residents to be aware that Spanish law allows them to apply for a 'residence visa for investors', where they intend to enter Spanish territory to acquire property in Spain with an investment value equal to or greater than €500,000, per applicant. Whilst this is not a legal requirement to own and invest in property, the ability to apply for a residence visa can be useful. To reach the minimum threshold to apply for a visa it is possible to include either a single property or various properties.

Investment in real estate in Spain may be undertaken personally by an investor or made through a company, provided this is not domiciled in a tax haven and the investor holds a majority of the voting rights and has the power to appoint and remove the majority of the members of its administrative body. The applicant's spouse, children under 18 years of age and dependent children of legal age may also apply for the visa.

The visa is valid for one year, with the possibility of renewing the residency by means of an additional authorisation of residence for 2 years, renewable every 2 years for as long as the initial conditions for the investment are maintained.

Acquiring Property

Acquiring a property involves the signing of contracts and deeds. A 'purchase deposit agreement' (contrato de arras penitenciales) is usually signed, as a private contract in which the parties undertake to complete the sale and purchase of the property.

The agreement will provide that a proportion of the sale price is paid as a deposit, and this must contain the characteristics of the sale and purchase transaction which will subsequently be formalised. The deposit paid usually varies between 5% and 15% of the total price. In the event that either party fails to comply with the agreement, the deposit (arras) will be kept by the seller (if the buyer is in breach) or double the amount will be returned (if the seller is in breach).

The signing of the 'contract of sale' (contrato de compraventa) is the final and decisive step in the transfer of the property. It is advisable that this contact is recorded by a notary public.

Generally, the buyer has the right to choose the notary who records the contract of sale and it is usually agreed that the buyer will pay the costs associated with the notary and the land registry. The land registry in Spain is organised on a regional basis.

Only a contract of sale recorded by a notary may be registered with the land registry of the locality where the property is situated and registration of the transaction is necessary to provide the buyer with good title to the property.

Leasing

Renting property is common in Spain - whether as a private residence, to run a business or for a commercial investment.

Leasing a property may provide the tenant more flexibility and will tie up less capital in the land. In addition, the procedure for taking a lease is generally much simpler than for a sale and purchase.

However, as with most jurisdictions, landlord and tenant disputes between owners and tenants are not uncommon (for example, disputes where damage occurs or on the legal position at the end of the lease when the owner takes back the property, etc.), so clear, precise documentation can be key in managing risk as well as ensuring a cordial and satisfactory relationship between the parties.

There are no mandatory legal provisions which govern the duration of a lease in Spain. The parties are free to negotiate their own commercial terms including the length of the term of the lease.

The law provides that in the case of rented accommodation a deposit equivalent to one month's rent must be paid and two months' rent in the case of rented business premises. The purpose of the deposit is not to ensure payment of the rent, but rather to ensure that the rented accommodation or premises are returned at the end of the lease in good condition. If that is not the case, the owner may retain the deposit and use it to repair any damage.

It is common for owners to require guarantees to ensure that tenants comply with their obligations, principally in relation to payment of rent., As part of securing payment, some owners require bank guarantees for several months' rent (generally between two and six months), although this approach can make it more difficult to let the premises. For this reason, some form of rent guarantee insurance is more commonly used, whether provided by an insurance company or, in some instances, provided free of charge by certain public authorities for leases which meet certain requirements.

Permits and Approvals

It is necessary to distinguish between buying a newly built property ('new build') and buying an existing 'second hand' building ('existing building'), as there are certain differences in terms of the documents required, namely:

When buying a new build property it is advisable to have all the details about the seller (developer or builder). It is essential to examine the plans and the building specifications, to ensure that the property has the correct administrative permits and to establish its planning status (by applying to the local council for a lawful development certificate and a building conditions certificate).

It is also necessary to confirm the cadastral status (extent, value and ownership) of the new build property by means of a graphic and descriptive cadastral certificate and to obtain a certificate showing that payment of the annual property tax is up to date.

