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Real Property in Europe

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Real Property in Luxembourg

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Types of Ownership in Luxembourg

Ownership of real property in Luxembourg is governed by Articles 544 to 546 and Articles 711 to 717 of the Luxembourg Civil Code. Various additional regulations such as the statute regulating ownership of an apartment supplement these primary regulations. Ownership grants the owner the right to have free disposition of the property he owns, as long as no statutory regulations are breached and as long as the rights of a third party is not encroached upon. The owner also has a right towards the profits or fruits derived from the property he owns.

The Civil Code also regulates the ownership of multiple persons in one piece of property („Indivision"). In the case of co-ownership, multiple persons are the owners of the same piece of land at the same time. Each of these persons have the right to have the land at their disposition and has an interest in the profits and losses derived from the Indivision. A distinction is made between a normal co-ownership („Indivision ordinaire") and a forced co-ownership („Indivision forcée).

Inheritable Building Right

Inheritable building rights are termed „droit d'emphytéose" in Luxembourg. These rights are governed by the statute dated 10 January 1824, which has been incorporated into the Civil Code. Inheritable building rights are contractually established and can last for a period of between 27 to 99 years.

The beneficiary of the inheritable building right enjoys all the rights an owner of real property would enjoy. He is entitled to assign and mortgage the property. The beneficiary is however not entitled to depreciate or decrease the value of the

property. He is obliged instead to maintain the property and to make payment for tax and other costs.

Ownership of an Apartment

The ownership of an apartment („copropriété“) is regulated by a statute dated 16 May 1975. This statute was amended in 1985 and has been supplemented by further special regulations in the meanwhile. The ownership of an apartment is understood to be the special ownership of an apartment together with co-ownership of the common areas of the building.
The owners of the apartment constitute a community of apartment owners (syndicate). This community is responsible to maintain the common areas of the building in good condition and to administer the same. This community is a legal person and can enter into legal negotiations and sue and be sued via a trustee. The community has to set up a set of by-laws which would regulate the administration of the building and establish the obligations of the apartment owners.

An owner of an apartment is free to dispose of his apartment in whichever manner he likes as long as the by-laws set up by the community of apartment owners are not breached. The owners of an apartment share the costs of the maintenance of the common areas of the building in proportion to the value of their respective apartments.

Time Sharing

There are no special statues regulating time sharing in Luxembourg. The EU Time Sharing Directive has also not been adopted in Luxembourg.

Encumbrances

Ownership can be encumbered by a land easement („servitude“). Land easements are regulated by the Civil Code and are either statutory established by reason of the location of the real property, by reason of the undisturbed, public and uninterrupted exertion for a period of 30 years or via notarised documentation.

In a life estate („usufruit“), the real property is transferred to a third party for his disposition. the A life estate is limited in duration to the lifetime of the owner of the real property.

Limits in Ownership of Real Property

Limitations in ownership of real property in Luxembourg can arise from various aspects in construction planning laws.

Real property which are protected for historical purposes („sites et monuments“) can also be disposed. In the event that the municipality is the seller of such real property, the approval of the responsible minister is necessary.

Protection of Property

The right of an owner can only be encroached upon when the encroachment is for the benefit of the public. The procedure to be complied with in such a situation as well as the rights of the person whose rights are encroached upon as contained in the constitution, the Civil Code as well as in other statutes. The owner of the property must be reasonably compensated prior to the encroachment in all cases.

Acquisition of Property

Proof of Ownership

Ownership rights relating to real property are entered into the cadaster or mortgage register. The cadaster and mortgage register sets out the special information relating to real property as well as provides information relating to all assignments and encumbrances relating to the relevant piece of property.

The registration in these registers carry both informatory as well as legal effects. A person who obtains title to a piece of real property without registering the transfer of title runs the risk that a third party may in good faith purchase the same piece of property from the seller of the property and register his ownership.

Preliminary Contracts / Letters of Intent

There are various different forms of preliminary contracts in Luxembourg. The most important forms of these are the unilateral and the bilateral promises. In the unilateral promise can take two forms : either the purchaser promises to purchase the real property or the seller promises to sell the real property. In the case of breach, the aggrieved party has a right to claim for compensation for damages suffered.

In the case of a bilateral promise („compromis“), both parties bind themselves to the purchase and pursuant to the provisions of the Civil Code, the purchase contract is thereby deemed to have been executed. In the event of breach by either party, the aggrieved party has the right to demand for the performance of the contract.

Purchase Contract

A purchase contract is established upon the acceptance of an offer. Although the purchase contract does not have to take a particular form in order to be legally effective between the contractual parties, the notary form is necessary for the purpose of publication and proof of ownership. A purchaser of real property should therefore strictly adhere to this form to avoid the risk that a third party claims any rights to his land. The notary certification is also necessary for registration of ownership. The registration causes the transfer of ownership to be effective against third parties. The seller is obliged to transfer ownership of the property to the buyer and is entitled to claim for payment of the purchase price. The purchase is correspondingly obliged to make payment of the purchase price and is entitled to take ownership of the real property.

Transfer of Ownership

Ownership is statutorily transferred pursuant to Article 1583 of the Civil Code as soon as the parties are in agreement with regards to the identity of the real property and the purchase price. However, the transfer of ownership has to be registered in order for the transfer to be effective against third parties. It is not possible to enter a preliminary priority notice for a pending transfer of ownership in Luxembourg. Only finalised and duly executed purchase contracts can be registered.

Guarantees

Pursuant to Article 1641 of the Civil Code, the seller is liable for such latent defects in that real property which hinder or decrease the utility of the property to such an extent that the purchaser would not have purchased the property in the event that he had known of this defect. There are no guarantees available for patent defects, which the purchaser is obliged to determine upon occupation of the property. The

purchaser is obliged to exercise his rights relating to the breach of guarantee within a specific and limited time frame, failing which his rights would become time-barred.

Financing

Mortgage

There are three forms of mortgages available in Luxembourg : a mortgage which is established via statute (a statutory mortgage), a mortgage which is established via judicial pronouncement (an enforced mortgage) a mortgage which is established via contract (a contractual mortgage). The mortgage must be registered at the „bureau de conservation des hypothèques".

The mortgage creditor has a right of claim with regards to the relevant proportion of the purchase price of the land.

Other Forms of Encumbrances on Real Property

Real property can be encumbered with antichresis right for the purposes of the redemption of a loan. Such rights are contractually established and grant the creditor the right to occupy the property and to acquire profits and fruits of the same until such time as the debt is fully repaid.

The law in Luxembourg also recognises the „ propriété-sûreté immobilière", which is a sale of real property. The purchase price in this case is the credit extended to the seller and the transfer of ownership in the property is the security which the lender receives. Upon full payment of the credit, the creditor can enforce his right to „repurchase" the property. Alternatively, the creditor can be freed from his debt when the lender remains the owner of the real property.

The credit bail consists of a rent agreement and a unilateral right of purchase. The tenant is entitled in such a case to purchase the relevant property at a contractually fixed price at the end of the tenancy.

Cross-Border Financing

There is no restrictions relating to the transfer of foreign currency in Luxembourg. The purchase of real property is not obliged to adhere to any further provisions in this regard.

Rental and Tenancy

Rental

The various forms of rental contracts which are regulated by the Civil Code do not need to take a particular form. The contracts can also be either written or oral. A contract for the rental of land can be orally executed. The written document required by statue is purely for the purposes of proof of the rental contract.

Tenancy

Tenancy for commercial and residential purposes are differently regulated in Luxembourg. The general regulations relating to tenancy, which apply to both types of tenancy contracts, is found in the Civil Code. Additionally, special regulations contained in the statue dated 14 February 1995, which was amended in 1 September 2006, apply to tenancies for residential purposes.

Tenancy contracts can be terminated on various grounds (expiry of fixed tenancy duration, failure to perform obligations set out in the tenancy contract, etc). There are special regulations which apply to the termination of tenancies for residential purposes. The statue dated 14 February 1955 provides that the tenancy contract would be automatically extended unless the owner of the property can prove that he needs the premises for himself or for specific family needs. Alternatively, the owner of the premises has to prove that the tenant had not fulfilled his contractual obligations or that other material legal grounds for the termination exists. The termination of commercial tenancies is regulated by special regulations contained in the sursis commercial, renouvellement préférentiel du bail).

Costs and Tax

Costs and Tax relating to the Acquisition of Real Property

No property acquisition tax is imposed in Luxembourg. However, a registration fee (droit d'enregistrement") amounting to 6% of the purchase price is imposed upon registration in the cadestral. A fee amounting to 1% of the purchase price is also impose upon registration of the real property in the mortgage register. It must however be noted that there are regulations which provide for the exemption of such fees in specific cases of acquisition of real property for the private use.

Special regulations apply for commercial property. In the event that the relevant building is located in Luxembourg city, a additional fee amounting to 3% is imposed. The fees payable to a notary public approximately amount to 0,6 to 1,2% of the purchase price plus value added tax amounting to 12% together with a fixed administrative fee. The re-sale of real property is taxed differently in the event that the sale is a speculative transaction. A speculative transaction is deemed when the real property is re-sold within 12 years from purchase.

Continuing Taxes

Property tax in Luxembourg is imposed by the municipality. The taxation rates depend *inter alia* on the utilisation of the real property (such as whether it is used for personal residential purposes of whether it is rented out).

Real Property in Bulgaria

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Forms Of Ownership in Bulgaria

Full ownership

The full ownership is the basic form of property in Bulgaria and is defined as the acknowledged legal right of a person de facto and de iure, that is, the right to posses, to use and to dispose of a thing as well as the right to demand all other persons to refrain from any influences on the thing. As a civil right it is a claim, which is absolute, material, transferable, complex, unlimited in duration. It is possible to make a distinction between public and private property. The regulation of the public property is different in some aspects and is based on special statutes. In Bulgaria, only the state and individual municipalities are entitled to possess public property. Private property can be owned by any person (including the sate and individual municipalities).

Joint Ownership

Pursuant to Article 30 paragraph 1 of the Ownership Act, joint ownership occurs when the right of ownership belongs in common to two or more persons. Each joint owner owns a share of the ownership rights. Bearers of the right of joint ownership may be the state, the municipalities, legal or natural persons. Each co-owner has the right to deal with his part of the property.

Right to Build

Pursuant to Bulgarian law, the owner of real property is entitled to grant the right to build a building on his ground to another person. This right consists of two elements :

- the right to build on property belonging to a third party. This right does not extinguish upon the destruction of the building. If the building is demolished, the owner of the building right is entitled to construct a new building on the same ground.

- Property in the building. This right comes into existence upon the construction of the building.

Upon the grant of the right to build, the owner of the ground retains a so-called "nude ownership". It means that the person holding the right to build is duly authorised to utilise the ground insofar as the same is necessary for the normal utilisation of the building.

Ownership of an Apartment

The ownership of an Apartment is termed "condominium ownership" in Bulgaria. The individual apartments within the building belong to the individual owners and the owners jointly own the common areas in the building in proportion to the value of the apartments which they own. Although the apartment owners are entitled to compartmentalise the building by means of floors or parts thereof, the common parts of the building may not be partitioned.

Time Sharing

The term "time sharing" as a judicial term does not exist in Bulgaria. Nevertheless, it is possible to achieve the same outcome by the grant of a right of utilisation for a limited period of time.

Restrictions in the Purchase of Landed Property

It is currently possible for both Bulgarian legal and natural person as well as foreign persons to own private property in Bulgaria. Foreign persons are defined to be legal persons who are not registered in the Republic of Bulgaria, companies registered abroad which are not legal persons and natural persons who have a permanent residence (more than 183 days per year) abroad.

Foreigners are entitled to invest in Bulgaria in accordance to the procedures laid down by the Bulgarian government. The procedures *inter alia* ensure that due regard is also given to local investment and that foreign investment are given equal treatment as compared to local investment. Foreign investments are deemed to be all investments by foreign persons or their branches in

- buildings and in restricted rights in real estate;
- ownership and restricted real rights over chattels having the nature of fixed tangible assets;
- enterprises or parts thereof
- Intellectual property
- concession contracts.

Pursuant to the amendments to Article 22, paragraph 1 of the Constitution of the Republic of Bulgaria, foreigners and non-resident legal persons are entitled to obtain title to real property by three methods :

- Acquisition of land pursuant to the terms arising from the acceptance of the Republic of Bulgaria into the European Union;

- Acquisition of land via an international treaty which has been ratified, promulgated and put into force in the Republic of Bulgaria

- Acquisition of land via legal succession.

This amendment would become effective on the date in which the Treaty of Accession of the Republic of Bulgaria into the European Union comes into force.

Protection of Property

The Constitution of the Republic of Bulgaria proclaims inviolability of the private ownership in Article 17, paragraph 3. Correspondingly, Article 2, paragraph 2 of the Ownership Act establishes equal opportunities for the development and protection of all kinds of ownership. Chapter V contains penal sanctions with regard to criminal encroachments against ownership.

Judicial protection of real property can be extended for the benefit of the state, municipalities, private natural as well as legal persons. Various kinds of claims can be lodged in the courts in Bulgaria for the protection of real property.

The adverse possession of the privately owned land for public purposes is restricted and can occur only in specific situations and for the specific purposes provided for in special regulation. Adverse possession must be conducted in accordance to the procedure laid down by statue. The owner of the property must be duly compensated for all cases of adverse possession.

Acquisition of Property

Certification of the Right of Private Ownership

Right of ownership both over chattels and real estate may be established by persons by means of testaments, court decisions, which have entered into force. Title deeds deemed to be the most stable and surest means of proving ownership of private persons. Title deeds in Bulgaria can take three different forms :

- *Title Deeds certifying the Execution of Legal Transactions, pursuant to which the Right of Ownership is acquired*.

  Contracts for assignment of ownership or for the establishment of other real rights over real estate must be executed by means of title deeds. With regard to assignment of a right of ownership over real estate, the notary form is a condition for the validity of the transaction. This category of title deeds has a binding evidentiary force for the circumstances reflected in them.

- *Title Deed, upon which the Right of Ownership over Real Estate is Established.*

  This category of title deeds is termed certifying title deeds. They do not certify the execution of legal transactions, upon which right of ownership is assigned. Instead, these documents set out the availability of the right of ownership over such estate itself. Each person, who is the owner of real estate, but is not in possession of a document certifying his right of ownership may procure this type of title deed. In order to obtain the same the owner must first prove his ownership rights to a Notary Public with other documents or through witnesses.

- *Notary Certification, issued through verification of circumstances.*

When the petitioner does not have any documents in order to prove his rights of ownership, he may request a Notary Public to carry out verification of his rights by means of witnesses. This verification process is known as the verification of circumstances. The verification of circumstances is carried out through the interrogation of three witnesses appointed by the mayor of the relevant municipality, district or townhall or by an official authorized by him.

Letter of Intent/ Pre-contractual Agreement.

Pre-contractual agreements have legal force if they performed in the form of a preliminary contract.

Sale and Purchase Contract

A Sale and Purchase Contract for real estate has to take the notary form and has to be registered in the Land Register in order to be effective against third parties.

Transfer of ownership / title

The transfer of ownership and title occur automatically upon the execution of the sale and purchase contract in the notary form without any further action. The registration of the transfer of ownership is however necessary for the same to be effective against third parties.

Financing

Mortgage

The payment of outstanding debts may be secured by the price of a chattel or real estate belonging to the debtor. For the purposes of security in the form of real estate, the legal instrument, which is to be utilised, is the mortgage. A mortgage is a real burden, which encumbers real estate belonging to the debtor or to a third party. The beneficiary of the mortgage has a preferential claim with regards to the proceeds of the sale of the mortgaged property for the satisfaction of the debt owned to him. A mortgage is can be created either by law or by contract and becomes effective upon registration of the same at the land property register.

A contractual mortgage is created upon the execution of a mortgage contract. The mortgage contract has to be executed in the form of a title deed and may only be created with regards to certain defined sections of real estate. Only the owner of the real property is entitled to mortgage his property. Not all debts may be secured by a mortgage. Instead, this security is only available to a defined range of debts. The mortgage contract, which is to take the form of a title deed, must contain specific information of the estate to be mortgaged including the location and boarders. A failure to provide particulars on the mortgage property will cause the mortgage to be void.

A statutory mortgage is automatically created for a certain category of creditors in the following situations :

- A mortgage can be created in favour of the seller of real property. The mortgage will be created with regards to transferred property as security for payment of the purchase price. This type of mortgages does not arise ex lege and must be established by means of registration of the same upon the request of the creditor as well as on the basis of the purchase contract.

- A mortgage can be created in favour of co-owners to whom a supplementary partition share is owed. This mortgage is created on the real estate left in the

share of the other co-owner, who is responsible for supplementing the share. Such legal mortgage arises in instances of voluntary or judicial partition amongst joint owners or joint heirs. In the event that one co-owner receives a share which is larger than the proportion due to him, this co-owner would be obliged to make payment of compensation the aggrieved co-owner. The mortgage created in this instance is aimed at securing this compensatory payment. The aggrieved party is entitled to register a mortgage which reflects the extra portion which the co-owner was not supposed to receive.

In addition to the mortgage, it is also possible for a creditor to obtain a charge on real property.

Tenancy and Lease of Land

A lease term in Bulgaria cannot exceed 10 years. In the event that a lease contract is registered in the Land Register, the new owner of the premises who has purchased the real property subsequent to the execution of the tenancy contract has to accept the terms and conditions of the lease contract. If the lease is not registered but has a fixed duration, a new owner of the real property is obliged to adhere to the terms of the tenancy for a period of one year. In other cases, the new owner has to adhere to the terms of the tenancy agreement for only one month in the event that the new owner would possess the premises.

