



Issues Relating to Foreign Investment

A Global Practice Guide prepared by the
Lex Mundi Real Estate Practice Group

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About this Guide

The Global Practice Guide of Issues in Real Estate is the first part of this multi-part project. The Guide presents jurisdictional overviews on real estate investment and financing laws in more than 35 jurisdictions around the globe.

The information in this Guide is not intended to represent a comprehensive guide nor an opinion or legal advice on the matters covered by them but rather provide a general overview on the subject. They may only be used as for general informational purposes, and advice should always be sought from the appropriate Lex Mundi member law firm.

Please note that each response was provided on a different date, and therefore the answers to the survey refer to laws and regulations in force on that specific date.

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Argentina

Prepared by Lex Mundi member firm Marval, O'Farrell & Mairal

1. Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.

Ownership of land in Argentina is generally freehold and is subject to registration with the official Land Registry of the place where the land is situated.

Foreign ownership is unrestricted except in certain areas of national security, such as frontier zones. A foreign investor who wishes to acquire immovable property in such an area (or controlling interest in a company owning such immovable property) must seek the prior consent of the National Commission of Security Zones. In order to apply for such a consent the investor must provide the Commission with documentation concerning the projected use for the property to be purchased, documentation concerning the buyer company, or individual, as the case may be, all of which must be certified by a notary public and translated and legalized where necessary. The Commission has complete discretion as regards granting its approval for the purchase to be made by a foreign investor, although this consent is generally in practice granted.

2. Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

There are no additional restrictions. However, certain foreign exchange restrictions must be considered:

Currently, foreign exchange regulations do not require non-Argentine residents who wish to invest in Argentina to transfer funds to Argentina to make such investments and, therefore, such transactions may be closed and settled off shore. However, if the transaction involves a transfer of funds to Argentina, certain restrictions may apply.

Non Argentine residents that transfer funds to Argentina to acquire real estate property are exempted from the 30% non-interest-bearing mandatory reserve deposit set forth in Argentine foreign exchange regulations for certain particular cases, provided that the transfer of foreign currency and sell for Argentine pesos in the foreign exchange market, and subsequent payment of the purchase price, are made simultaneously with the execution of the public deed that transfers the property in favor of the non-resident investor.

In addition, pursuant to the Information Regime on Direct Investments created by Communication "A" 4237 of the Argentine Central Bank, administrators of real estate owned by non-Argentine residents shall inform the Central Bank on such real estate investments, provided that their value, calculated on the basis of the total fiscal value of the real estate, equals or exceeds the equivalent of US\$ 500,000. If the relevant real estate investment does not reach such amount, the filing of the report is optional.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

There is no such requirement.

4. What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

There are currently no taxes levied solely on foreign investors acquiring or transferring real estate. Non-resident individuals or non-resident legal entities are taxed only on argentine source income (i.e. derived from income arising from the purchase and sale, or rental of real estate located in Argentina).

Non-argentine domiciled individuals or entities are subject to patrimonial taxes solely upon their assets located in Argentina. Depending on certain elements the applicable rate varies from 0.75% to 1.5%.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

The registration of the corresponding deed with the Land Registry is required for most rights over real property (i.e. acquisition, ownership, mortgages, and easements) for protection and affects vis-à-vis third parties.

There is no title insurance system.

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Issues Relating To Foreign Investment

Australia

Prepared by Lex Mundi member firm Clayton Utz

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

Yes. Foreign investors intending to purchase real estate are subject to the provisions of the Foreign Acquisitions and Takeovers Act 1975 (Cth). An application by a foreign investor must be made to the Foreign Investment Review Board ("**FIRB**") who will then advise the Treasurer to either approve or disallow the acquisition. The Treasurer has provided an authorization to the Executive Member and other senior division staff of FIRB to make decisions which are consistent with FIRB's policy. Proposals that involve issues of special sensitivity are decided by the Treasurer.

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

There are no other state restrictions on the acquisition of real estate by foreign investors. Foreign investors must also make an application to the Foreign Investment Review Board for approval if they seek to acquire a substantial interest in entities which own Australian real estate. Takeovers of such entities and their interests must also comply with the takeovers requirements in the Corporations Act 2001 (Cth).

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

Foreign investors are no longer required to invest with a local partner. Investment with a local partner is not essential but may be advisable if specific local knowledge or expertise were required for the particular project or if it would prove advantageous to have an Australian partner involved for legal or tax reasons.

- 4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

The rate of transfer duty charged on a foreign person acquiring real estate is not different from the ordinary rate and there are no special provisions in this regard.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

The Foreign Acquisitions and Takeovers Act 1975 (Cth) has mandatory reporting obligations which require foreign persons to seek the approval of the Treasurer before their acquisition in Australian real estate, or entities which own Australian real estate, will be approved.