The developer is obliged to provide the buyer with various documents, such as the building log book, the works completion certificate, the ten-year insurance policy, the certificate of occupancy, the definitive plans (plans and specifications), reports from authorised installers (regarding utility supplies: water, electricity, gas, etc.), the manual for using and maintaining the property's installations and the warranties and instructions for any electrical appliances installed, etc.

If the property is under construction, the developer must guarantee, by means of insurance or a bank guarantee, to return any amounts received on account in advance.

For a new build property, a ten-year insurance policy for structural faults and damage is essential for registration with the land registry.

When buying an existing building, it is necessary to: check with the land registry that the seller is the owner of the property and its situation in terms of charges and encumbrances; establish the building use class with the local council and that payment of the annual property tax is up to date; confirm that the property has the certificate of occupancy (accommodation) or licence for use and operation or opening (business premises), as well as an energy performance certificate; ensure that payment of any dues to the owners' association is up to date and check that there are no tenants or occupants, or if there are tenants, the terms of their lease.

The contract of sale cannot be signed in the presence of a notary if the certificate of occupancy (whether it is a new build or a second-hand property) and energy performance certificate and energy label, required by law, are missing.

Tax

With regard to the tax treatment of a sale of purchase, it should be borne in mind that when buying a second-hand property the buyer will be obliged to pay property transfer tax, the rate of which will depend on the autonomous region in which the property is located (usually between 6% and 10% of the sale price recorded in the contract of sale). When buying a new build property, the buyer does not pay property transfer tax, but rather VAT, the rate of which is 10% of the sale price.

For its part, the seller pays tax on the increase in the value of urban property (known as municipal capital gains tax), which is calculated according to the cadastral value of the property and the number of years between its purchase and its sale.

Buying property with a mortgage loan (which is what happens in many cases) requires additional work. In addition to the costs mentioned above, the buyer will have to pay for the valuation of the property, the tax on documented legal acts for the total amount guaranteed with a mortgage and the obligatory fees relating to the notary and the land registry for formalising the loan. If there was a previous mortgage on the property, unless otherwise agreed, the cost of cancelling it will be met by the seller.

In some instances, buyers can negotiate the purchase of property on the basis that they take over and continue paying the seller's existing mortgage. Depending on the availability of new financing, this approach can sometimes be cost effective as the transfer can be is carried out in the same contract of sale and no tax on documented legal acts would be paid. Where property is leased, this will attract payment of property transfer tax, which is the responsibility of the tenant, the rate of which is 0.5%.

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Our experience in setting up foreign companies in Spain and, in general, in international matters, as well as our team's command of different languages, allows us to offer our clients added value, giving us a competitive advantage.

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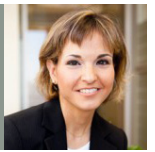

THAILAND

The Kingdom of Thailand is a constitutional monarchy with a parliamentary form of government. Thailand uses a civil law system and its primary laws are embodied in Acts of Parliament. These Acts are supported by a variety of administrative laws and regulations, issued by the Cabinet and permanent ministries of the Thai government.

For businesses, the core laws in Thailand are the Civil and Commercial Code ("CCC") and the Civil Procedure Code ("CPC"). The CCC sets out legal principles common to most free market economies and the CPC contains rules and standards that courts follow when adjudicating civil disputes. The CPC became law in 1935 and has been amended several times, especially in the period between 1991–2008. Thailand has certain restrictions concerning foreigners acquiring property in the country as detailed below.

Land Registration

Thailand operates as comprehensive system of land registration. The Land Department is the government agency responsible for issuing land title deeds to property and registration of real estate transactions in Thailand. Headed by the Director General with its headquarters in Bangkok, the Land Department has an office in every province and several major districts, each of which is generally responsible for a specific designated area.

In general all property transactions in Thailand including sale and purchase of land, buildings and condominium units will (apart from short term leases) require registration with the Land Department. Land mortgages are permitted in Thailand but must be made in writing and registered with the Land Department.