Tax and Costs

The tax and costs for the acquisition of real property in Bulgaria are as follows :-

- Tax for the local municipality : 2% of the higher value between the purchase price and the official tax evaluation.

- Notary tax: different percentages, about 0,5 % of the purchase price, but not more than 1500 EUR.

- Tax for the Ground register: 0,1 % of the purchase price

Continuing taxes for the ownership of real property in Bulgaria amount to between 0,075 % and 0,15 %. Upon succession of real property, the Inheritance tax law provide for payment of tax at the rate of 5% for real estate having a value more than EUR 125 000.

Real Property in Belgium

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Forms of ownership

Full Ownership

According to article 544 of the Belgian Civil Code, the full ownership confers to its owner the absolute right to enjoy a property and to dispose of the same in conformity with the law. In the case that several persons own the same piece of land, these persons are joint-owners. The Belgian Law recognizes the following different kinds of joint-ownership:

- The free joint ownership which occurs when the ownership of a real estate is acquired by more than one person.
- The occasional joint-ownership which occurs when the ownership of a real estate is inherited by more than one person.
- The forced joint-ownership which occurs when the parties are obliged to stay in joint ownership for a specific period of time.

In case of free joint ownership or occasional joint ownership, one joint owner may sell his part to the other joint owners. However if one joint owner wants to leave the joint ownership but the other joint owners refuse to buy his part of the property, the real estate will be sold after the leaving joint owner has applied for dissociation. The profit of the sale will be divided between all joint owners in proportion to their part in

the joint ownership. The joint owners may contractually agree to stay together in the joint ownership for a period of time which cannot exceed five years.

Long Lease

Besides full and joint ownership, the Belgian law distinguishes between different types of rights on real property. The long lease regulated by the 1824 Long Lease Act is a temporary real right conferring to its holder full use of a real property belonging to the grantor in exchange for a yearly charge in acknowledgment of the grantor's property rights. The long lease must be contracted for a period between 27 and 99 years. The holder is entitled to exercise all

rights attached to the use of the real property as long as he does not reduce the value of the real property.

Hereditary Building Right

The building right regulated by the Building Right Act of 1824, is a temporary real right conferring to its holder the ownership of buildings, works or plantings erected on real property belonging to another party for the duration period of his right, which can not exceed 50 years. However, the building right is renewable. The holder is the sole owner of the erected assets provided that he returns the land in the same condition in which he received it.

Ownership of an Apartment

The rights and obligations of apartment joint ownership are regulated by articles 577-3 to 577-14 of the Belgian Civil Code, which were introduced in the Code by the law dated 30 June 1994. The joint ownership of an apartment includes the

ownership of a private part (apartment) and the partial ownership of the common parts (building).

According to article 577- 4, the basic deed and the regulations of the joint ownership shall be drawn up by a public notary and shall be registered with the Mortgage Registry Office. The joint owners form together an association, which has legal personality and is able to represent the joint owners towards third parties. The General Assembly, in which each joint owner has a voting right, will appoint a manager who is able to represent the General Assembly against third parties.

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Time Sharing

Belgian Law is also acquainted with the right to use immovable properties on a timeshare basis. This time- sharing right is regulated by the Law dated 11 April 1999 which implements the European Directive 94/47 into the Belgian legal system. The law lists the minimum items which must be strictly included in the contract and determines the language in which the contract shall be drawn up. The purchaser is entitled to withdraw the contract without giving any reasons within 15 calendar days after the day of the signing of the contract. Before the expiration of the period in

which the purchaser may exercise its right of withdrawal, any requirement or acceptance of any advance payments from the purchaser it is strictly prohibited.

Encumbrances

The use of a real property can be limited in different manners, such as via mortgage charges or by limitation of its use or alienability. The Mortgage Act dated from 16 December 1951 regulates the mortgage and privilege rights for specific creditors. The sole kind of mortgage known by the Belgian law is an accessory mortgage depending on the existence of a debt to be secured. Such a mortgage has to be vested by a notarial deed and is only enforceable towards third parties from the moment of its registration at the competent Mortgage Registry Office.

Limitation of use of ownership can take the form of easements for the benefit of public authorities or private persons. Some easements are created by law and others by private agreement. Easements are accessory real rights enjoyed by the owner of a land (dominant tenement) at the expense of the land of another person (servient tenement).

The alienability of a real property can be limited. A legal limitation of the alienability is to be found in the option of purchase to the benefit of the farm leaser. The alienability of a real estate can also be contractually limited if an option to purchase has been given to the benefit of someone.

Sale of Real Property which are yet to be Constructed

The Breyne Act dated 9 July 1971 regulates the sale of houses or apartments which have to be constructed or are still in construction at the moment of the sale agreement. Article 1 of the Act provides that the Breyne Act applies to agreements related to the sale of a house or apartment before or during the course of his erection as well as to agreements by which seller or contractor undertakes to erect,

to make erect or to provide a house or an apartment and that the buyer is obliged to make one or several down payment before the completion of the works. For the transfer of property, the Breyne Act distinguishes between the transfer of all constructions already erected by the seller which occurs at the moment of the signing of the preliminary agreement and the transfer of all constructions still to be erected which occurs as soon as the materials are implemented and incorporated.

Restrictions in the Purchase of Landed Property

Real estate and landed property can be acquired by foreign people under the same conditions as Belgian nationals. There are no specific legal restrictions on the right of foreign nationals to invest in real estate in Belgium. This is a direct consequence of article 191 of the constitution and article 11 of the Belgian Civil Code, providing that foreign nationals enjoy the same rights as Belgian nationals, except when statutory provisions expressly provide for the contrary.

Protection of property

Article 16 of the constitution provides that no one can be deprived of his property except in case of expropriation for public purposes, in the circumstances and manner established by law, and in exchange for a fair compensation paid beforehand. The laws allowing public authorities to expropriate private properties are restrictively interpreted. The legality of the expropriation order and the fairness of the compensation can be controlled by the administrative Court.

Purchase of property/ formal requirements

Acquiring ownership of real property in Belgium requires some formalities to ensure the protection of the contractual and third parties. The Mortgage Registers provide third parties information as to the owner of a specific real estate. In addition to this information, the Mortgage Registers show also whether there are any encumbrances, legal actions, and lease contracts with duration of more than 9 years to the related real estate.

Preliminary Contract / Letter of Intent

The "*compromis de vente*" is the most common form of a preliminary contract. Here, the parties agree on the sale object and sale price. In the Belgian legal system, the sale is performed and the ownership is transferred to the buyer as soon as there is an agreement on the sale object and sale price. Such preliminary sale contract is already binding for both parties. In order to prove said sale, it is recommended that the parties draft a written agreement. In principle the transfer of ownership occurs at the time of the conclusion of the preliminary agreement. However, in most cases, a specific clause will delay the transfer of ownership until the signing of the notarial deed.

In the case of an option to purchase, the parties agree to the benefit of the buyer that the seller shall not transfer the ownership of the related real estate to any third person for an agreed period of time. This option to purchase is irrevocable but the buyer is not obliged to exercise its right to purchase. To counter this, the parties may agree on an option to sell for the benefit of the seller.

In order to validate the transfer of ownership towards third parties, the preliminary sales contract needs to be notarized and registered with the competent Mortgage Registry Office. The notarial deed must contain all dispositions set out in the preliminary agreement and must signed within four months after the conclusion of the initial agreement.

Guarantees

The seller is not liable for obvious defects which should have been noticed by the buyer. In case of hidden defects, the seller is liable whether or not he was aware of them. However, the contract may contain a clause discharging the seller from any obligation arising from hidden defects that are unknown to the seller and not detectable by a close examination of the object being sold. In case of defects in the real estate, the buyer is entitled to sue for rescission of the contract or for reduction of the agreed price.

Financing

In order to finance the purchase price, buyers usually have to mortgage the acquired real estate to the benefit of the bank granting the loan. The mortgage shall be vested by a notarial deed and shall only be enforceable towards third parties as from the moment of its registration at the competent Mortgage Registry Office. In contrast to other European countries, the duration of the mortgage is limited to 30 years. In order to protect the seller, the Belgian law grants a specific privilege to the benefit of the seller. In the case that the entire purchase price has not been paid at the moment of the registration of the notarial deed, the Mortgage Register Office shall automatically register the privilege of the seller.

Tenancy

Belgian law distinguishes different kinds of lease. There are specific rules for commercial lease and for residential lease. The Commercial Lease Act dated from 12 May 1951 regulates the commercial lease. In all cases it is important that the lease be dated (for example: by registration of the lease agreement). If the lease is dated, the purchaser shall respect the lease even if the lease agreement contains an expulsion clause. The purchaser is entitled collect rent charges from the point of execution of the notarial deed. If the lease is not dated before the signature of the notarial deed, the purchaser shall respect the lease agreement, in so far as the tenant has been more than 6 months in the leased property. However in some enumerated cases, the purchaser can terminate the lease with a 3 month's prior notice that has to be notified within 3 months after the signature of the notarial deed. If the tenant rents the lease property for a period less than 6 months, the purchaser has no obligation to respect the lease agreement.

Since the first of January 2007, according to the Law dated December, 27, 2006 (Loi programme or Programmawet), all lease contracts concluded before or after the first of January 2007 have to be registered at the competent registration office before June 30, 2007. The consequence of this new law is that all lease contracts have to be in writing. The responsibility to register the contract lies by the lessor. If the contract is not registered, a fine will be imposed on lessor. When the tenant has established his main residence at the leased property, the new Law will also impose a civil sanction if the contract is not registered. The civil sanction dives the tenant the right to terminate the contract without notice and without having to pay any indemnity to the lessor.

Building Laws

In the area of public building law, Belgian national legislation as well as regional legislations (Flanders Region, Walloon Region and Brussels Region) should be

considered. In principle, a building will be deemed to be in conformity with the legislation if it is covered by a valid building permit and its use or destination complies with the use and destination requirements set out by the building or urban planning permit. Most construction, reconstruction, demolition and renovation works relating to buildings require a building permit. Minor changes to existing buildings and minor constructions are generally exempt. In some cases an environmental permit is also required, but in most cases not for residential real estate. A permit is required for a number of specified activities. A distinction is made depending on how the activity affects the environment.

Legal, Tax, Costs

As long as the contractual parties have not contracted the contrary, all costs due by the purchase agreement are to be paid by the purchaser. This includes notarial duties and transfer taxes. Transfer taxes which are 10% in Flanders Region and 12, 5% in Brussels and Walloon Region, are based on the price and costs of the sale. Besides these taxes and duties due at the acquisition of the real estate, home owners have to pay withholding taxes on real property ("*précompte immobilier*" or "*onroerende voorheffing*") which are calculated on the deemed rental value attributed by the tax authorities to the property ("*revenue cadastral*" or "*cadastral inkomen*"). The tax paid varies and generally lies between 20 and 50 percent of the revenue cadastral.

The inheritance of immoveable property is governed by the law of the place where the real estate is located. The Belgian law provides that if the deceased person did not execute a valid will, the assets would be distributed in accordance to the provisions set out in the Belgian Civil Code. Belgian law attributes a fixed part of the inheritance to certain heirs such as children, surviving spouse and descendants. If the legacies set out in the will exceed the above mentioned part, they are reduced.

The regional authorities (Flanders, Walloon and Brussels Region) are responsible for imposing inheritance taxes. While the principles of taxation do not differ, the actual tax rates differ from one region to another region.

Real Property in Austria

JANUARY 2007

Forms of Ownership

Full ownership/Partial ownership

As a rule, ownership to real property resides only in one person. However, it is also possible for several people to have undivided joint ownership of property. In such cases the interests of the joint owners are divided proportionally.

Building lease

Under Austrian law, ownership of a building is generally considered to be inseparable from property ownership (superficies solo cedit). Ownership of a building is only considered to be independent of real property ownership if special building laws apply or the building is a superstructure (such as when a building encroaches on adjoining land).

The building law grants ownership of a building. However, the building owner does not have any title rights to the real property but merely the rights of usufruct. Normally, one pays for this right. The right is created by registration in the land register. It can be sold, bequeathed, or mortgaged. Building rights last for between 10 and 100 years. When the building right expires, ownership of the building reverts the owner of the real property. Upon expiration, the real property owner must compensate the building owner. This compensation statutorily amounts to one-

fourth of value of the building. The value of compensation can be contractually varied.

Ownership of an Apartment

Apartment ownership can create rights for co-owners in relation to real property. An *in rem* right is created for the usage and control of the apartment or other parts of the apartment (e.g. garage). However, there is no actual division of the real property. The community of co-owners is a legal entity consisting of all those who own apartments on the land.

Two natural persons are entitled to jointly acquire a minimum portion of the apartment in equal parts.. Each partner can only sell his portion of the property with the permission of the other. For the purpose of legal actions, they constitute a single party. One partner can give the other the right to exercise his rights on his behalf. Each partner can bring an action to dissolve co-ownership. C-ownership is created when all co-owners enter into a contract for this purpose. A notary has notarized the contract, and when the contract is registered in the land register.

Timesharing

Timesharing can be structured in various ways, such as in a trusteeship, in an association, in co-ownership, or in usufruct. The EC Time-Sharing Directive was implemented into Austrian national law through the “Teilnutzungsgesetz”, a statute, which established guidelines for consumer contracts. Time-sharing rights must grant contractual or *in rem* rights for at least three years in return for payment of a fee. The rights recur during a certain period of time and pertain to an apartment, a building that is to be used as an apartment or lodging, or part of one of the aforesaid. The Time-Sharing Statute is essentially a consumer protection measure and does not fully regulate time-sharing. The consumer protection measures

include comprehensive duties of disclosure, formalities, rescission rights, and the option of entry into the land register for increased security.

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Encumbrances

Land can be encumbered with liens (mortgages), charges on the land or, finally, with the requirements of statutory provisions. As a rule, these encumbrances first take effect when recorded in the land register. Exceptions include unrecorded real estate and superstructures.

Restrictions in the Purchase of Landed Property

There are generally no restrictions on the acquisition of property for citizens. Citizens of EU or EWR nations are given the same status. In other cases, persons or legal entities that reside or have their headquarters or main branch abroad, or that are primarily owned by foreigners, must undergo an approval procedure by the land transaction authorities of the municipality in which the land is located. These proceedings vary from municipality to municipality. As a general rule, the

procedures for acquiring real property are stricter in West Austria as compared than East Austria.

There are also general limitations on the acquisition of real property, such as those related to public housing, to redevelopment areas, or to areas devoted to agriculture and forestry. The acquisition of real property to use for vacations is rarely or never allowed, even for citizens.

Protection of Property (against state measures)

The Austrian Constitution proclaims the 'inviolability' of property (§ 5 StGG). Expropriation can only occur in the context of special statutory provisions where such action is taken in the public interest and compensation is provided for. Examples include the construction of roads, railways and mines, the production of electricity and gas and aviation.

Purchase of Property

The Land Register

The land register is maintained by the district courts. It is a public document. Both real property and the in rem rights attached to the property are recorded in the register. The register consists of the ledger and supporting documents. The ledger keeps records of property acquisitions, liens, property charges, easements, resale rights, pre-emptive options to purchase, encumbrances, and prohibitions against sale or encumbrances. In addition, notations are included in specific circumstances, such as in the event of potential disputes relating to priority in intended sales and in the event that the existence of facts bring about a certain legal significance. All of

the aforesaid ensure legal certainty by drawing attention to matters of importance. Each ledger also has a map that shows the region and property boundaries.

Proof of ownership

Property rights can be verified by checking the relevant land register. Because the land register is public and subject to inspection, the property rights to a piece of real estate can be proven. The land register databank for each province can be accessed upon payment of a fee.

Letter of Intent /Pre-contractual Agreement

The parties can enter into a pre-contractual agreement to conclude a contract. Such an agreement is only binding if it contains the major points to be addressed in the main contract and also states when the main contract is to be concluded. If an action to conclude the main contract is not brought within a year, then the right to do so is extinguished. The pre-contractual agreement is subject to the same formal requirements as the main contract. It must therefore be notarised by a notary public.

Sale and Purchase Contract

The sales contract represents a meeting of the minds between the parties as to the major points at issue. Property rights can only be entered into the land register and ownership thereby attained if a written contract exists that has been notarised by a notary public.

In the event that the sales contract deals with property, which is insured, the Insurance Contract Statute (VersVG) provides that the buyer assumes the rights and duties of the sellers. The Buyer and seller are jointly and severally liable for

payment of the insurance premiums. Upon sale, both the buyer and the insurer have a right of termination, which must be exercised within one month.

Transfer of ownership / title

Although chattels ownership passes over at the time of the conclusion of the contract and the delivery of the goods, ownership in real estate only passes upon registration of the transaction in the land register. There are strict formal requirements for registration into the land register. A contract that has been notarized by a notary must be presented in order to effect a change of ownership in the land register. Moreover, one must present a declaration made by seller, expressly stating that he agrees with the entry (Aufsandungserklärung). A statement from the tax office must also be presented, stating that all taxes associated with the acquisition of the property have been paid. The acquisition of real property is only accomplished once an entry is made in the land register. The entry ensures that the seller cannot effectively sell the property once again to a third party and that he cannot effectively encumber the property with third party rights. Because of the strict formalities associated with land register law, it is important to employ the services of a notary or of an attorney.