There are various categories of land title documents and property ownership under Thai laws ranging from full ownership to possessory title. The best form of ownership is registration with Chanot (Nor Sor 4) title which is registered at the Land Department in the province in which the land is situated as this gives the holder of the title full rights of ownership over the land. The registered title deeds will contain certain prescribed details of the property including a legal description of the land, the name of owner, details of total area of the land plot that the title deeds are issued for, historic record of transactions, etc.

Freehold Property in Thailand

Land

Land ownership in Thailand is governed by the Land Code B.E. 2497 (AD 1954) and its subsequent amendments. Pursuant to the Land Code, the general principle is that only Thai nationals are allowed to own land. The definition of foreigners pursuant to the Land Code includes foreign individuals and companies incorporated in Thailand with with foreign nationals holding more than 49% of total shares or where number of foreign shareholders exceed Thai shareholders.

A foreigner who violates the land ownership restrictions would be subject to both a financial and custodial penalty.

However, there are certain exemptions whereby foreign nationals may own land in Thailand. The main exemptions are as follows:

A) Exemption under Treaty
A foreigner may be permitted to own land if there is a treaty between Thailand and the national country of such foreigner. However, currently Thailand has no such treaties with any country.

B) Exemption under Section 96 bis of the Land Code
A foreigner who invests not less than 40 million Baht in certain business activities which are beneficial to Thai economy with an investment term not less than 3 years, with the permission of the Ministry of Interior Affairs, may own up to 1 Rai of land (equivalent to 1600 square meters) for residential purposes in a specified area; such as, Bangkok, Pattaya. However, permission for foreign land ownership under section 96 bis Land Code Act is rarely granted.

C) Exemption under laws on investment promotion
A foreign company (as defined under the Land Code) incorporated in Thailand with certain business privileges and promotion from the Board of Investment of Thailand or the Industrial Estate Authority of Thailand may be permitted to own land for operation of its business. However, there are certain key conditions which include; for example, total area of land owned must be suitable to for its business operation and the purpose of the company's use of the land must be for its promoted business activities.

Condominium units
Pursuant to the Condominium Act B.E. 2522 (1979) and its subsequent amendments a condominium may be owned by a foreign national residing in Thailand, a company incorporated in Thailand having foreign status and an operating business promoted under investment promotion laws.

In addition, a foreigner, who brings into Thailand foreign currency equal to the purchase price of the condominium unit and has exchanged this amount into Thai Baht currency, may also own a condominium unit. The recipient bank in Thailand will provide documents in support of the remittance and exchange of foreign currency, which must be submitted to the Land Department for registration of the purchase.

It is also important to note that in a condominium the total number of units held by foreigners must not exceed 49% of all units, and the aggregate floor space of all units owned by foreigners must not exceed 49% of total space area of all units.

Partly foreign owned Thai land holding company

Land ownership will sometimes be structured through a property company. For example, a number of foreigners may opt to incorporate a holding company in Thailand for acquiring ownership of property. Typically, a company formed for this purpose will maintain major Thai shareholders with minority shareholders protection mechanisms. However, the Thai government has been implementing a series of strict regulations and practices in order to scrutinise and investigate the status and purposes of such companies both before and after the acquisition. Should it be found that there is a misuse of

these corporates structures in order to circumvent the laws, the Land Department of Thailand has authority to take actions pursuant to the Land Code.

Leasehold Property in Thailand

Lease for General Purposes
Leases of immovable property (i.e, land, house, condominium units) for general or residential purposes are overned by the CCC. The longest lease term permissible under the CCC is 30 years.

Leases of immovable property for a term of more than 3 years must be made in a written document and registered with the relevant office of the Land Department. A lease of immoveable property not entered into in this way will only be enforceable for a period of 3 years. Whilst ownership of freehold units in a condominium is no longer available for overseas investors, a foreign national may acquire the leasehold on a long term basis. In general, the lease term is normally 30 years with an option to renew.

Lease for Commercial and Industrial Purposes
For leases of commercial or industrial property, provided the qualifications of the lessor and lessee are in accordance with the Lease of Immovable Property for Commercial and Industrial Purposes Act B.E. 2541 (1998), the lease term can be longer than 30 years but must not exceed 50 years. An extension for additional 50 years is permissible. The lease for such purposes also requires registration with the competent land office.

Under Thai law, unlike the position with freehold land and buildings, there are no special restrictions concerning foreign nationals acquiring leasehold of land and property different from Thai nationals.

Tax and Fees

The following taxes and fees are generally payable in property acquisition in Thailand.

Freehold

- Transfer Registration Fee: 2% of official assessed price or the sale price, whichever is greater
- Specific Business Tax: 3.3% of sale price but not less than official assessed price (if applicable)
- Stamp Duty: 0.5% of sale price but not less than official assessed price (exempted if Specific Business Tax is payable)
- Withholding Tax:
  (i) seller who is an individual - progressive rate
  (ii) seller who is a company - 1% of sale price but not less than official assessed price

Leasehold

- Lease Registration Fee: 1% of the rent for the entire lease term
- Stamp duty: 0.1% of the rent for the entire lease term

Conclusion

Despite the restrictions on freehold acquisition of property in Thailand, foreigners are still permitted to acquire ownership of property in Thailand through certain exemptions. Alternatively, leasehold for residential or general purposes can be for a term of up to 30 years while leasehold for commercial and industrial purposes can be for a lease term of up to 50 years.

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Apisith & Alliance is a highly focused Bangkok based independent law firm recognised for its knowhow and expertise in the areas of international trade, corporate and commercial laws, intellectual property and inward investment.

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UNITED KINGDOM

The United Kingdom of Great Britain and Northern Ireland (the 'United Kingdom' or 'UK') has a leading real estate market which attracts significant numbers of investors from across the world.

The UK consists of four countries: England, Scotland and Wales ('Great Britain') and Northern Ireland. Scotland, Wales and Northern Ireland each have devolved government with varying powers. The UK today is the fifth largest economy in the world with a population of over 64 million and the largest real estate investment market in Europe.

The service sector dominates the UK economy with the financial services industry being particularly important. London is the world's largest financial centre alongside New York and has the largest city GDP in Europe.

The UK's legal system is a mixture of common law, made by the courts applying legal precedent to individual cases and statute law made by the UK Parliament. As the UK is a member state of the European Union ('EU'), EU law is applied by the UK courts and takes precedence over UK law. This guide deals only with real estate transactions in England and Wales (separate legal systems apply in Scotland and Northern Ireland).

Owning Commercial Property in England and Wales

The two main ways of owning land in England and Wales are acquiring a freehold interest (the nearest position to outright ownership in the UK) or by the acquisition of a lease. In addition, the concept of commonhold ownership was introduced by the Commonhold and Leasehold Reform Act 2002. This provides a structure for multiple ownership of buildings suitable for an office or industrial block with multiple occupiers. However, commonhold has not proven to be popular with owners or investors and has so far been rarely used.

The vast majority of commercial property in England and Wales is registered at the Land Registry. The Land Registry runs a centralised land registration system and guarantees title to registered land. Land which is registered will have its own unique title number allocated by the Land Registry and details of the title will be recorded on the register available for public inspection. Registration provides evidence of an owner's entitlement to the land. Since 2003 all transfers of freehold interests and leases with more than seven years left to run must be registered with the Land Registry.

In general, both EU and non-EU residents and companies can own and hold commercial property in the UK and there are no significant barriers for overseas investors wishing to invest. Property can be owned in the name of one or more individual person or by a company, limited liability partnership (LLP) or through other investment vehicles (for example, partnerships or real estate investment trusts). The decision on how to make an investment in property and the choice of investment vehicle can be complex. Particular care should be taken to ensure a tax efficient structure is used.