Guarantees

The law for guarantees applicable for the sale of real property is based on the general rules of the Austrian civil law (ABGB). Guarantee claims for immovable property must be asserted in court within 3 years, failing which they would become time-barred. The time begins to run once the property is transferred. Alternatively, in the event of defect in title, time begins to run once the defect is discovered. Moreover in most sales contracts, the seller entered into various guarantees or

obligations, which, if breached, entitle the buyer to either rescind the contract or to bring a claim for damages. Important issues for which a guarantee should be granted are, for example, that the property is free of encumbrances and that it is free of environmental hazards.

Financing

Mortgage

A mortgage (a lien on real property) is created by contract and registration of the same in the land register. The entry must include either a specific sum or a maximum amount. This is done in order to protect subsequent creditors who may want to enter a mortgage. A lien is dependent on a secured right and is extinguished upon when no such right exists. In contrast, a mortgage may be registered in the land register for a maximum sum, one for which either there is no secured claim or one for an insignificant amount. A typical case is the mortgage for credit.

Charge on the land

Due to the fact that the Austrian law of liens is basically ancillary, the legal concept of an abstract charge on the land (such as that in Germany) does not exist. A charge only takes effect when the same is registered in the land register.

Tenancy of apartments and lease of land

Renting and leasing are regulated by the ABGB and the Rent Law Statute (MRG). The MRG provisions are intended for the protection the tenant, who is generally in a weaker position than the landlord. Such protection is extended by means of

provisions furnishing protection from termination and regulations on time limits. The applicability of the MRG and the scope of its provisions are dependent on the individual case and is influenced in particular by the type of rental property, the use that it is put to, the aid provided by public funds, and the time the house was built. In addition, the statue is frequently revised. As a general rule, an apartment tenant who pays the rent and does not engage in any serious misconduct cannot be evicted.

Building Laws

Public building laws

Building law is regulated in the building regulations of the various provinces and shows some variation. If one is dealing with a building that is worth preserving, there may be significant limitations on the use of and on alterations to the building.

Private building laws

The principles for work and service contracts in the Civil Code (ABGB) govern private construction projects. Construction projects may be undertaken by architects, general contractors, or property developer.

Legal, Tax, Costs

Costs and Tax for the acquisition of property

Property acquisition taxes fall due when new real estate is acquired (upon conclusion of the sales contract and not at the time of registration in the property register). It is a legal transaction tax. The counter performance is used as the basis for computing the tax. In the case of a sale it is the sales price. If this price contains a sales tax this must be taken into account. The property acquisition tax is generally 3.5% of the computation basis. For acquisition by close relatives it is 2%. In order to make an entry into the property register, it is necessary to present a confirmation of payment from the tax office. The fee for entry into the property register is 1% of the sales price.

Continuing taxes

Ongoing taxes include property tax and land value tax. The basis of computation is the assessed value of the real estate. The assessed value is far lower than the actual value of the property (about 1/3). One must bear in mind that the Constitutional Court is currently of the opinion that the assessed value principle is unconstitutional. On this basis, the current statute is likely to be abolished by the end of 2006. This will lead to a significant increase in taxes. This may be countered the abolition of the inheritance and gift taxes

Law of Succession Law / Inheritance Tax law

Real property is devisable. Inheritance Tax has been recently abolished by the Austrian Constitutional Court.

Income Tax on „Speculative Sale“

If a piece of real property re-sold again within a 10-year period, this sale is seen as a “speculative transaction” and is also liable to income tax.

Real Property in Switzerland

JANUARY 2007

Forms of Ownerships

Sole ownership

The Swiss Civil Code (ZGB) regulates the law of property in Part 4 and property in the first section. Title Number 19 contains, commencing from article 655, extensive provisions relating to real estate. Sole ownership of real estate is an extensive legal position according to Swiss law.

Further possible forms of ownership are the collective ownership, which allocates to several persons fractions of an object (Article 646, Paragraph 1 ZGB) and the joint-ownership, in which each person is the owner of the entire object (Article 652 ZGB).

Heritable building lease

The heritable building lease exists in Switzerland in the form of an independent and permanent building lease (Art. 779 Par. 1 ZGB). Pursuant to this lease, an entitled person may erect a construction on or under an area of land or may use an already erected construction for a maximum period of one hundred years. The constitution of the building lease forms the basis of a corresponding contract, which requires public notarisation to become effective. At the end of the period of the building lease, the ownership in the construction falls to the owner of the land. The owner

has a corresponding obligation to pay an adequate compensation for receipt of the building.

Ownership of an apartment

Article 712a of the Swiss Civil Code (ZGB) characterises the ownership of an apartment as ownership of a particular storey of a building. Under this expression, co-ownership in an area of land, which additionally entitles the co-owners to use and develop parts of a building, is to be understood. The objects of these special rights are the self-

contained parts of a building which have their own entrance. In practise, you find apartments or business premises, which include adjoining rooms. The ownership of a particular storey of a building may be established by the owner of an area of land, by co-owners or by the parties entitled to a building lease through a declaration for that purpose (also according to the law of succession) and by entry in the land register. The property of a particular storey of a building ends with the destruction of the property. A legal cancellation may also be obtained, for instance, when an owner of a particular storey of a building consolidates all the parts of the property in his hands.

All the owners of a particular storey of a building constitute a co-ownership which usually regulates itself with regards to the administration and the use of the property. Such regulation is usually represented externally by an administrator. Each owner of a particular storey of a building has to contribute to the costs related to the common property, including the administrator’s costs, and to take into consideration the interest of the entire building when building up his own property.

Time-sharing

Unlike the sole ownership, the joint forms of ownerships or the ownership of a particular storey of a building, time-sharing is a form of ownership unknown to Swiss law.

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Encumbrances

Real servitudes, personal servitudes, mortgages or rights of lien may limit the ownership of real estates. The real servitudes require an entry into the land register as well as a written agreement. Furthermore, in particular cases, for example, in relation to building lease or with regards to rights of occupancy, the written agreement requires a certification by a public notary.

Restrictions in the Acquisition of Real Estate

Switzerland has always regulated the acquisition of real estates by foreigners such as persons having their residence or companies incorporated outside of Switzerland. Presently, the applicable law is the "*Lex Friedrich*", which has been considerably relaxed since its introduction. In particular, the acquisition of commercial and industrial properties is no longer subject to a governmental approval. The participation in pure real estate companies remains prohibited to foreigners.

In the event that a buyer plans to acquire private estate for his private enjoyment, he must obtain a permit from the appropriate cantonal authority. This is not necessary if the potential buyer is in possession of a one-year work permit or if he may be considered as resident. The Swiss Federal Law considers Swiss companies conducting their company activity abroad as persons abroad. The acquisition of real estate through a stooge is prohibited. On the other hand, the acquisition through trustees is in principle allowed, whereby the trust is to be laid open. The trustee is not discharged from the obligation to obtain permission. The law provides for several exceptions to this pre-requisite to obtain approval, several grounds, which would allow for permission to be granted as well as several cogent grounds for refusal. In case of authorisations granted by law, the Cantons have the power to introduce new grounds for the permission or further restrictions for the protection of their own interests or to impose more specific constraints for special locations. A transaction would be deemed to be void if no due approval is obtained.

No permission is required for cases of inheritance. This however only applies to the acquisition by way of inheritance (*mortis causa*) and not to anticipated succession. Should state interventions such as expropriation, compensation for the transfer to a public corporation or land consolidation lead to acquisition of title, a foreigner no longer subject to the necessity of obtaining authorisation.

When all the preconditions have been fulfilled and no appeal has been filed, the authorisation will be granted. The authorisation could be granted subject to certain conditions and requirements, which are aimed to ensure that the acquisition really realises its purposes. Once authorisation is obtained, the foreign buyer still needs to undergo a further verification through the land-register's administrator or, as the case may be, through the head of the register of companies before the final entry in the land-register. The land-register has the discretion to further verify whether the requirements pertaining to the authorisation of the foreign acquisition have been fulfilled.

Protection of Property

Deprivation of property may only occur on a legal basis through formal expropriation and this may be admissible in order to enable the construction of buildings or to facilitate investments and services, which are in the public interest. Expropriation may only take place upon payment of full indemnification. A multi-stage procedure grants the affected party to question the public interest of the work, its concrete form and indemnification.

Acquisition of Property

Proof of Property

The Federal law requires the cantons to establish a land-register. Every property, with only few exceptions, has to be recorded in the land register. The land-register contains particulars related to the owner, the servitudes, mortgages and rights of lien. Any modification of such legal conditions requires the entry in the land-register. Transfers of property, which are the results of appropriation, devolution upon death, expropriation, execution or court decision, are exceptional transactions, which become effective without entry in the register.

It is necessary to make a written application for the entry in land-register. In the case of a foreign real estate business, which requires authorisation, the relevant valid authorisation is to be handed over as well. Notaries are indirectly obliged to inspect the land-register before the transfer of property. The document necessary for the entry must contain all material data related to the property.

Preliminary Contracts

A preliminary contract is governed by Swiss law and obliges the parties to execute a main contract. Should either of the parties fail to fulfil his obligation of executing a main contract, the aggrieved party is entitled to be compensated for damages suffered.

Purchase Agreement

The acquisition of real estate requires the purchase agreement to be certified by a notary. The organisation of notaries' offices varies in each canton. In some cantons,

independent notaries are entitled to grant the certification while in other cantons, the certification is granted by government officials. The contract is deemed to be void when the necessary notarisation is not obtained. Further requirements relating to forms arise in connection to the necessity of an official authorisation for the acquisition of real property by foreigners or for the acquisition of agricultural areas.

Transfer of ownership

Swiss law acknowledges the abstraction principle, by which the transfer of ownership does not follow from the execution of the purchase agreement. The seller is merely obliged to effect the transfer by arranging the entry in the land-register. The contract is regarded as executed through the unilateral written declaration of alienation (so-called registration). If, for any reason, the purchase agreement is defective, the transfer of ownership does not occur, notwithstanding the entry in the land-register. At the moment in which the defectiveness of the underlying transaction comes to light, the land-register becomes incorrect and a right of rectification arises. With the execution of a purchase agreement, the buyer is entitled to have his rights *in rem* temporarily registered as security.

Warranty

Within the framework of the warranty the seller is liable for defects of title or for material defects. The claims for warranty are barred after a period of five years. In particular, the seller would only liable to a minimal extent for superficial defaults. The buyer is obliged to examine the real property and to provide due notice of any default of warranty.

Financing

Guarantee by a real right

Swiss law acknowledges three forms of guarantee by a real right of financing referring to a real estate: the mortgage note, the mortgage assignment and the certificate of a land charge, the last of which has since lost all practical importance. A mortgage is established by a publicly certified contract. The duration is not limited and does not depend on the existence of a claim. The mortgage note establishes a security and may be negotiated in case of need as bearer mortgage note without underlying claim.

Cross-border Financing

There are no restrictions to the free circulation of foreign currency in Switzerland. Swiss banks are also allowed to finance real estates abroad.

Leasing and renting

No special prescriptions exist with regards to the lease or rental, except for agricultural areas. The termination of the lease contract in the case of residential or business premises must occur through the use of an official form. The legal period

of notice for termination for unfurnished apartments is three months. This period is reduced to 14 days for furnished apartments. A hardship clause provides that the lease may be extended for a maximum of two years. Such clause is not applicable if the ground for termination lies with the tenant, such as overdue rent payments.

Costs and Taxes

Costs and Taxes for the acquisition of real estates

The tax on change of ownership lies within the discretionary power of the cantons and municipalities. The relevant municipalities and cantons have a legal right of lien for the collection of the tax. The tax is charged at a rate of between 1 and 2 % of the purchase price. In case of resale of a real estate, a real estate profit tax applies to the realization of profits. The sale of real estates is exempted from the turnover tax. In case of acquisitions, further charges for notary as well as land-registry fees will be incurred.

Current Taxation

In case of natural persons, real estates belong to the property, which is taxed by the cantons and by the municipalities. Legal entities pay a capital tax to the confederation and to the cantons. The value of tax payable is calculated based on a book value of the relevant real estate. The proceeds, which a natural person

derives from the sale of real estate is deemed to be income. In the case of legal entities, such proceeds are deemed to be profit. While income is subject to income tax, profits are subject to direct federal tax as well as to cantonal and municipal tax. In case of residential buildings used for private enjoyment, the tax authorities calculate a “self renting value”, which is subject to the ordinary income taxation. Lastly, a property tax, which lies between 0,5% and 2% of the tax or cadastre’s value of a real estate, also has to be paid.

Building laws

Public and Private Building law

Public building laws in Switzerland are formed by a complex construction of norms. Beside the federal, cantonal and municipal laws, the infrastructure and environment regulations also play an important role. The development plan law of the confederation obliges the cantons to identify building and non-building areas. This happens at municipal level through so-called “area plans”. These plans discipline particular types of use and intensity.

Each building project requires a building authorisation from the municipality, in which case other authorities often also become involved. Constructions without authorisation would be removed, in so far as they do not comply with the building regulations. The Swiss Civil Code as well as the cantonal introductory laws to the Swiss Civil Code contains provisions related to the law of neighbours.

Private building laws are essentially the laws on the contract of manufacture. According to these laws, a manufacturing company is liable for possible defects.

Forms of Ownerships

Full Ownership

The right of full ownership in Russia comprises three components: possession, use and disposal. The Russian Civil Code defines various forms of ownerships available in Russia : Private Property, State Property and Municipal Property. Other forms of ownership are defined and regulated by other laws in the Russian Federation. Property owned by the State or municipality can be transferred to private citizens or to legal entities pursuant to the laws on privatization of the state and municipal property (Article 217 of the Russian Civil Code.

Common Ownership

Property owned by more than one person is owned via common ownership (Article 244 of the Russian Civil Code). Co-owners of common property are, unless provided otherwise by agreement, obliged to jointly possess and utilize the common property. Under the principle of common ownership, the share of each of the co-owners may be defined (in which case, a shared ownership occurs) or may be undefined (in which case, a joint ownership occurs). Possession, use and disposal of property in a shared ownership are exercised on the basis of an agreement between the parties. The share in common ownership is contractually transferred at the conclusion of the contract, except when provided otherwise by the parties. Ownership in jointly owned property can only be disposed of by the consent of all joint owners.

Ownership of Living Quarters

Chapter 18 of the Russian Civil Code deals with this topic in detail. Pursuant to Article 288 of the Russian Civil Code, living quarters can only be used for the residence of citizens. Various types of

industrial productions are prohibited in dwelling houses.

Owners of apartment units in an apartment building own the common quarters of the house, the load-carrying structures, the mechanical and electrical equipment, the plumbing fixtures and the other equipment outside or within the flat, which service more than one flat by means of common ownership. In the event that an apartment owner acts against the rights and interests of his neighbours or allows for the destruction of the apartment, the local self-governing body is entitled to warn the owner to cease and rectify from the same.(Article 293 of the Russian Civil Code).

Time-sharing

The present Russian Law does not have the concept of “timesharing”. International practice renders the notion “time-sharing” as the system of temporary ownership of recreational properties, or facilities. The contract sets up the right of ownership of the real property within the limited season, which lasts no longer than a week. In Russian law this notion is considered more than economically than legally. It is therefore possible to apply legal mechanisms recognized by Russian laws, such as leasing agreement, temporary use, or contract for property trust management to achieve the effect of a time-sharing agreement.

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Encumbrances

An easement is deemed to be an encumbrance in Article 274 of the Russian Civil Code. An easement is defined to be the limited right of usage of real property belonging to a third party. An easement should not deprive the owner of the land plot of his rights of possession, utilisation and disposal of the land. The owner of the land, which has been burdened with an easement, has, unless stipulated by law, the right to claim a proportionate payment from the beneficiaries of the easement. An easement is preserved upon the transfer of land. An owner of a piece of land burdened with an easement is entitled to claim for the termination of the easement on the basis that the basis on which the easement was created has since ceased to exist. Other real estate burdens include mortgages, leases and rent agreements as well as estate trusts.

Restrictions in the Purchase of Landed Property

The persons, having in their ownership a land plot, have the right to sell it, to make a gift of it, to pledge it, to give it in rent, and to dispose of it in any other way, so far

as the relevant land has not been withdrawn from, or restricted in the circulation in conformity with the law. (Article 260 of the Russian Civil Code).

Foreign citizens and persons without citizenship may generally lease land parcels in the Russian Federation (Article 22 of the Russian Land Code). According to the new Russian land legislation (the Russian Land Code), foreign citizens, foreign individuals, individuals without citizenship and foreign legal entities may acquire and possess land plots in Russia subject to certain limitations when compared to Russian nationals. Non-Russian persons may only obtain land plots from the state and municipalities for a fee rate set by the Russian Land Code. Free transfer, that is, privatization of ownership title for land is not presumed. (Article 28 of the Russian Land Code) According to the Article 15 of the Russian Land Code, non-Russian persons and foreign legal entities may not obtain ownership rights for the land plots located at the state borders, or other special territories of the Russian Federation, as well as for the land plots under special regulations. One of the limitations applies to the ownership of agricultural lands by foreign legal entities, foreign citizens and Russian companies, in which more than 50 % of the charter capital is owned by foreign companies or foreign citizens. These may only possess Russian agricultural lands on the basis of a lease (Article 3 of the Federal Law On Turnover Of Lands Of Agricultural Purpose) for a term of not more than 49 years.

Protection of Right of Ownership

Property rights are protected by the Russian Constitution. No one may be deprived of property otherwise than by a court decision. Forced confiscation of property for state needs may be carried out only on the proviso of preliminary and complete compensation. The law presumes several means of protection of ownership rights. In particular, it is possible to reclaim of property from adverse possession. In the case of a termination of a right of ownership, the losses suffered by the owner as a

result of the adoption of a legal act issued by the State shall be recompensed by the State (Chapter 28 of the Russian Civil Code).

Foreign investments are protected mainly by the Federal Law “On Foreign Investment in the Russian” Federation dated July 09, 1999 № 160. This Federal Law determines the basic guarantees of foreign investors' rights with regards to the investments, income and profits obtained from such investments, and the terms of business activities of foreign investors in the Russian Federation. The law protects foreign investors from possible adverse changes in local legislation. This in turn controls the investment regime for a specific period.

Purchase of Property

The Land Register

The state registration of the transfer of real estate ownership rights is confirmed by corresponding state registration certificates. State registration of the contracts and other transactions is confirmed by a special “registration inscription” on the relevant documents that disclose the transaction (Article 14 of the federal law dated July 21, 1997 № 122 “On state registration of estate and dealings with it”).

Pre-contractual relationship

It is very common that the relations between the parties, prior to the formation of a contract, are governed by a preliminary contract. By the preliminary contract, the parties assume an obligation to conclude a contract on the transfer of the property, on the performance of works or on rendering services (the basic contract) on the basis of the terms stipulated by the preliminary contract. The preliminary contract must contain terms, which make it possible to identify the object, the other essential

terms of the basic contract as well as the term, within which the parties are obliged to conclude the basic contract. If such term has not been defined in the preliminary contract, the basic contract shall be subject to conclusion in the course of one year from the conclusion of the preliminary contract. If parties fail to conclude the basis contract within the time frame set out hereinbefore, or if one of the parties fails to forward to the other party an offer to conclude this contract, the obligations stipulated by the preliminary contract will be terminated. (Article 429 of the Russian Civil Code).

Contract of Sale

The essential information which has to be included in a contract of sale for real estate include data that makes it possible for the buyer to ascertain the real estate subject, data to determine the description of real estate and information on its price. The contract of sale of real estate must be concluded in writing in one document, which has to be signed by both parties. In the absence of the critical data set out hereinabove, the relevant contract would not been deemed to have been concluded. (Article 550 of the Russian Civil Code). The price of real estate in the contract of sale of real estate is fixed per unit of its square or per other indicator of its size.

The transfer of the title under the contract of sale to the buyer is subject to state registration (Article 551 of the Russian Civil Code). The contract of sale of real estate is deemed concluded at the moment of execution (paragraph 1, Article 433 of Russian Civil Code). The transfer of the title under the contract of sale to the buyer is subject to issue of a transfer act or other document signed by the both parties. In case one of the parties evades the transfer of the real property or to sign the transfer act, such action would be considered as a refusal to fulfil the conditions of the sale contract.

Transfer of ownership/title

The right of ownership shall arise from the moment of its transfer, except when otherwise stipulated by the law or by the contract. In the event that the alienation of the property is subject to the state registration, the right of ownership shall arise from the moment of such registration, except when otherwise stipulated by the law (Article 223 of the Russian Civil Code).

Financing

Mortgage

Both individuals and legal entities can be subject to legal mortgages. Foreign persons and legal entities are only subjected to limitations regarding the subject matter of mortgage. For example, companies with foreign investments amounting to more than 50% of its charter capital is not entitled to possess agricultural lands in ownership. A mortgage agreement is only legally enforceable when the agreement is duly registered at the relevant authorized bodies. Prior to registration, the agreement is not deemed to be a concluded agreement. (Article 10 of the Federal Law dated July, 16, 1998 №122 – FZ “On mortgage”). A mortgagor is only entitled to dispose of the mortgaged property upon receipt of the approval of the mortgagee. A subsequent mortgage is possible, except when prohibited by the first mortgage agreement.

Land and apartment Lease

A foreigner does not face any restriction in leasing real property in the Russian Federation. There are, however, several restrictions applicable to the usage of lease property. Article 288 of the Russian Civil Code restricts the usage of

residential property to usage for residential purposes only. State or Municipality-owned apartment are leased to specific individuals by special order. The lease agreement must be statutorily registered. The lease is based on payment of rent, the amount of which can be decided either by the contractual parties or by law. In general, a tenant who fulfils his tenancy obligations has a preferential right to re-lease the property for a subsequent term.

Legal, Costs and Tax

Costs related to acquisition of property

The expenses which one would definitely incur in the acquisition of property are as follows :

- state duties for the registration property transfer;
- Income Tax for Individuals : 13% of the value of the real property sold in the case of tax residents and 30% in the case of non-residents. The property value is included into the tax base of income tax of the tax-payer.
- For foreign organizations which do not maintain a permanent representation for operations in Russia : 20% (Article 284 of the Russian Tax Code)
- Foreign individuals : tax residents in Russia have the right to tax deductions within law-defined range, that is, from 125,000 rubles up to the

total amount of real property value. (Article 220 of the Russian Tax Code).

Continuing Taxes

Pursuant to Article 65 of the Russian Land Code, the utilization of land in the Russian Federation has to be compensated by means of payment of land tax and lease payments.

Land tax is a local tax set up by the local municipal authorities. The land tax for cities with the status of Federal Entities such as Moscow and St Petersburg are determined by the local governments of these federal entities. The Russian Tax Code sets out the general method of tax calculation and tax payment. All enterprises and individuals that own land plots, that have permanent (non time-barred) usage rights and have life inheritance possession are subject to land tax. The taxable base is determined by a cadastre land value. The payable tax is calculated up to a maximum value of 1.5% of the cadastre value. The percentage, which is to be applied in the tax calculation, depends on the land category. Individual taxpayers pay real property tax at a rate, which varies from 0.1% to 1.5% of its book value. The rate increases to a maximum of 2.2% for legal entities

Land lease payment is determined by the municipal authorities. The land lease payment is calculated according to established methods and as a rule, exceeds the amount of land tax, especially for legal entities.

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The classes of occupation at common law

Owner Occupation

A person who owns the freehold of a house in which he or she lives unburdened by any mortgage is the principal "model" for owner occupation. Such a person has the fullest rights of occupation and protection of all. Their right to occupy the house can only be interfered with in very limited sets of circumstances.

The term "owner occupier" is also used, somewhat artificially, to describe those who do not have a freehold interest in their homes, but who have a long leasehold interest. The term "owner-occupier" is usually only applied to a leaseholder with a long lease, i.e. one for more than 21 years. As a result of legislation in some circumstances a leasehold occupier may be entitled to apply to the Landlord for an extension of his/her Lease or the right to compel the Landlord to sell to him or her the freehold. Many people do not purchase a leasehold interest from the freeholder. They take it, instead, from an existing leaseholder, commonly the existing occupier who is selling his or her interest. Where a would-be occupier under leasehold purchases from an outgoing leaseholder, the transaction, is called an assignment, but is in all other respects like a straight forward purchase.

Trespass

A trespasser is one who occupies premises without any permission at all to do so. Because of the housing shortages which exist in many areas of the U.K, trespass is

far from uncommon. Many are forced to trespass in order to find somewhere to live. This is the phenomenon of “squatting”.

Licence

While the normal arrangement whereby one person rents as a home, property belonging to another is

that of tenancy (see below) there are a number of arrangements of less formality which are known as Licences. The term “Licence” means no more than permission. In the housing context, it is used to describe one who is not a trespasser (because he has permission to occupy) but who is neither an owner occupier, nor a tenant. The most common example of licences is a person living in a property which is either owned or rented by a member of the family, for example, a parent. The non-owner or non-tenant is, in this circumstance, in law a Licencee.

Tenancy

This is the normal arrangement by which one person comes to occupy premises which are owned by another. It is, of course, customarily granted in exchange for a monetary payment called rent. There are 2 common forms of tenancy; periodic tenancies and fixed term tenancies. A periodic tenancy is one which is granted to run from period to period e.g. week-to-week or month-to-month. It can only be brought to an end by service of a valid Notice to Quit. A fixed term tenancy is one which is granted for a specific period of time e.g. 3 months, 6 months or a year and this normally comes to an end simply because the time runs out provided the appropriate notice is given. Legislation provides that any tenant can ask, in writing, the person who last received rent under the tenancy, for written details of the full name and address of the Landlord. If the person to whom the demand is made fails to reply within 21 days he commits a criminal offence.

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Commonhold

As well as freehold and leasehold owner occupation recent legislation has provided for a new way of organising ownership of freehold land, namely commonhold. It is designed to deal with the problems that arise in freehold land when there are shared facilities and obligations and thus is capable of being used when leases have, in the past, usually been the solution. It is intended to avoid the widely appreciated disadvantages of the long leasehold system, and in the long term, to replace it. Since the passing of the legislation in 2002 very few common holds have been created as it seems developers and their legal advisors are reluctant to stray from the old system of freehold/leasehold title.

Mortgages

Freehold leasehold and commonhold ownership can, and frequently will, be subject to a mortgage. Although all mortgage deeds contain a variety of terms (e.g. not to create tenancies in the property without permission), it is usually only when an occupier falls into arrears with the repayments that the company will take action to evict him or her. Before legal proceedings are started the mortgage company will normally make a written demand for any arrears. If the arrears are paid off at that

point nothing further will happen. If an occupier has a bad history of arrears, however, the mortgage company may still decide to press on with the full legal procedure.

After any demand for the arrears, there will be a formal demand for repayment of the whole of the outstanding debt. This will be for all capital outstanding and also any accumulated interest. At this point an occupier can, if he or she is in a position to do so, buy off the mortgage company entirely, and retain possession of the property. If the occupier is unable to do so then the next step is for the mortgage company to issue possession proceedings in the County Court. They cannot evict the occupier without Court proceedings. The Court is not obliged to grant the possession order immediately. It has power to grant an order suspended on the condition that the occupier continues to pay current instalments under the mortgage, and a fixed amount for payment of the arrears. The Court will only exercise this discretion if it is of the view that the arrears can be cleared in a reasonable time.

Types of Mortgage

Capital repayment mortgages

A capital repayment mortgage is a loan which requires payment in periodic amounts which are assessed in at least 2 parts. The 2 essential parts of the repayments are capital repayments and interest. Monthly payments are assessed at an amount slightly larger that the interest due on the original capital loan. This means that at the beginning of a mortgage repayment period an owner occupier is not paying back much of the capital but is mostly paying interest on it. Gradually, however, the capital will decrease. The monthly payments remain the same, except for fluctuations in the rate of mortgage interest. In later years, therefore, when the amount of capital outstanding has been reduced, the monthly payment covers a smaller sum due by way of interest and a correspondingly larger amount of capital

repayment. In the final years of a mortgage there is little interest due at all and most of the payment is capital repayment.

Interest only mortgages

The monthly payment under an interest only mortgage is a sum equivalent to interest only on the amount of the loan. There is no capital repayment and the amount of capital borrowed remains due to the Lender at the end of the mortgage term. Whilst interest only mortgages are cheaper than capital repayment mortgages any borrower is well advised to take out an endowment policy or ensure that arrangements are made in some other form of investment so that the amount of capital may be paid of at the end of the mortgage term.

Proof of Ownership

All of England and Wales is now subject to compulsory registration under the Land Registration acts. This means that all transfers of property must be registered at the Land Registry. The Land Registry is open to public inspection and details are today available on the internet. The Land Register is made up of 3 separate registers: -

<u>The Property Register</u>

This describes the land and estate comprised in the title usually by reference to a plan. If the property is leasehold then the property register contains short particulars of the Lease under which the land is held.

<u>The Proprietorship Register</u>

This identifies the owner of the property and the date on which that person became owner. It also stipulates the amount paid for the property and contains any entries that affect the right of disposal.

The Charges Register

This contains details of any charges (i.e. mortgages) which are secured against the property. Land Registry entries are considered to be conclusive evidence of the title. If the land acquired is not yet registered, for instance it has been in the same hands for many years, the owner needs to prove his ownership with an unbroken chain of title for at least 15 years.

Conveyancing Procedure

Once agreement has been reached between the buyer and seller on the purchase price then the seller's solicitor will obtain an up-to-date copy of the registered title together with copies of any planning permissions and building regulation consents. He will also ask the seller to complete standard property information forms and submit copies of all of these together with a draft contract to the buyer's solicitor. The buyer's solicitor then approve the contract raise any further enquiries they see fit and carry out Local Authority, water and drainage and environmental searches with the appropriate authorities. If the buyer is arranging a mortgage, the lender will produce a mortgage offer and will usually instruct the buyer's solicitor to also act for them in connection with the transaction.

Once the buyer's solicitor has satisfied himself that the title to the property is good and marketable he will prepare a report to his client with copies of all the relevant documentation and the agreed form of contract. If the buyer is happy with the contents of the report and documentation he is asked to sign and return the contract and arrange for a deposit to be sent to his solicitor (traditionally 10% of the

purchase price but often less). Once in receipt of a signed contract, deposit and mortgage offer/instructions the buyer's solicitor contacts the seller's solicitor, who will have a contract signed by their clients, to exchange contracts.

Exchange of contracts is dealt with over the telephone by use of a formula laid down by the Law Society which contains reciprocal solicitors' undertakings. It is only once contracts have been exchanged that a binding agreement comes in to being between the buyer and the seller. The contract contains penalties for the buyer and the seller should either of them not proceed with the transaction for any reason. On exchange of contracts a date for completion is fixed. Completion is when the seller moves out and the buyer moves in to the property and the balance of the purchase price is paid.

After exchange of contracts the buyer's solicitor will carry out a search of the Land Registry to ensure that no additional entries have been created since the date of the last Land Registry entries and a search of the buyers on behalf of the lender to ensure that they have not been made bankrupt. The buyer's solicitor will then prepare the transfer document in accordance with the terms of the draft contract. Once this is approved it needs to be signed by the seller and, if the buyer is more than one person, by the buyers. Approximately 5-10 days before the date fixed for completion the buyer's solicitor will write to the lenders certifying that in their opinion the title is good and marketable. This document will also request the mortgage monies to be sent in time for completion.

A completion statement, prepared by the seller's solicitor which sets out the balance of monies required on completion, will be sent to the buyer's solicitor. Once in receipt of a completion statement the buyer's solicitor will prepare a cash statement for their client which sets out the balance required to complete. This figure will also include Stamp Duty and Land Registry fees together with the solicitor's costs. Once in receipt of the balance required to complete together with the mortgage advance

the buyer's solicitor transfers the balance of purchase monies to the seller's solicitor usually by inter-bank transfer on the day of completion. Once in receipt of completion monies the seller's solicitor will contact the estate agents to confirm that they may release the keys to the property which will be collected by the buyer's. The seller's solicitor will then send the executed transfer together with all relevant title deeds and documents to the buyer's solicitor. Who will simultaneously send sufficient monies to the Seller's lender to redeem the mortgage over the property. Post completion the buyer's solicitor pays Stamp Duty Land Transaction Tax which is based on the purchase price of the property and deals with the registration of the buyer's (and their lender's) interest at the Land Registry

Stamp Duty Land Transaction Tax

This is a Government tax which is based on a percentage of the total purchase as shown below:-

Purchase price		
Up to and including £125,000	-	0%
From £125,001 to £250,000	-	1%
From £250,001 to £500,000	-	3%
£500,001 and above	-	4%

It is important to note that Stamp Duty Land Transaction Tax is payable upon the whole of the purchase price (over and above £125,000.00) and not just the amount of the purchase price above that threshold.

Land Registry Fees

These are charged by the Land Registry on a sliding scale as follows: -

Up to and including £50,000 -	40.00
£50,001 to £80,000 -	60.00
£80,001 to £100,000 -	100.00
£100,001 to £200,000 -	150.00
£200,001 to £500,000 -	220.00
£500,001 to £1,000,000 -	420.00
£1,000,001 and above -	700.00

E-Conveyancing

As a result of the widespread use of the Internet many aspects of the conveyancing transaction may now be done online. For instance, the Land Register is available for public inspection over the internet and searches may be carried out in a short period of time by using the Internet.

Real Property in Portugal
JANUARY 2007

Types of Ownership

Full Ownership

The Portuguese Civil Code regulates the ownership of real property in Portugal. The owner of the land is entitled to utilise it in accordance to the relevant statutory provisions, is to dispose it as well as to earn income from it. The ownership right comprises the air space above the surface of the land, as well as the subsoil, together with everything that it contains, unless the law or a contract provides for otherwise.

Co-Ownership

It is possible to obtain co-ownership of a piece of land. Each co-owner is entitled to use the land in the manner agreed upon and is not entitled to hinder the other co-owners in their utilisation of the land. All co-owners are jointly responsible for the maintenance of the land. All decisions are made by means of a simple majority vote. Each co-owner votes accordingly to the proportional percentage of his ownership. Each co-owner is however entitled to encumber or dispose of the part of the land which he owns without the consent of the other co-owners. Any co-owner is entitled to enforce full ownership rights against third parties on his own.

Joint Property

The principle of joint property can be found in matrimonial property law and succession law. The joint owners of the property do not have the right to dispose of

their part of the property. They are only entitled to dispose of the whole of the property together.