Property Acquisition

Most property acquisitions will involve an 'exchange of contracts' (when a legally binding contract is entered into between the parties) followed by 'completion' when the transfer of the property is completed. There will typically be a gap of 3 or 4 weeks between these stages but it is possible for the parties to agree a simultaneous exchange and completion. After completion, the buyer will need to apply to the Land Registry to register the acquisition to effect the legal transfer of ownership.

On exchange of contracts the buyer will usually be required to pay a deposit of up to 10% of the purchase price which is held by the seller's solicitors as stakeholder until completion. Most contracts provide that the risk of damage occurring to the property transfers upon exchange of contracts. Consequently, it is normal practice for the buyer to take out insurance on the property from exchange.

Before proceeding with any acquisition there will be a period of due diligence on the property. This will normally include commissioning a building survey and, depending on the nature of the property and the risk of contamination, there may be other site investigation required to verify ground conditions. During this time, the solicitors acting for the buyer (or any lender) will carry out title investigations, pre-contract enquiries, local and other searches on the property. This process is to check that the seller owns and has good title to the property and whether there are any restrictions or third party rights which could affect future use or development of the property.

For registered land, due diligence will include reviewing the filed plan and office copy documents of the relevant property from the records maintained by the Land Registry. Where Land has not yet been registered, proof of ownership is established by reference to the original title deeds. The investigation will include searches with public records on highways, public utilities, planning and environmental issues.

Leasing

There are wide variations in the leases granted for commercial property across England and Wales. However, in broad terms there are two main types of lease - ground leases and rack rent leases.

Ground leases (or long leases) are long term interests in land or a building which reserve only a nominal rent for the landlord (or a rent which is significantly lower than the open market rent).

These normally have a capital value and, in many respects, the tenant of a ground lease will have a similar interest to a freehold owner with a substantial asset and long term possession of the site. A ground rent lease will often be sold in return for a capital premium and will typically be for a term of 99 to 250 years but can sometimes be granted for longer periods. Generally acceptable to property investors, ground leases will usually be suitable security for a bank or other institutional lenders providing loan funding for an investor or developer.

Rack rent leases (sometimes described as occupational leases) are granted for much shorter periods. Generally, a rack rent lease will be granted to a business tenant using the property for its business. This will not usually attract payment of a premium but the tenant will pay the landlord a rack rent (or open market rent) usually by four quarterly payments in advance each year. To protect the value of the

landlord's investment, most rack rent leases will include provisions allowing the landlord to trigger rent reviews at regular intervals.

The rent reviews may be based on the open market rental for the premises at the time of the review or the parties may agree fixed increases in the rent or reviews linked to the increase in a recognised index such as the retail prices index.

The duration of a rack rent leases can vary depend on the quality and location of the property and occupier demand. In the current market, a rack rent lease can be for as long as 15 years but it is not uncommon for tenants to negotiate break clauses allowing early determination. Until the early 1990s, rack rent leases for terms of 25 years with five yearly rent reviews were common. Many of these leases still exist today. Rack rent leases will include provisions dealing with repairs, alternations and the permitted use of the premises. Investor landlords will normally seek to pass on to the tenant all the obligations to repair and insure the property in what are described as full repairing and insuring leases (or 'FRI leases').

Where only part of a building is let, the lease terms will normally include provision for the tenant to contribute towards the common expenses and costs of repair through a service charge.

Tenants occupying business premises under a rack rent lease can acquire security of tenure under the Landlord and Tenant Act 1954. The practical effect of this legislation is to provide the tenant with a statutory right to renew the tenancy unless the landlord

is able to successfully oppose the claim using one of the limited grounds recognised in the legislation. As this can restrict an investor's long term plans for the property, this needs to be considered carefully before granting a lease. Where a prospective landlord and tenant agree in advance of signing the lease that the tenant's statutory rights are to be excluded it is possible for the parties to create an 'excluded tenancy' which is contracted outside of the legislation.