Building Rights

This right guarantees the construction of a building on property, which belongs to a third party. The proprietary rights relating to the building and those

relating to the land do not vest in the same person. A time-based building right automatically expires upon the end of its duration period. In the event that no agreement is made in regard of the duration of the building right, this right expires when the person holding the right does not construct the building within a ten-year period. The right is also extinguished in cases of inability to use the ground or when the proprietary rights in the building and in the land coincides in the same entity.

Ownership of an Apartment

The owner of an apartment has full ownership of the apartment itself and is a joint owner of the common parts of the building such as the entry, the roof, the stairs, and the lifts. Each owner can sell the apartment without the consent of the other owners. The owners don't have any pre-emptive right to purchase each other's properties. Each apartment owner has to bear the costs of the shared ownership corresponding to his proportion of ownership. Every year, the regular assembly of the joint owners elects a manager, who various administrative duties. The decisions of the assembly are made by means of a simple majority vote.

Time-Sharing

It is possible to purchase ownership of a house or apartment for a particular duration of time per year in Portugal. This duration time per year is limited to a

minimum period of 7 consecutive days and a maximum period of 30 consecutive days. Time-sharing is admitted in almost every kind of tourist accommodation.

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The right of time-sharing can be limited in duration but has to last for a minimum period of 15 years. If the parties do not agree on a limitation period, the right is perpetual. The establishment of time-sharing rights requires certification by a notary public. An owner of time-sharing rights is also obliged to register his rights in the land registry.

Encumbrances

The ownership of real property can be encumbered by the rights of third parties or be restricted in its utilisation. An encumbrance can be formed by the registration of a mortgage, which is the establishment of a right of antichresis. The right of antichresis authorises the holder of the right to utilise the pledge until due satisfaction of a bond. In general, this right can be secured until due payment of the secured debt or for a determined period of time.

Restrictions in utilisation can be established in the form of land easements (servidões prediais), usufructs (usufruto) or utilisation or habitation rights (uso e habitação). A land easement would oblige an owner of real property to tolerate certain activities or circumstances on his land for the benefit of another piece of

land. A land easement would only become effective upon registration of the same in the land registry.

The usufruct is the right to utilise real property belonging to a third party and to make profit out of it. This right is usually valid for a fixed period of time and is made for the benefit of a natural person or for the benefit of a legal person. A person entitled to utilisation rights is entitled to utilise the real property and to reap income from it. The person is however only entitled to reap income for personal needs.

Restrictions in Acquisition of Property

Real property in Portugal can be acquired with minimal restrictions by entities that are not domiciled in Portugal.

Protection of Property

Compulsory acquisition or seizure of real property can only occur on a statutory basis. Both forms can only be undertaken upon payment of reasonable compensation.

Acquisition of Property

Proof of Ownership

According to the Portuguese Civil Code the ownership rights on immovable property is obtained at the moment the contract is concluded, that is to say, at the moment of the execution of the deed. In order to make the new acquisition definitive and known by third parties, all transactions which establish, recognise or alter the rights relating to real property must be registered in the land register. This includes in

particular full ownership, usufruct, habitation rights, hereditary building rights, land easements, mortgages and ownership of an apartment. Every person who has a relevant interest is entitled to search the land register. The registration of a real property right causes the acquisition to become definitive. If someone purchases a property and does not register the acquisition, he has to bear the risk of losing the property in the case of another person purchases the same property from the same seller and registers it first. In such cases, the transferor loses his title to the real property that he purchased.

Preliminary Contract / Letter of Intent

Contractual parties often agree on the conclusion of a letter of intent (contrato-promessa de compra e venda) prior to the grant of the final purchase contract. The letter of intent has to contain all significant elements of the main purchase contract, such that the parties settle the terms and conditions of the purchase in the preliminary contract. This contract makes the seller liable in case he does not transfer the real property and makes the buyer liable in case he does not buy the property. A letter of intent must be executed in writing and contain the duly recognised signatures of both parties. Although the registration of a letter of intent is not necessary, such registration would assure a claim for the transfer of the real property.

Purchase contract and transfer of property

A purchase contract is established upon the acceptance of an offer. The purchase contract for real property, however, will only be effective upon due certification by a notary. Title in real property is transferred upon the grant of the notary deed. Portuguese law allows for the retention of title until some event happens or until the accomplishment of some duty. The retention of title in the case of immovable

property is only enforceable against third parties if it is duly registered. Although it is not necessary for the purchaser of real property to register his ownership rights at the land registry, such registration protects him from any further sale transactions, which the seller may undertake in regard of the same property. Pursuant to Portuguese law, title can be transferred by contract, succession, usucapio and other means of acquisition.

Guarantee

In the event that a real property transferred is defective, the purchaser would be entitled to contest the purchase contract by reason of mistake or fraudulent misrepresentation on the basis of the pre-requisites set out in the contract. In the event that the purchaser successfully contests the purchase contract, the seller would be obliged to make payment of compensation for damages suffered. In such an event, the purchaser is entitled either to demand for the rectification of the relevant defects or a replacement of the defects. The seller is not obliged to replace any defect which he did not have any knowledge about. In the event of relevant defects are detected, the notice of the defect must be occur within 1 year period from the day that the defect was found and within a 5 year period from the delivery of the real property.

Financing

Mortgage

Existing, future or conditional claims can be assured by means of a mortgage. Portuguese law regulates the voluntary mortgage, the statutory mortgage and the mortgage established by judicial statement. The voluntary mortgage is established

by means of a contract. A mortgage will only have legal effect upon its registration at the land registry. The registration therefore has constitutive character due to the fact that an unregistered mortgage is void. It is possible to make a preliminary registration of a mortgage prior to the execution of the security contract in its proper statutory form. The validity of a contractual mortgage is not limited by time. A statutory mortgage is available for the security of a sustenance claim made by a person who is unable to work against his legal guardian or caretaker. The state is also able to utilise a statutory mortgage to secure payment of property tax. A statutory mortgage is also only valid upon registration at the land registry. In the case of a mortgage established by judicial pronouncement, the creditor would be entitled to commence execution against the debtor's goods in the event that the debtor does not fulfil his obligations. A mortgage creditor is entitled to commence execution against all the debtor's assets in the event that he possesses a full title of execution. The satisfaction of the debt is obtained by means of sale of the real property at a public auction or freehand sale.

Tenancy

Portuguese law makes a distinction between tenancy agreements made for the commercial purposes and for habitation purposes and has special regulations for one and another. On 27th February 2006, the Law 6/2006 that approved the new Lease Legal Rules was published. It will come into force on 28th June 2007. The new law establishes special rules for the increase of old rent, for the grant of allowances to tenants in certain circumstances, for maintenance works, for lease transmissions, for rescissions and for the denouncement of contracts. The new law also grants the landlord the right to denounce any lease contract with an undetermined duration by communicating denouncement to the tenant at least five years in advance. The denouncement must be confirmed in no less than a year and no more than 15 months in advance.

Costs and Tax

Costs and tax for the acquisition of real property

A purchase of real property is exempted from property transfer tax as long as it is for habitation purposes and the price of the purchase is not over € 80.000.

The value of the property transfer tax is established according to these rules:

- In case of use for habitation: from 2% to 6% depending on the value of the purchase
- In case of acquisition of land: 5% of the purchase value
- Other purchases of real property: 6,5% of the purchase value.

The ancillary costs in a purchase contract include notarisation costs (a purchase deed costs, for example, costs €175) as well as registration costs (a simple description of an acquisition costs €125). These costs are borne by the purchaser.

The income that arises from a property sale is subject to the personal income tax, unless the acquisition of the property by the seller occurred before 1989. In this case, the law establishes an exemption. All profits made in the sale of property for habitation purposes is not subject to income tax if the tax payer reinvests the profits made in the sale transaction within 2 years in the purchase of real property for habitation purposes. In the event that only a proportion of the profit is reinvested in real property, only that proportion of the profit would be exempted from tax.

Continuing Obligations

All income derived from real property is to be taxed in the source state, that is to say, the state in which the assets are located. Every owner of real property is subject to the Local Property Tax. If the real property value is less than €150.000, and if the property is for habitation purposes, it is exempted from the tax for a period of 6 years. If the real property value is between €150.000 and € 225.000 and if the property is for habitation purposes, it is exempted from the tax for a period of 3 years. Domestic income arising from tenancy or rental contracts is subject to income tax. In the event that foreigners are subject to taxable income in Portugal, the foreigners are obliged to obtain a Portuguese proxy who would be responsible for the relevant tax obligations.

Building Laws

The regional co-ordination plans are binding on each person who intends to build in Portugal. Each builder is obliged to obtain an approval from the municipality prior to the commencement of each building or urban change. A contravention of the principles of the construction approval or parcelling can result in a stop or demolishing of the building works. In exceptional cases, such a contravention can result in a compulsory acquisition.

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Forms of ownership

Full Ownership

Ownership is the highest title a person can hold in relation to property under Czech law. This right is freely transferable and is guaranteed by Art. 11 of the constitution, pursuant to which the owner is entitled to hold, use, profit and dispose of real property. Most real estate property in the Czech Republic is subject to registration at the Cadastral register. All land and most developments have to be registered.

Ownership in real estate is transferred by means of the execution of an agreement for the transfer of ownership. Such an agreement must be registered in the Cadastral register. Actual ownership only passes upon the due registration in the Cadastral register. The registration has a retrospective effect and becomes effective on the date on which the application for registration was filed. The most common agreements for the transfer of ownership are purchase, barter and donation agreements.

Exclusive Ownership – Partial ("ideal") Ownership

Pursuant to Czech law, the owner of a building is not necessarily also the owner of the land on which the building stands. The separation of these two types of ownership is possible. Czech law makes a distinction between an exclusive and a co-ownership of land and buildings. An owner of an apartment would exclusively own a unit of a building and at the same time to co-own the common areas, the structure and the land on which the building is built with other unit owners. It is

however also possible for one or multiple persons to own the whole building and/or plot of land. In each case the co-owner is said to have an “ideal” share on such common parts or the whole building or plot of land. The transfer of such unit is governed by special provisions for apartments (units)

contained in the Code on Freehold of Flats No. 72/1994 Coll.

Ownership by Inheritance and Possession

Ownership to real estate may be acquired ex lege by inheritance, as well as by possession. The property must be in the possession of a rightful possessor who believes in good faith that the property belongs to him for an uninterrupted period of ten years. Further, real estate could be re-acquired by restitution laws contained in Code No. 403/1990 Coll, No.87/1991 Coll. and No. 229/1991 Coll. Even if the terms for restitution claims already expired, restitution often appears as a reason for ownership title of a seller.

Encumbrances

Easements

Easements may be personal (in personam) or connected with the ownership of real estate (in rem). A personal easement exists when a property is encumbered in favour of an individual legal or natural person and when this easement is entered into the Cadastral register. This right cannot be transferred and usually expires on the death or winding up of the entitled person. Typical easements are the right of way, the right to construct a building on the land owned by a third party and the right

to use cables and pipes. Easements connected with the ownership of real estate run with the property if it is transferred.

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Pre-emptive rights

Pre-emptive rights give the seller the first right to receive an offer regarding the purchase of real estate, in the event that the buyer intends to sell the relevant real estate. Such rights can be established either as in personam or in rem rights. In personam pre-emptive rights cease to exist with the transfer of the real estate to a third party. In rem pre-emptive rights remain in place after a transfer of the property and have to be recorded in the Cadastral Register.

Restrictions for foreign persons

In general, a foreign resident who is not a citizen of the Czech Republic may only acquire an ownership title in situations specified by the Foreign Exchange Act. Such situations include acquisition by inheritance, acquisition as matrimonial property in the event that only one spouse is a Czech citizen or native, acquisition from a relative in a direct line, sibling, or spouse, or acquisition for a diplomatic mission of a foreign country subject to reciprocity.

In addition, a foreign resident, who is a citizen of a member state of the European Union, may acquire real estate. The foreign resident must have received a residency permit, which is issued by the Czech police to citizens of the European Union. A legal entity that places its plants or organizational unit in the Czech Republic and is authorized to conduct business in the Czech Republic may also acquire real estate. There are, however, some types of land, which cannot be acquired under these pre-requisites. Real estate that constitutes or belongs among agricultural land resources or to lots intended to fulfil the function of a forest under special regulations can only be acquired by a foreigner who lives in the Czech Republic for more than 3 years.

Protection of Property

A rightful owner of real property can demand the surrender of unlawfully withheld property, which rightfully belongs to him. The law also affords protection against the unauthorised erection of buildings. Upon an application for removal of the building made by the lawful owner of the relevant land, the court is entitled to order for the unauthorised building to be removed and for the unauthorised builder to bear the expenses of such removal. In the event that it is not expedient to remove the building and provided that the owner of the land agrees, the court can also order for the ownership in the unauthorised building to be transferred to the owner of the land as compensation for the unauthorised erection.

Acquisition of Property

<u>Procedure of real estate purchase</u>

The procedure, which has to be followed in the purchase of real estate, depends on the exact type of property, which is to be acquired. In general, several documents are needed and various contracts are to be signed. In most cases, letter of intent relating to the future purchase agreement is signed.

Purchase agreement and Contract for Future Purchase

The written purchase contract by which the ownership right is transferred from the seller to the buyer has to contain main terms and conditions of the purchase agreement, such as the exact specification of the property, its price, the title document under which the seller acquired ownership, all liabilities burdening the property, conditions of payment, the date of a handover, provisions for the payment of real estate transfer tax, provisions for the filing of the petition of change of ownership, conditions for withdrawal from the agreement and a seller's warranty that he is the sole unrestricted owner of the property. The signatures under this contract are to be verified by a competent Czech authority, which could be a Czech lawyer as well. A petition to the Cadastral register must be filed together with the purchase contract. The buyer would only be deemed to be the new owner of the real estate subsequent to registration.

It is common for parties to execute a contract for future purchase when the transaction involves foreigners or when the transaction is a large project. The execution of such contracts are also recommended in instances where the property is not yet completely built and where the buyer needs to obtain a mortgage to finance the purchase, needs to receive a residency permit or needs to solve other issues before the execution of the proper purchase contract. The signatures in a contract for future purchase need not be verified. Before signing such an agreement for future purchase, it is recommended that a research at the Cadastral Register be conducted to ensure that the seller still owns the property and that no surprises arise from new encumbrances.

Reservation agreement, Agreement for the deposit of money

Most of the real estate agencies work with reservation contracts, which are signed once a person is interested in the real property. In order to secure payment of the purchase price, a contract for the establishment of a solicitor cash deposit or notary cash deposit is also executed as an alternative to a mortgage credit.

Financing

Principal and common ways to finance real estate purchase are either through the buyer's own cash resources, through general corporate banking facilities or by using the capital value of the property to raise specific finance secured on the property. Usually the grant of a mortgage is combined with supporting pledges over the shares of the borrower, bank accounts, insurance policies, rental income from the property and the like. Floating charges used in common law are not common under Czech law and are only possible by in certain corporate pledges.

A fixed security interest over land, buildings, apartments or other real estate is generally created under a mortgage and is registered in the Cadastral register. For unregistered real estate such as minor building works, mortgages have to be registered in the Pledge Register, which is held by the Notary Chamber and contains pledges over movable assets or over an enterprise.

Mortgage

Mortgages are formed via written agreements, via an agreement on the settlement of inheritance which has been approved by a court, via judicial decisions a decision and as well as via legal or state administrative decisions, such as the statutory

mortgages created by the Czech tax authority to secure tax obligations. To be effective, the mortgage has to be entered into the Cadastral register. Once registered, the mortgagee has priority over the borrower's unsecured creditors.

Tenancy (apartments) and lease of land

It is possible to rent a house, a flat or land by means of a lease agreement. Although it is not necessary for lease agreements to be in written form, this would be recommended for purposes of security. According to Czech law and practice, the essential points of such agreement should be determined in detail. Such details include the exact and full address of the real property, the number of rooms, details relating to facilities, details relating to all other spaces in the rental property, such as the balcony, terrace, cellar and garage, the method of calculating the rent and reimbursement for services such as heating, warm water and refuse collection. Beside leases entered into by mutual agreement, older leases subject to rent control are still found in the Czech Republic. There are two types of rent control : the maximum basic monthly rent ("controlled rent") and a materially guaranteed rent. Specific regulations list costs, which may be included in the rent. This type of rent control is most common for modernised municipal flats in the event that the municipality was granted a subsidy by the state, as well as for privatised municipal buildings and members of housing co-operatives. On the free market, the principle of supply and demand has significantly raised the prices for flats in prominent areas. For foreigners, the rent of a flat on the free market is often the only option.

Building laws

The relevant permits in building laws are the planning permit, building permit and occupancy permit. Planning permits are necessary for developing land and have to be filed with the local construction authority. Various statutory rights in relation to appeals can be made if an application is refused. A building permit is needed for the construction of new property, for a big reconstruction of an existing building or when

the existing use of a building is to be changed (retail space is to be changed to office space). Minor building and reconstruction works do not require a building permit. Historically and architecturally important buildings require an approval from the cultural heritage protection authority before a planning or building permit will be issued.

Upon the completion of construction, it is necessary to apply for an occupancy permit from the construction authority. Since 1st January 2007, new construction law has become effective and simplifies the building process, in particular for small developments. However, not all expectations for a simpler procedure were met, such as the reduction and specialization of the building authorities.

Legal, Tax, Costs

The main costs for the acquisition of real estate is the real estate transfer tax, which has a fixed rate of 3 % of either the purchase price or of the value of the property determined by a court appointed expert, depending on which sum is higher. Real estate transfer tax is paid by the seller by the end of the third month following the month of completion, usually the date of signing the main purchase contract, which was filed in the Cadastral register and is automatically forwarded to the competent tax authority of the seller. If the seller fails to pay the tax, the buyer guarantees payment. Therefore, an amount equal to the real estate transfer tax is usually placed in escrow and only released to the seller if the tax has been paid up in full. Failure to pay this tax in time is subject to penalties and interest.

General value added tax (VAT) on the transfer of buildings is 19%. VAT on the transfer of residential provisions amounts to 5 %. This rate will be increased to 19 % as of 2008. The transfer of buildings which are more than five years old, which are transferred three years after initial acquisition or new or heavily reconstructed

buildings, transferred three years after the occupancy permit, is issued are free of VAT.

Further costs occur in terms of the broker, who will have a commission fee which amounts to between 3,5 to 7,5 % of the purchase price, verification fees, registration and research costs at the Cadastral register (around 100 EUR). The seller will pay for the evaluation of the court appointed expert, whose expertise must be undertaken for each purchase. The buyer should also pay for any valuations and surveys of the physical state of buildings as well as for environmental audits or studies.

Real estate or land tax is calculated with the help of coefficients, which depend on the amount of inhabitants of the district (community) the land and/or building is situated and its type (agricultural, green, forest, fish pond).

Real Property in France

JANUARY 2007

Forms of Ownership

Full ownership

The full ownership of real property gives the owner the unconditional and absolute right in perpetuity to use and alienate his goods, except to the extent that such disposition is statutorily restricted or prohibited (article 544 Civil Code).

Partial ownership

Usufruct (usufruit)

The bundle of rights that make up full ownership may be subdivided into the right to use or benefit from and the right to dispose of the real property. These two rights may be separated, the first being known as a usufruct (usufruit) and the second as a legal interest (nu-propriété). A usufruct is a temporary right, the duration of which coincides with the life of the usufructary. The usufruct grants to the usufructary the right to enjoy the property of the legal owner in the same manner as the owner itself but on the condition that he does not waste or diminish the remainder interest of the legal owner in such property. The legal owner conserves the right to dispose of his interest therein but on the condition that he does not impinge upon the rights of the usufructary by doing so.

Joint ownership

Joint ownership is a form of concurrent ownership pursuant to which several individuals or legal entities each have an undivided interest on the same piece of real property. Joint owners must unanimously agree upon all measures affecting the jointly-owned property. Either joint owner may obtain the severance of the jointly-owned real property at any time.

Co-Proprietorship (copropriété)

Co-Proprietorship is a form of concurrent ownership pursuant to which two or more individuals or legal entities own a physically defined portion of the same piece or real property.

Ownership of an Apartment

The ownership of an apartment is not regulated by the civil code but is based on the statute dated 10 July 1965. The owner's rights to an apartment are composed of two parts. In addition to owning his individual unit to which he has an exclusive right, each co-proprietor owns an undivided interest in the common areas (*parties communes*). The common areas are deemed to be held as a joint ownership. However, this joint ownership is governed by special rules in order to facilitate the management of the real property.

Time sharing

In principle, ownership is not limited by time under French law. However, the development of leisure has led to introduce a new kind of contract: the time-sharing contract *(contrat de jouissance d'immeuble à temps partagé ou multipropriété*).

Time sharing is regulated by the consumer code (Code de la consommation L 121-60 à L 121-46). A physically defined portion of the real estate is allocated to each shareholder for a definite period of time each year instead of being permanently allocated to him. As a protection for the consumer, the time sharing contract is bound to strict rules.

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Encumbrances

An encumbrance or servitude may be defined as an interest in one peace of real property (the subservient tenement – *fonds servant*-) which is granted for the benefit of another piece or real property (the dominant tenement –*fonds dominant*-) in order to permit the dominant tenement to be better or more usefully enjoyed. The servitude is a real property interest which is accessory to the dominant tenement and may not be created, sold, mortgaged or rented without same. The servitude is a property right that runs with the land and is transferred with the dominant tenement. There are three general categories or servitudes in France: administrative servitudes (*servitude administrative)*, legal servitudes (*servitude de droit commun)* and contractual servitudes(*servitude du fait de l'homme)*.

Restrictions in the Purchase of Landed Property

In principle, foreign purchasers do not face any restrictions with regard to the purchase of real property in France. The only requirement is to inform the *Banque de France* or the *Trésor Public* of this investment when the purchase exceeds a certain monetary limit. Foreign purchasers may make real estate investments in France both by purchasing land property through notarial deed or by acquiring 100% of the shares in a resident company which already owns landed property in France.

Protection of Property

A compulsory surrender of property (*expropriation pour cause d'utilité publique*) is only permissible on the grounds of public interests and even then an adequate compensation must be paid prior to the surrender. The compulsory surrender can only be made effective by judicial pronouncement. The compensation, which is to be paid prior to the exercise of the public right of possession, can be agreed upon between the administrator and the owner of the relevant property.

Purchase of Property / Formal requirements

Pre-contractual relationship

Many conveyances of real property commence with the execution of a unilateral purchase option *(promesse unilatérale de vente)* pursuant to which the seller grants to a prospective purchaser an option to purchase the real property at a fixed price during a specific period. To be valid, this unilateral purchase must specify information setting out the exact nature of the real property to be sold and the price to be paid. During this option period, the seller is not entitled to sell his property. Although the potential buyer is not obliged to purchase the land, the unilateral purchase option often specifies that a forfeit known as *dédit* would have to be paid

as compensation in the event that the purchaser does not exercise his option to purchase.

The parties to a real property conveyance sometimes give each other reciprocal options *(promesse synallagmatique)* to purchase and sell. If the parties have reached a meeting of the minds concerning which real property is to be conveyed and its price, this is deemed to be sufficient to constitute an actual contract of sale. The reciprocal option agreement must specify whether or not the real property is to be purchased with the proceeds of a loan and must state that it is subject to the condition precedent that the purchaser obtains the loan. The parties may record this option in the land registry (if it is in a notarised form) in order to ensure that it is binding on third parties.

Sale and Purchase Contract

A contract of sale is valid and binding even if it is oral, so long as the contract provides a means of determining the real property to be sold and the price to be paid for the same. The contract must however be duly registered in the land registry for the same to be binding on third parties. For registration, the contract has to be executed in formal deed of sale in a notarised form.

Transfer of ownership / title

The transfer of real property in France is already effective upon the execution of the purchase contract and does not only take place on the basis of a clarification of the conveyance and entry into the land register.

Proof of ownership / rights

The change of legal ownership in France occurs independently of the entry of the same in the land register. The sanction which one may suffer for failure to make the necessary entry into the land register *(conservation des hypothèques)* lies in the *inopposabilité*. One may not be able to enforce his rights against certain third parties.

Guarantees

In the event that the purchaser does not perform his obligations, the seller is entitled to elect to terminate the purchase contact or to force the performance of the same, that is, to force the transfer of the relevant property. In addition, the seller is obliged to compensate the seller for any damages he may have suffered by reason of his failure to perform his obligations on time.

Financing

Mortgage

A mortgage *(hypothèque)* is a right to real property granted to a creditor, known as mortgagee, by a debtor, known as the mortgagor, relating to real property which the latter owns in order to secure payment of a debt by the mortgagor to the mortgagee. A mortgage can be granted by contract, by the law or by a judgement. The agreement must be in a notarised form and must be recorded to be enforceable against third parties.

Tenancy and lease of land

Tenancy

French tenancy law is extremely complicated due to the fact that the law is regulated concurrently by the general law of tenancy in the civil code as well as by further special tenancy statutes and decrees. A tenancy contract is established when parties come to an agreement on the tenancy object as well as the rental price. Such an agreement can be entered into either orally or in writing. French law contains neither any statutory provision as to the duration of a tenancy contract nor determines any value as to the rate interest charged on rent. The contractual parties are free to make their own agreements as to various other elements in the tenancy contract. The contractual relationship terminates upon the expiry of the tenancy period for fixed term tenancy contract or upon the determination of the tenancy contract in the case of tenancy contracts without a fixed term. The length of the notice period which is to be furnished by the terminating party is determined either by the terms of the tenancy contract or by usual practice in the relevant region. The duration of notice periods usual to various regions range between one to three months.

Leasing

The owner of either developed or undeveloped land is entitled to transfer his rights of utilisation to another person (*concessionaire*) for a minimum period of 20 years. The leasing interest is to be adapted on a yearly basis. Such a leasing right has to be documented in writing and registered in the land registry. The vested rights of utilisation can be partially or wholly transferred to a third party by the lessee. Both parties are entitled to terminate the contract on an amicable basis at any time. The tenant has the unilateral right to terminate such a contract for the first 6 years of the lease contract. The tenant is however obliged to furnish a 6-month notice period upon the exercise of such termination rights.

Building Laws

Public building laws

The *code de l'urbanisme* establishes the planning with regards to the public construction plan, regulates the process for construction authorisations and construction police measures taken against buildings in need of refurbishment. Municipal regulations determine matters such as the maximum heights for houses and chimneys as well as the renovations of facades. An owner is sometimes forced to carry a burden (such as the right of way or obligation to maintain) when the prevailing grounds is public land.

Private building laws

A person who chooses to build in France is essentially entitled to choose between the following contract models: a contract with a construction company (*contrat d'entreprise*), a classic building contract. (*contrat de construction de maison individuelle sur plan*) or a purchase from a developer. Each of these contracts is subject to warranty regulations contained in the civil code.

Legal, Tax, Costs

Costs and tax incurred for the acquisition of property are as follows:

- Real-estates agent's commissions
- Application of registration fees at a rate of 5.09 % from the beginning of 2006 on the purchase price

- Notary's-fees (0.825% which may be negotiable)

- Settlement of VAT by the vendor if the sale is subjected to it and not deductible (land for building, buildings destined to be substantially renovated, building in the course of construction, building completed)

Continuing taxes

The continuing taxes, which have to be paid with regard to real property, are as follows:

- "Taxe foncière" : This property tax is payable by the person who is the owner of the property on the 1st January of each year. The rate of this tax is determined by various factors such as the land area, the region in which the land is situated, the department, the community, the fittings as well as the age of the house.

- "Taxe d'habitation" : this is residence tax and is to be paid by the inhabitants in the property, regardless whether the inhabitant is the owner of the premises or merely a tenant. The rate of this tax is dependant on the same factors as the "taxe foncière". Both taxes can vary significantly from region to region and is fixed by a regional tax authority.

- "Revenu foncier/Régime du forfait" : This tax is imposed on any income received from the renting of the real property. The rate of this tax also depends on various criteria such as whether the real property in question is furnished or unfurnished.

- "L'impôt de solidarité sur la fortune": This is an asset tax which is payable on a yearly basis by owners whose property in France exceeds the amount of 750.000 euros (real property or other goods). This tax is calculated at a

percentage of the value of assets a person owns which exceeds 750.000 euros.

Indian Legislations governing Real Property

Indian Contract Act, 1872

This legislation sets out all important requirements relating to contracts such as the requirements of a valid contract, performance of contracts, damages, guarantee and indemnity.

Transfer of Property Act, 1882

This lays down the general principles of realty such as part-performance and has provisions for dealing with property through sale, exchange, mortgage, lease, lien and gift.

Registration Act, 1908

The purpose of this Act is the conservation of evidence, assurances and title, the publication of documents and the prevention of fraud. It details the formalities for registering an instrument. The transactions involving immoveable property must be effected by registered instruments.

Specific Relief Act, 1963

This Act is only utilised to enforce individual civil rights by way of a suit for specific performance of a contract, injunction and/or for damages.

Urban Land (Ceiling and Regulation) Act (ULCRA), 1976

This legislation fixes a ceiling for the vacant urban land that a 'person' in urban agglomerations can acquire and hold. A person is defined to include an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not. The ceiling limit ranges from 500-2000 square metres. This legislation was partially repealed by the Centre in 1999. Initially the repeal Act was applicable in Haryana, Punjab and all the Union Territories.

Subsequently, it was adopted by various State Governments including the Government of Uttar Pradesh, Gujarat, Karnataka, Madhya Pradesh and Rajasthan. It is believed that the Repeal Act has eliminated the large amount of litigation and released huge chunks of land into the market. Nevertheless, the fact remains that the Repeal Act has not been adopted in some States, including West Bengal.

Land Acquisition Act, 1894

This Act authorises governments to acquire land for public purposes such as planned development, town or rural planning, provision for residence for the poor or homeless and execution of any Government schemes relating to education, housing or health. It provides for acquisition of land at market value.

Rent Control Act

Some State Governments have adopted a new Rent Control Act based on the Central Government's Rent Control legislation model. The new law has modified inheritance of tenancy and also defined a rent level beyond which Rent Control Act cannot apply. It provides for, inter alia, protection of tenant against eviction under certain circumstances

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State laws governing real estate

Each state has its own set of laws, which govern planned development, rules for construction, floor-area-ratio (FAR) floor space-index (FSI), formation of societies, stamp duty, land reforms and rent laws. As per the land reforms laws, there is a ceiling on holding land, which varies from state to state. However, one can acquire and hold land in excess of the ceiling limit with the permission of the state Government, *inter alia* for the purpose of township. One can use agricultural land for other purposes, provided that such conversion is allowed by the Government.

Foreign Direct Investment (FDI)

As per notification in March 2005 by India's Ministry of Commerce, Foreign Direct Investment in the Indian real estate sector is now permitted through the "automatic route". This means that investment is possible without the additional approval from

the Government through Foreign Investment Promotion Board or RBI. This implies that the foreign investor may now by-pass some of the previously required approvals, making the investment process less cumbersome. The investors are required only to notify the concerned regional office of the RBI within 30 days of receipt of inward remittances towards share subscription or allotment money and to file the Form FC-GPR. Within the real estate sector, foreign investment in India is now permitted in

- construction and project development related to both residential and commercial development housing townships;
- commercial office space;
- hotels and resorts;
- hospitals;
- educational institutions;
- recreational facilities; and
- city and state level infrastructure.

Certain guidelines and project conditions exist within the reform measures:

- In residential development projects, the minimum land area must be 10 hectares (approximately 25 acres);
- In commercial development projects, the minimum built-up area must be 50,000 square meters (approximately 540,000 square feet);

- If the project combines residential and commercial development, either one of the above conditions may be satisfied ;

- At least 50% of the project must be completed within five years from the date of obtaining all statutory clearances;

- The project must comply with all local land use guidelines;

- The sale of undeveloped plot is not permitted, that is, the developer may purchase undeveloped plot but must develop the land before selling it further. The definition of an undeveloped plot is contained in the notification.

- Investors must obtain necessary approvals including those of building/layout plans, developing internal and peripheral areas and other infrastructural facilities. The investors must pay development, external development and other charges and comply with all other requirements as prescribed under applicable rules, bye-laws, regulations of the state Government/ Municipal / Local body concerned;

- State Government/ Municipal/ Local body concerned approving the building development plans would monitor compliance of the above conditions by the Developer. In addition to the above project conditions, the following financial conditions must be satisfied:

- Minimum capitalization requirement of US$10 million for wholly-owned subsidiaries of foreign companies and US$5 million for joint ventures with an Indian partner;

- Capital must be brought into India within six months of commencement of business of the company;

- Holding period of three years on repatriation of any of the initial investment unless with the prior approval of the Foreign Investment Promotion Board;

Land Titles and Records

At present there are four legislations which have a bearing on property transactions involving transfer of ownership of proprietary interest. These are the Transfer of Property Act, the Indian Stamp Act, the Indian Registration Act and the Indian Evidence Act. The Registration and Other Related Laws (Amendment) Act 2001 provide for the compulsory registration of documents relating to part performance of contracts concerning immovable property (covered by Section 53A of the Transfer of Property Act), in order to prevent loss of revenue to the states. The Act also seeks to curb the practice of avoiding registration of deeds by transferring property through power of attorney and agreements of sale.

Stamp Duty and Taxes

Stamp Duty and Registration Fees

There is a direct link between Registration Act and Stamp Act. Stamp duty and registration fees need to be paid on all registered documents. The rate of stamp duty and registration fees varies from state to state. The Central Government has proposed to impose uniform Stamp Duty and Registration fees through out India. All transactions and transfers of immoveable property or documents relating thereto

within a Special Economic Zone (SEZ) are exempted from payment of stamp duty and registration fee.

Property Tax

Property tax is a levy charged by the municipal authorities on owners of property for the upkeep of basic civic services in the city. Generally, property tax is levied on the basis of reasonable rent at which the property might be rented out from year to year. The reasonable rent can be actual rent if it is found to be fair and reasonable. In the case of properties, which are not rented out, the rental value is to be estimated on the basis of rental rates in the locality. In case of an inter-vivos transfer, the annual value of land and building is fixed as a percentage of amount stated in the deed of transfer. In the case of special class of properties such as cinema theatres, the rental rate is estimated by adopting an accountancy method, pursuant to which rent is a certain percentage of the total average turnover during the year, that is, actual receipts of the sale of tickets (excluding entertainment duty). However, some cities follow a different system for the levy of property tax.