Permits and Approvals

Planning permission will usually be required for most development of commercial property including building works, major alterations and material changes of use. Planning applications are usually considered locally by the relevant local planning authority empowered to undertake the planning functions for a particular geographical area. There is no definitive zoning regime across England and Wales which allocates specific uses for designated areas but local planning authorities are required to publish Development Plans which contain the planning policies for development in their areas. For nationally significant infrastructure projects above certain thresholds, the developer will need to apply for a development consent order rather than planning permission.

Depending on the nature and detail of works or operations proposed, a number of other permits may be required. For example, there is a statutory requirement to obtain building regulation consent for new buildings and many alterations of existing buildings. This is designed to ensure that buildings are safe and accessible and meet minimum standards.

Special controls on development apply to listed buildings of special historic or architectural interest, areas of 'green belt' (land reserved for open space) and in relation to sites of special importance in terms of wildlife or geological features.

Environmental issues on property are regulated separately by the Environment Agency: the government agency for protecting and improving and promoting sustainable development. It's role includes protecting the environment against flood or pollution and for issuing and regulating environmental permits which may be required for development.

Tax

UK tax is generally collected and enforced centrally by a government department, HM Revenue and Customs ('HMRC'). There is no single tax regime for commercial property in England and Wales. When investing in commercial property there are a number of different taxes to consider.

UK tax will generally be due on rents and other income arising from commercial property whether or not the owner is UK resident. For non-UK resident landlords, UK tax law requires the tenant (or managing agent collecting rent) to withhold part of the rent and pay this to HMRC on account of the tax liability unless that landlord obtains authority in advance from HMRC to receive all the rent as gross payments.

UK resident companies (subject to certain exemptions) are liable to pay tax on the capital gains on the sale or other disposal of commercial property. Non-UK residents who hold commercial property as an investment will not normally be liable to pay tax on capital gains unless that person effectively operates and trades in the UK.

As an incentive for long term capital allowances, HMRC will allow businesses to deduct certain capital allowances from its corporate or income tax on commercial property.

These allowances are generally limited to specific approved qualifying expenditure, for example on new plant and machinery.

There are two other major taxes that affect commercial property:

Stamp Duty Land Tax ('SDLT') is a tax payable by the buyer of a property or tenant under a new lease. The amount of SDLT payable on the transfer of commercial property will depend on the purchase price. In the case of a lease, the SDLT will be determined by the level of any premium and/or rental payable by the tenant and the length of the term of the lease.

Value Added Tax ('VAT') applies on the value of a supply of commercial property payable where the property is a new commercial building built within the last 3 years.

In general, freehold commercial property more than 3 years old is exempt from VAT. However, for commercial property the owner can elect to opt to tax their property which will result in all supplies of the property being VAT'able at the standard rate of VAT. This will enable the owner to recover VAT on their expenses. As VAT will now be chargeable on the sale of the property and on the rent, both the buyer and the tenant will need to ensure they are VAT registered in order to be able to recover and account for VAT.

In most cases, a commercial property investment with tenants in occupation can be considered to be a business in its own right, known as a going concern. The sale of a commercial property that is subject to VAT can be treated as a transfer of a going concern for VAT purposes ("TOGC").

TOGCs are outside the scope of VAT and therefore no VAT is chargeable to the buyer so long as the buyer is registered for VAT and has opted to tax the property before completion if the seller has already done so or the property would otherwise be subject to VAT. It is important that the property buyer/seller obtains legal advice as there are a number of conditions that need to be satisfied.

In addition to the taxes administered by HMRC, a property owner or (where the property is let) the tenant will pay local tax in the form of business rates to the local rating authority.

Finally, community infrastructure levy (or CIL) is a further tax which local authorities and other charging bodies may raise on the development of land to support infrastructure in their area. However, this only applies to properties located with a 'CIL' area created by the authority and will generally only arise where the landowner carries out a development which creates additional commercial floor space.

Proper tax planning may be crucial to the profitability of an investment and to the viability of a proposed development. However, a structure which may be highly efficient for one tax could prove to be very costly under another. Consequently there is often a careful balancing exercise required to manage the overall tax liability.

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