Income Tax Act, 1961

Under Income Tax Act, deductions in respect of profits and gains arising from certain industrial undertakings other than infrastructure Development Undertakings are as follows :

- In case of hotel established between 1st April 1997 and 31st March 2001 in a hilly area or a rural area or a place of pilgrimage or such other place as the Central Government may specify by notification in the official Gazette, 50% of profit is deductible for 10 years. This deduction is not applicable to the hotels situate at Kolkata, Delhi, Mumbai and Chennai;

- In case of an approved hotel located at a place other than those mentioned in hereinabove 30% is deductible for a period of 10 years;

In the case of a housing development project approved before 31st March 2007, where the size of the plot of land is minimum 1 acre and residential unit built up area not exceeding 1000 sq.ft. where such unit is situated within Delhi or Mumbai or within 25 KM from the Municipal limits of these cities and 1500 sq.ft. at any other place, 100% of the profit derived from the business is exempt from tax. The same applies for housing development project approved before 31st March 2007, where the size of the plot of land is minimum 1 acre and the built up area of the shops and commercial establishment in the housing project does not exceed 5% of the built up area of the housing project or 2500 sq.ft., whichever is less. If approval is granted before 2004, construction should be completed before 31st March 2008. If approval is obtained after 1st April 2004, then the construction should be completed within 4 years from the end of financial year in which the project was approved. In case of Multiplex Theatre and Convention Centre, 50% of profit is exempted for the initial 5 years.

Capital Gain Tax

There are no tax implications for making investments in real estate. In case of immoveable property, which is sold within a period of 36 months from the date of acquisition, the gain arising there from would be deemed to be short-term capital gain and liability for taxation at the rate of 30% (plus surcharge plus education cess) would arise. In case the immoveable property is retained for more than 36 months, the gain would be deemed to be long-term capital gain and the tax arising therefrom would be charged at a rate of 20%. The Assessee would be entitled to index the cost as per the cost inflation index. If the assets have been purchased prior to 1st April 1981 the Assessee would be entitled to substitute the cost by the market value as on April 1 1981 and index the cost thereafter. Long-term capital gain is taxable

at a flat rate of 20% (plus surcharge plus education cess) for the assessment year 2007-08

Pursuant to section 54EC of the 1961 Income Tax Act, long-term capital gain liability can be set off by investing in specified capital gains bonds within a period of 6 months from the date of transfer or before the due date of filing the return, whichever is earlier. Investors can minimise their long-term capital gain tax liability by investing in capital gains bonds or in some cases by investing in residential house property as provided for in sections 54, 54F and 54EC of the 1961 Income Tax Act. Short-term capital gains can be adjusted against short-term capital losses.

Wealth Tax

Under the Wealth Tax Act, wealth tax is charged for every assessment year in respect of the net wealth on corresponding valuation date for every individual, HUF and Company at the rate of 1% of the amount by which the net wealth exceeds Rs.15 lacs. Net wealth includes estates owned by the Assessee. Not all residential house and properties are included for the purpose of computation of wealth tax. Exemptions include one residential house or part of a house or a plot of land having a maximum area of 500 sq.mtrs belonging to an individual or HUF, any commercial establishment or complexes, any house for residential or commercial purpose which form part of stock in trade and any house occupied by the Assessee for the purpose of his business or profession.

Forms of Ownership

Full Ownership

The Spanish notion of ownership is regulated by the Civil Code *"Código Civil"* (CC). The CC provides that ownership is the right of utilisation and the right of disposition without any restriction, except as provided for in statutes. Ownership in real property can lie in one or in more persons. Ownership of real property by multiple persons takes the form of tenants in common. Each owner is entitled to the unrestricted right of disposition with regards to his proportion of real property. He is entitled to dispose or encumber the same. When a co-owner of real property decides to sell his proportion of the land to a third party, the other co-owners have a pre-emptive right of to purchase the land. Each of the co-owners has the right to demand for the dissolution of the co-ownership, except in cases where such a right has been expressly excluded in an agreement. Dissolution of co-ownership would result in the division of the real property. Joint tenancy of real property can arise via the Spanish laws on matrimonial property. The existence of joint tenancy rights may not be reflected in the land register.

Heritable Building Right

Spanish law recognises the heritable building right to be a right to own a building on a piece of land which belongs to a third party. The heritable building right can be established either contractually or by testamentary will. The certification by a notary public is a pre-requisite for the proper establishment of this *in rem* right. The person

holding the heritable building right is obliged to commence construction works within the time frame agreed upon. In the event that the building is not constructed within this time frame, the heritable building right extinguishes. Further grounds for the extinguishment of the heritable building right include the expiry of the contractual duration or the coin-

cidence of the heritable building right and the ownership of the corresponding real property in one hand. The heritable building right can be inherited, encumbered and transferred.

Ownership of an Apartment

The ownership of an apartment is regulated by the statute on horizontal ownership (*Ley sobre Propiedad Horizontal*). Both apartments as well as offices can be the subject matter of such exclusive ownership. The special ownership of an apartment is established via a clarification of division. This clarification sets outs the ownership of individual apartments as well as areas of shared ownership. The clarification requires certification by a notary public before the same can be registered into the land register.

Time Sharing

The time-sharing in Spain is regulated by the law 42/1998, which develops the EU Directive 94/47/CE on the protection of the persons who acquire time sharing rights. Spanish law specifies that a time sharing right must have a specific duration. The rights must involve the right to use a building for a concrete period in the year. This period must last at least 7 days. The time-sharing right can span from 3 to 50 years. The Spanish government however intends to restrict the rights of time-sharing to a time frame of 30 years.

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Encumbrances

There are a large variety of land easements in Spain. Some of these are contractually established and others arise by means of adverse possession. Certain land easements such as rights relating to water and pathways are statutorily established. The statutory easement can however be made more specific via contracts in certain circumstances. The life estate gives the relevant owner the right to utilise the land as if he were the owner of the land. These rights also bring about the corresponding obligations arising in such ownership. The owner of a life estate is not entitled to dispose or encumber the real property. The life estate extinguishes upon the death of the owner of such rights.

Restrictions in Ownership

Investment guidelines applicable in Spain do cause some restrictions in foreign investment in real property. A foreign investment is an investment undertaken by a natural or legal person whose residence or domicile is in a foreign country. This similarly applies for Spanish companies in the event that more than 50% of its

shareholding is owned by non-residents or in the event that the administrative organ of the company is dominated by non-residents. Foreign investment must also be registered in a „Investment Register“. A prior authorisation for investment is only necessary in exceptional cases. Special rules also apply in the acquisition of land in zones which are crucial for the defence of the country. Official procedures are necessary for foreign natural and legal persons not domiciled in Spain in the acquisition of land utilised for the purposes of agriculture, forestry, business office. Such procedures are also necessary when a foreigner acquires more than 3 apartments in a housing estate or when a foreigner acquires untilled land which has been ear-marked by the Spanish land utilisation and construction plans for municipal real property.

Protection of Real Property

Real property can be adversely possessed on the justifiable grounds of public usage or public interest. Adverse possession can only be exercised by relevant authorities pursuant to statutory regulations and must be preceded by compensation for the possession.

Purchase of Real Property

Proof of Ownership

The Spanish laws of registration are subject to the fundamental right of voluntary registration. A consequence of this right is that a large proportion of property transferred is not reflected in the land register. Only the significant content of the relevant legal title is recorded in the register. The sold property is usually only vaguely referred to with regards to its natural borders and borders to neighbouring property. There is no security with regards to the area, the borders or sometimes even to the existence of the real property itself. The continuity in registration is only

limited to a link to the last registered corresponding legal title. This causes the ownership register to be incomprehensive, especially since the register is not compartmentalised in any way. The meaning and basis for registration in the ownership register is primarily for the establishment of public belief which arises upon registration. This causes a rebuttable assumption of rights. Until proof of the contrary, the registered owner is entitled to the positive assumption that the registered real property belongs to him. Despite the more declaratory effect, this registration is the safest and strongest form of proof of ownership against third parties. A purchaser who merely owns a private agreement does not enjoy any protection of his rights. A good faith third party who is able to effect registration in the ownership registry will become the owner of the relevant real property.A purchaser should therefore secure a registration in the ownership register prior to payment of the purchase price. A Spanish notary public is obliged to make a check at the ownership registry prior to certification (establishment of the conveyance *"escritura"*). The purchaser should however verify whether this was actually done.

Letter of Intent

The difference between an agreement promising to purchase and the execution of the actual purchase contract often cannot be easily distinguished in Spain. The promise to purchase therefore plays a significant role in the purchase. When the purchaser and seller enter into an agreement with regard to the subject matter of the purchase and the purchase price, either party would be entitled to demand for the execution of a final primary contract.

A further possible preliminary contract is the contract for a purchase option. In such a contract, the seller is obliged to offer to sell the land to the relevant potential purchaser at the option price for a fixed period of time. The potential purchaser is however not obliged to make any purchase. It is not uncommon that the seller would request for a advance payment of 10% of the purchase price as security.

Sale and Purchase Contract

The ownership of movable and immovable property is transferred without distinction upon the execution of a legal obligatory contract (*título*) in connection with the executory act of transfer of the subject matter of the purchase (*modo*). It is sufficient to execute a private agreement without a particular form or to enter into oral agreement. Such agreements form the constitutive legal title and create the obligation to transfer the real property. The private contract is not subject to special requirements of form and is ruled by the freedom of form. Nevertheless, both the law and the contracting parties can establish the pre-requisite of documentary formalization of the contract. A private contract has to be certified before it can be registered in the pubic registry. The rights arising from a certified contract can be enforced in the court of law. A private contract will usually set out all the agreed terms of the contract as well as the final date of completion before the notary. It is customary to make payment of 10% of the purchase price at this stage. This 10% payment is not refundable in the event that the purchaser chooses not to go ahead with the purchase. Should the seller choose not to go ahead with the purchase at this stage, the seller would be obliged to return the deposit to the purchaser and to make payment of a penalty amounting to the sum of the deposit paid.

Guarantees

The seller is only obliged towards the purchaser with regard to defects in the property, which the purchaser could not have discovered. In the case of hidden defects, the aggrieved party can claim for either a decrease in purchase price or for the termination of the purchase contract. A claim for compensatory damages can only be made against the seller in cases where the seller had notice of the relevant defect. The limitation period for claims in breach of guarantee is six months.

Financing

Mortgage loans for purchasing property in Spain are available from national and international banks. Spanish banks would normally require a valuation of the property to be carried out by an independent surveyor, appointed by the bank, prior to offering mortgage facilities. There are virtually no exchange controls in Spain, which means that whether resident or not, you are free to obtain a loan or mortgage against your property in any currency and from any bank in the world. Spanish banks are ready to extend loans to foreign real estate purchasers and offer competitive loan packages. The periods of the extended loans can extend up to 20 years and the loan amount can amount to up to 75% of the value of the property (as valued by the bank). It is usual for an early cancellation penalty amounting to 1% of the loan amount to be imposed.

Rental and Tenancy

Since 1 January 1995, the municipal laws of tenancy have been directed by the Ley de Arrendamientor Urbanos (LAU). The LAU makes a distinction between tenancy for residential purposes and tenancy for other purposes. The tenancy of office premises is deemed to be tenancy for „other purposes“ and enjoys contractual freedom. There are no formal pre-requisites for the execution of a tenancy contract. The LAU gives the tenant a right of claim for compensatory damages against the landlord in the event that the landlord refuses to continue a tenancy which has a fixed duration. The pre-requisites to the right of claim is that the tenancy relationship must have already existed for 5 years and that the tenant had carried out business trading activities in the business office during this time.

Costs and Tax

Costs and Tax for Purchase of Real Property

As a general guideline, the total amount of costs and taxes associated with sale and purchase is approximately 10% of the price. These costs are as follows:

- Notary fees: A fee is charged by the Notary to prepare and legalise the public document (*Escritura)* of the sale. This is also a scale fee based on the declared value.

- Property Registry fees: The fees of the Property Register for registering your public document will be assessed on a scale fee related to the *Escritura* value.

- Patrimony tax: Patrimony Tax is imposed on the capital gains derived from the transfer of properties at the time of the tax accruing, which takes place on 31st December of each year.

- Property Tax (Capital Gains Tax): This tax is paid to the Local Authority and is a form of Capital Gains Tax that is payable on the notional increase in value of the land since the last purchase. It should be stressed that this tax is based on the increase in value of the land, and not on any buildings erected upon it. The obligation to pay this tax falls upon the seller, but frequently it is agreed that the buyer will pay it.

- VAT: It imposes tax on the transfer of the first sale (i.e., as consequence of development of business activities). The applicable rates are 16% for non-housing properties and 7% for housing properties.

- Transfer Tax: This applies for second-hand property, no IVA applies but the so called Transfer Tax (7% of the purchase price).

- Documented Legal Acts Tax (or Stamp Duty): It imposes tax on public deed (1%) only when VAT (but NOT when Transfer Tax) is applicable.

Continuing Taxation

Property tax is imposed by municipalities. Any profit made upon the sale of real property within a period of 21 years is deemed as income and is subject to tax. Appreciation tax (plusvalía) is also imposed. Ownership of apartments is taxed at the rate of 0,5% of the register value and the apartment is utilised by the owner himself and not rented out.

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Forms of Ownership

It is possible for a piece of land to be owned by more than one person. Where multiple owners own land, the ownership may be in equal or unequal shares. In Scotland, there is no prohibition on the number and kind of shares. It is possible for land to be owned by natural persons and/or other legal entities such as companies.

In the event of an acquisition by multiple owners, it is important to consider whether the title should be taken on a "Survivorship Destination". A Survivorship Destination has the effect that on the death of a co-owner, the deceased's share of title to the relevant land would be automatically passed to the surviving co-owners of the land upon the death of one owner. The alternative to the Survivorship Destination is for parties to take title in their own names as well as in the names of their respective executors. In this case, the land would pass to the executors upon the death of the owner and would be dealt with in accordance with the applicable terms of succession set out, for example, in the deceased's will.

In the event that a number of co-owners desire to sell a piece of land owned by multiple owners, it is possible for those desiring the sale to force the sale by means of a court action against the co-owners who are against such a sale. Such an action is called an action for division and sale. It is possible for land to be owned by someone as a Trustee, and not as beneficial owner.

<u>Encumbrances</u>

Title Conditions

While title is usually held absolutely, most titles also contain conditions, which the owner is obliged to observe. These conditions are called title conditions and may be enforced against the owner by a third party. There is a broad variety of title conditions. If, for example, a person sells a piece of land but retains ownership of an adjoining piece of land, he may impose various title conditions in the title to the land

sold upon the sale of the land. Such conditions could include a restriction on the number of buildings which can be built on the land, a restriction on the type of usage of the land and also provisions relating to the maintenance of common boundaries. It is possible for title conditions to be contained in a deed separate from the conveyance. This separate deed is called a Deed of Conditions. The Deed of Conditions is commonly utilised in large residential developments to set out the title conditions applicable to all properties forming part of the development.

Servitudes

Another type of land right which exists in Scotland is called the servitude. Land can either be subject to a servitude or have the benefit of a servitude. One of the most common servitude rights is the right of access. In the event that the only means of access to a piece of land is via a private road, that land may have the benefit of a servitude of access over the private road which leads to the land. Correspondingly, the title to the private road would be burdened by the servitude right.

While it is possible for servitudes to be formed in various ways, servitudes are most commonly formed in writing. In the event of a servitude formed in writing, it is common for the written deed to make provision for the maintenance of the land subject to the servitude. Usually, the owner of the land having the benefit of the

servitude would have to bear part of the costs of maintaining the relevant portion of land burdened by the servitude.

Restrictions in the Purchase of Land

No particular restrictions apply in Scotland with regards to the purchase of land by foreigners.

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The Purchase of Land

Proof of ownership

When land is bought, the seller grants (signs) a conveyance of the title, which is generally called a “disposition”, in favour of the purchaser. A disposition is given to the purchaser in return for the price. The purchaser’s solicitor is obliged to send the disposition to the Land Register of Scotland. The purchaser is further obliged to make payment of a registration fee to the Register. The quantum of this fee depends on the purchase price paid. Upon registration of the title, the Register will send a title deed called a Land Certificate to the purchaser’s solicitor. Each Land Certificate has a unique title number and includes a plan which sets out the extent of the land and the rights (such as servitude rights) which go with the land.

It should be noted that Land Certificates in Scotland are state-indemnified. Thus, if the Register issues a Land Certificate without exclusion of indemnity and there is subsequently a successful claim against the title resulting in loss on the part of the Proprietor, the state will pay compensation to the Proprietor. The Register may however issue a Land Certificate with a particular exclusion of indemnity. Such exclusions are usually made when the Register has a particular concern about some matter, which the Proprietor has not been able to properly address at the registration stage. If a Proprietor suffers loss in respect of a matter excluded from indemnity, he would receive no compensation from the state.

Preliminary Contract / Letter of Intent

Until the conclusion of a written agreement for the sale/purchase, there is no binding relationship between the seller and purchaser and either party is entitled to walk away from the pending transaction with no penalty.

Sale and Purchase Contract

A sale and purchase contract is usually an exchange of formal letters called the missives between the seller's lawyers and the purchaser's lawyers. The missives are not signed by the seller and purchaser but by the lawyers on behalf of the seller and purchaser. Whatever form the contract takes, it will include a description of the land, the price, who the parties are, the date of entry (the date on which the price is paid in return for delivery of the conveyance and possession of the land), and provisions as to clear title.

At the date of settlement, that is, the date on which payment is received in consideration of the transfer of title, the title deeds and such other relevant documentation will be delivered to the purchaser in return for the price. The purchaser's lawyer will then deal with payment of any government tax due (such as

Stamp Duty Land Tax) and with registration of the disposition and of the mortgage deed, if any (the Standard Security) at the Land Register of Scotland.

Financing

Mortgage

If the purchaser is borrowing for the purchase, it is the purchaser's responsibility to ensure he will be able to borrow the necessary funds before being committed to the contract. To secure the loan, the purchaser will execute a mortgage loan deed known as a 'Standard Security' in favour of the lender. A Standard Security is a fixed security against the land and gives the lender the power to *inter alia* ultimately "call up" and sell the land if the purchaser defaults on the loan. It is also a charge against the land and the purchaser would be obliged to make full repayment of the loan in order to sell the land with a clear title. Upon receiving repayment of the loan, the lender would be obliged to execute a discharge in favour of the purchaser and the purchaser will arrange to register the same in the Land Register of Scotland. The discharge would have the effect of clearing the burden effected by the Standard Security. It is common practice for the same lawyer to act for the purchaser as well as the mortgagee. Nevertheless, this is often not the case for high value transactions and commercial transactions. In such cases, the lender may instruct its own lawyers to represent its interests, examine the title and prepare the standard security.

Floating Charge

Another type of security, which can only be granted by a company, is a "floating charge", which is sometimes called a "bond and floating charge". A floating charge is not a fixed security but, as the name suggests, "floats" over the assets of the

company. The floating charge attaches to the movable and immovable assets of the company, which exist at that time when the creditor calls on the floating charge. At this point of time, the charge is said to have "crystallised". The company is no longer entitled to dispose of its assets and these come instead under the control of a Receiver.

Tenancies and Leases

In Scotland, the terms "lease" and "tenancy" are interchangeable and basically mean the same. There are significant differences in the treatment of residential and commercial leases in Scot law. Public policy reasons dictate that residential leases be treated differently due to the fact that one would be dealing with people's homes.

A new residential lease is usually formed by means of a short assured tenancy. A short assured tenancy has a compulsory initial duration of 6 months and can be extended for a longer period. A landlord has fairly strong rights in such leases to regain vacant possession either at the end of the lease or as a result of breach of a lease provision by the tenant. If a short assured tenancy is to be granted for a long period, for example for more than 3 years, it would be sensible to include rent review provisions (as dealt with hereinbelow). The landlord is usually responsible for the costs of maintenance of the building and for insurance in residential leases. The tenant would merely be responsible for keeping the premises tidy/clean.

In contrast to residential leases, the tenants of commercial leases are usually fully responsible for all maintenance and insurance obligations and the landlord has virtually no obligations with regards to the premises. Commercial leases also usually contain 'rent review' provisions whereby the rent payable is reviewed at specified dates and adjusted to reflect market prices. Such provisions are not

common in residential leases. Commercial lease agreements are generally more complex and are also entered into for longer lease periods.

Regardless of the type of lease contract, the landlord's lawyer and not the tenant's usually prepares the relevant leases. While leases contain various provisions, a lease agreement will only be valid when the identity of the landlord and tenant, the identity of the property being leased, the rent, and the date of commencement of the lease is contained in the lease.

Building and Environmental Laws

Land is subject to local government laws in Scotland, which are administered by the local authority in whose area the land is situated. These laws can be basically categorised as planning regulations and building control regulations.

Planning Regulations

In the event that one intends to build a new building or to modify an existing building, a building planning permission may be necessary. In order to receive a building planning permission, an application must be made to the relevant local authority. Permission is granted on the basis of a number of factors, such as the local development plan. The local development plan contains information as to what kind of buildings are likely to be permitted to be built in specific areas. In the event that an application is unsuccessful, an applicant has a right of appeal.

Building Control Regulations

Building Control Regulations are intended to ensure that a building has been built in conformity with the regulations and is safe. Depending on the particular works to be

done, one may have to apply for what is called a building warrant from the local authority and if it is granted, the building must be built in terms of the application and the warrant. Once completed, the building is subject to inspection by the local authority and upon successful approval, receive a certificate of completion. A purchaser has to be aware of building control regulations when he is either buying an already built building or land for the purposes of building a new building.

In the case of new residential developments, it is common for the developer/builder to be registered with the National House Building Council. When a registered developer sells a house, it will be sold together with a NHBC certificate, which is a guarantee of workmanship and insurance against construction defects. The NHBC certificate lasts for 10 years and transfers with ownership of the property.

Land can also be subject to other public laws such as

- Compulsory purchase whereby a government department can force an owner to sell, for example for road construction purposes

- Powers in favour of certain companies/organisations for example to lay water, gas, electricity, or telecommunications media through land.

Environmental Laws

Land is also subject to environmental law governed by various agencies. The organisation in Scotland, which has the main enforcement powers, is the “Scottish Environment Protection Agency”, a quasi-government department. The basic principle applicable in environmental law is that “the polluter pays”. Thus, where the polluter can be identified, he would be responsible to rectify any damage which he may have caused. However, if the polluter cannot be identified, the owner of the land would become obliged to rectify the relevant damage caused. Needless to say,

the rectification costs could be substantial. It is therefore very important that a purchaser is aware of this risk and conducts all necessary surveys prior to the purchase of any land.

Legal Costs and Tax

The purchaser's lawyer's legal fees vary from case to case and a purchaser is free to ask for a quotation of anticipated fees. Legal fees are subject to Value Added Tax (VAT) at the current rate of 17.5%. The purchaser also has to pay registration dues to the Land Register of Scotland to get the title and mortgage deed registered. The amount of registration fees payable varies depending on the purchase price.

A purchaser may also be liable to pay a government tax called "Stamp Duty Land Tax". The Stamp Duty Land Tax rates vary for residential and commercial (non-residential) properties. In summary, current rates for residential properties are as follows :

If price is less than £125,000	0%
If price is between £125,000 and £250,000	1% of the price
If price is between £250,000 and £500,000	3% of the price
If price is over £500,000	4% of the price

For non-residential properties the rates are the same, except that the first band of 0% applies up to £150,000, not £125,000.

When a purchaser sells land, he may be liable to pay a tax called Capital Gains Tax, depending on his own tax arrangements. This is a tax on the gain made by a seller between the dates of his purchase and sale. The sale of a house is exempt from Capital Gains Tax if it is the principal home of the seller.

The other ongoing tax for residential properties is a local government tax called “Council Tax” payable by the occupier. This is a tax on buildings, paid to the relevant local authority instead of the central government. The amount depends on the value of the property and the pricing set by the local authority. The purpose of this tax is to finance the running of local authorities. The local tax payable for commercial property is called “non-domestic rates” and the rate of tax payable to the local authority on non-domestic property is calculated in accordance with the rateable value of the land. In light of the fact that the tax rates are set by the local authority, the amount of the charge may vary according to the location of the land.

Types of Ownership

Full Ownership

The Italian legal system recognises the all-embracing character of proprietary rights. The owner has the right to enjoy and dispose of things fully and exclusively, within the limits and with observance of the duties established by legal order. Proprietary rights are regulated by articles 42 to 44 of the Italian constitution as well as by article 832 to 1099 of the Italian Civil Code (ICC). Both natural persons and/or other legal entities can be owners of real property.

Partial ownership

When ownership is shared between more than one person, a “community“ is formed between the respective holders of legal rights, and these persons are defined as co-owners of the respective property. Each co-owner can always demand dissolution of the common ownership by means of a court action. The court can establish an appropriate period of delay, in no case greater than five years, in the event that an immediate dissolution would prejudice the interest of the other co-owners.

An agreement to remain in common ownership for a period of no more than ten years is valid and is also effective against the successors of the participants. In the event that an agreement for common ownership was entered into for a period of more than 10 years, the duration of the agreement would be decreased to 10 years.

The court can order dissolution of the common ownership before the agreed time if serious circumstances require for the same

Heritable Building Right

The Heritable Building Right ("*diritto di superficie*)" is a right to build which is separate from the ownership of the ground and land, and is regulated by articles 952 – 956 of the ICC. This legal institution enables one to have ownership of a building, which is separate from ownership of the land upon which the building stands. This heritable building right can be obtained by a contract in writing.

Ownership of an Apartment

When numerous persons share the ownership of a building, the various storeys or apartment would carry special rights and duties, regulated by articles 1117 – 1139 of the ICC. When there are more than four members, the members in meeting have to appoint an administrator. If the members do not make such an appointment, the Court would make an appointment upon the application of one or more members.

When the number of members in a building is greater then ten, by-laws are adopted, which contain the rules concerning use of common property and the division of expenses. By-laws often also establish several important limitations to the right of use of the properties. For example, the usage of an apartment for certain commercial activities can be prohibited. By-laws are usually contained in an annex to the purchase contract of the property. In this case, they can only be modified with the unanimous consent of all the members.

Time Sharing

It is possible to have a special ownership of a shifting right of utilisation, which is restricted for a particular period of time (*"Multiproprietà"*). The "time-based owner" ("*Multiproprietario"*) does not obtain co-ownership in the apartment but instead the full ownership in the relevant apartment. The exercise of the rights of ownership are however restricted to a particular time frame in a year. The EU Time-Sharing Directive No. 94/47/CE has been adopted in Italy by virtue of the D. Lgs. No. 427/1998.

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Encumbrances

A right of ownership can be encumbered by easements. These are regulated by articles 1027 to 1078 of the ICC. An easement is established by means of an agreement in writing, which is duly certified by a Notary Public. An easement can also be established via a testamentary disposition.

Purchase Restrictions

Even foreigners are entitled to purchase real property for the commercial purposes without any restriction. However, the commercial utilisation of the land could require one to obtain the necessary authorisations for the same. There are no restrictions applicable for the purchase of real property for private usage. The right of ownership is a right, which is constitutionally protected in Italy. Nevertheless, the public administration is authorised to require the compulsory surrender of property by reason that such surrender is necessary for the due execution of public construction plans. Italian law provides for compensation to be given for cases of compulsory surrender. The quantum of compensation would generally be determined based on the area in which the relevant land is located and the market value of the same.

Purchase of Real Property

Proof of Ownership

The public authority responsible for the registration of ownership of property is the depository department at the land register ("*Conservatoria dei Registri Immobiliari*"). The first general data, which can be obtained with regards to a piece of land is to be found in the family name register ("*Rubriche dei Cognomi*"). It is therefore crucial to have accurate information as to the name, first names and birth date of the relevant person for the purposes of a proper verification at the Italian land registry. The purchaser is also advised to conduct a check with regards to the land title at the cadastral register (*Ufficio Tecnico Erariale*), an office of the Finance Ministry. The cadastral register contains an index of all real properties as well as information as to its earning capacity as well as its proprietary owners.

All transactions (and mortgage charges) would be registered in the land register. Pursuant to Italian Law, the land register contains details of legal transactions

relating to the relevant piece of land as well as relevant legal claims and judicial decisions with legal force (pursuant to article 2645 ICC). In the event that a Plaintiff fails to register his claim at the land register, he would not be able to enforce judgement against a third party who bought of the land.

Pre-contractual relationship

Contracting parties often reach an agreement only with regards to the main points of the contract. The other less important details remain open for discussion. In such a situation, the parties may enter into a preliminary contract. This preliminary contract must be made in writing (pursuant to article 1351 ICC) or would otherwise be void. The preliminary contract can provide that the buyer gives an earnest confirmation ("caparra"). Upon confirmation, the seller would be obliged to perform his part of the obligations due.

An alternative open to parties would be to enter an improper preliminary contract, called the "compromesso". By executing a "compromesso", the parties bind themselves to reproduce their agreement in a public act, in order to register the contract in the land register. the "compromesso" is a definitive contract, which is immediately effective, and valid according to the Italian Law.

If one of the parties does not perform its obligation of entering the definitive contract, the other party can obtain a judgement producing the same effects as the contract, which had not been executed (article 2932 ICC). Pursuant to Article 2645 ICC, the preliminary contract can also be registered in the Land Register if the signatures of the seller and buyer are certified by a Notary Public.

Purchase contract

Italian Civil Code (ICC) provides that contracts transferring ownership in immovables must be drafted in writing, and in particular, that they must be made by public act or by private agreement, under penalty of nullity (art. 1350). In practice, for safety's sake and in order to register the contract in land registers, they are always made by public act (*"rogito"*), which has to be drawn up by a Notary Public.

Transfer of property

The ownership of the real property is directly transferred to the purchaser upon the execution of the purchase contract. The duly executed purchase contract as well as the transfer of ownership should be registered (*"Trascrizione"*) at the land register ("*Registri immobiliari*"). The registration has the function of making the legal transaction public so as to enable the same to be enforced against third parties. Contracting parties are not obliged to register the transaction at the land register. Nevertheless, it is in their interest to perform such an action, which is directly fulfilled by the Notary Public.

Guarantees

The purchased real property must have all the characteristics, which the seller set out in the purchase contract. In addition, the real property must be suitable for the purpose it was purchased for. Pursuant to article 1495 ICC, any claim relating to a defect or fault in the purchased real property must be notified to the seller within 8 days after the discovery of the same.

Usurpation

The ownership of real property and of other real rights of enjoyment in it can be also acquired by virtue of possession continued for twenty years. A person, who acquires real property from a person, who is not an owner of the property, would be able to receive title to the property when the transfer had been effected by means of an instrument, which is appropriate to transfer ownership and when a period of ten years from the date of the transaction has expired.

Financing

Mortgage

The seller of real property is statutorily entitled to secure his purchase price claim by means of a statutory mortgage on the relevant real property. This mortgage would be registered in the land register at the same time as the registration of the purchase contract, except in cases where the creditor expressly renounces his right to the same. The contractual mortgage is only effective when the same is made in writing or when the same is certified by a notary and registered in the land register.

Leasing and Tenancy

In Italy, the terms “lease” and “tenacy” are interchangeable and basically mean the same.The statutory regulations regarding leasing are to a very large extent tenant-friendly and inalienable. There are various types of leases such as the lease of agricultural land and the lease for self-cultivation. Leasing contracts should be concluded in writing and must set out the identity of the parties, the identity of the lease property, the duration of the lease and the rate of leasing interest.

The duties of a landlord include

- Delivery of the rental property to the tenant in a good state of repair,
- Maintenance of the rental property in a condition suitable for the use agreed upon,
- Warranty of peaceful enjoyment of the rental property during the course of the tenancy.

The duties of the tenant includes

- To accept delivery of the rental property and to observe the diligence of a good *pater familias* in using it for the purpose specified in the contract or for purposes which can be otherwise presumed from the circumstances,
- To pay the rent at the dates agreed upon.

In Italy, the tenancy of living premises is differently regulated from the tenancy of commercial premises. Tenancy of residential premises must have a minimum duration of 4 years. When the contract is not expressly terminated, the contract would be automatically extended for additional 4 years. Upon presentation of an important reason, the tenant is nevertheless entitled to withdraw from the tenancy prior to the expiry of the minimum 4-year period. Parties are free to determine the rent. When real property is rented for the purpose of industrial, commercial or handwork-related activities, the tenancy contract would have a minimum duration of 6 years. In the case of hotels, the minimum period would be 9 years. It has to be noted that in both cases, tenants are granted the benefit of a pre-emptive right of purchase with regards to the rented properties.

Costs and Tax

Costs and tax payable upon the purchase of real property

A foreign purchaser must first apply for a tax number (Codice fiscale) at the finance authorities. The sale of commercial and residential buildings is subject to VAT at a rate ranging from 4% up 20%, depending on the nature of the building and of the buyer. When the seller is the developer of the building, provided that the sale occurs within five years of completion of construction, or when the entity that has carried out the restoration activities set out by some particular laws, provided that the sale occurs within five year of completion of such restoration activities, registration tax, cadastral tax and mortgage tax amount to 168 Euros each.

Continuing Tax

Italians and foreigners, who own real property in Italy, have to pay taxes on revenue from real properties and buildings, and the municipal revenue tax (ICI).Lease agreements, other than financial leases, for commercial and residential buildings are subject to registration tax, fixed at a rate of 2% on the rental income due for the entire duration of the lease agreement, with the possibility to pay the registration tax on an annual basis. If the owner is a VAT subject, the lease may be subject to VAT and are subject nevertheless to the registration tax at a rate of 1% or 2% according to the characteristics of the real estate.

Inheritance Law / Inheritance Tax Law

According to Italian Law, everyone is free to choose its own heirs, but the law nevertheless reserves a share of inheritance to some relatives, namely, the consort, the children and the descendents. The ordinary forms of will are the holographic will (a will wholly written, dated and subscribed by hand by the testator), and the will by notarial act. Inheritances and donations between relatives are subject to a tax of 4% (7% in case of immovables) of the value of the property declared exceeding Euro

1.000.000. Inheritances and donations between non-relatives are subject to a tax of 8% (10% in case of immovables) of the value of the property declared in the deed of donation.

Building Laws

Public Building Laws

In a construction project, the purchaser must, prior to the purchase, first ensure that the real property meets the building law and city development plan (Piano Regolatore Generale). Municipal authorities are in charge of regulating the constructions activities in the municipality. These contain guidelines, which have to be observed in subsequent construction designs for the relevant area. The Mayor has to approve each and every activity, which causes changes in a building in the municipality.

Environmental Law

In Italy real property is subject to various environmental laws. Each individual owner is responsible for his own breach of environmental laws, based on the basic principle “the polluter pays”. In this regard, it is important to point out that, should the public authorities order the reclamation of a polluted real property, they can register a mortgage on the property, in order to secure the expenses incurred for the reclamation, even if the person, who polluted the property does not own the property anymore.

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