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Issues Relating To Foreign Investment

Austria

Prepared by Lex Mundi member firm CHSH Cerha Hempel Spiegelfeld Hlawati

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

The laws on the transfer of land of the federal states of Austria provide for restrictions on the acquisition of real properties, of certain rights in rem (such as for example building rights, usufruct) and on the conclusion of lease agreements concerning real properties by a foreigner or by a company in which foreigners hold the majority of the shares. For such transactions foreigners basically have to obtain the approval of the land transfer authorities. EU and EEA residents are treated like Austrian citizens and are therefore exempt from this requirement.

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

Some federal states (for example, Vorarlberg) restrict the transfer of shares or the increase of the share capital of an Austrian company or an Austrian partnership

owning real estate in the relevant federal state. For such transactions foreigners basically have to obtain the approval of the land transfer authorities. EU and EEA residents are treated like Austrian citizens and are therefore exempt from this requirement.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

Foreign investors are not required to invest with a local partner.

- 4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

There are no specific state taxes levied solely on foreign individuals or entities.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

According to the Foreign Currency Act 2004 the National Bank (OENB) can provide that certain disposals upon real properties require the approval of the OENB. Furthermore, the OENB can interdict certain disposals upon real properties. So far, the OENB has not issued any regulation according to which approval for the abovementioned transactions has to be obtained. However, the purchase of real estate located in Austria by an Austrian citizen from a foreigner and the sale of real estate located in Austria from an Austrian citizen to a foreigner has to be reported to the OENB. Furthermore, the repatriation of profits or the return of capital to foreigners has to be reported to the OENB.

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Issues Relating To Foreign Investment

Bahamas

Prepared by Lex Mundi member firm McKinney, Bancroft & Hughes

- 1. Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.**

Yes. The International Persons Landholding Act requires that a foreign investor obtain either a certificate of registration or a permit in order to purchase real estate in The Bahamas.

A certificate of registration may be obtained after the purchase of real estate has been completed and is required when purchasing real estate of less than five acres for a second home. Real estate purchased by permanent resident holders also requires a certificate of registration.

A permit must be obtained prior to the completion of the purchase of real estate and is required when purchasing real estate for commercial purposes or which consists of five or more acres.

- 2. Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

There are no further restrictions imposed on ownership of real estate by foreign investors in The Bahamas.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

No. Foreign investors are not required to invest with a local partner in The Bahamas. Investment with a local partner would likely not affect the purchase of real estate and is, therefore, not advisable.

- 4. What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

Stamp duty will be payable by foreign individuals or entities at the time of purchase of real estate.

Real Property tax will be payable by foreign individuals or entities on an annual basis based on the value of real estate.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no reporting requirements for foreign direct or indirect owners in The Bahamas, other than the information disclosed to the Investments Board in making the application for a certificate of registration or permit.

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Issues Relating to Foreign Investment

Barbados

Prepared by Lex Mundi member firm Clarke Gittens Farmer

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

Yes, all non-resident individuals and/or companies are required to seek the permission of the Exchange Control Authority for any transaction in which any one of the parties is a non-resident individual or legal entity.

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

Apart from the requirement that non-residents must obtain the permission of the Exchange Control Authority for the purchase of shares in any Barbados legal entity, there are no other state restrictions imposed on the ownership of real estate by foreign investors or the acquisition of interest in entities which own real estate.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

No, there is no requirement for foreign investors to invest with a local partner. However, it is recommended that foreign investors consult with the appropriate local advisers (legal, financial, tax, etc.)

- 4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

There are no special taxes which are levied solely on foreign individuals or entities acquiring or transferring real estate or interest in entities which acquire real estate.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

Apart from obtaining the permission of the Exchange Control Authority, which acts as notification to the Central Bank of Barbados, there are no special reporting requirements required for the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate. Foreign direct or indirect owners of real estate are required to follow the same reporting process as locals. That is, the document(s) evidencing the disposition of real property and the acquisition to the purchaser is/are required to be recorded/ registered at the Land Registry and notice in the prescribed form must be sent to the Department of Inland Revenue and the Land Tax Department.

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Issues Relating To Foreign Investment

Belgium

Prepared by Lex Mundi member firm Liedekerke Wolters Waelbroeck Kirkpatrick

- 1. Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.**

There is no such requirement.

- 2. Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

There are no such restrictions.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

There is no such requirement and there is no such necessity.

- 4. What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

There are no taxes levied solely on foreign investors acquiring or transferring real estate or interests in entities which acquire real estate.

- 5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.**

There are no such specific requirements.

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Issues Relating To Foreign Investment

Bolivia

Prepared by Lex Mundi member firm C.R. & F. Rojas - Abogados

- 1. Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.**

There is no national governmental permission required for foreign investors to acquire real estate.

- 2. Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

Foreign investors who shall act as legal representatives of a legal entity must obtain temporary residence. Foreigners are barred from acquiring property within 50 Km from the frontier.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

It is not necessary for a foreign investor to invest with a local partner, investment with a local partner might be advisable but not mandatory.

- 4. What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities, which acquire real estate?**

The Bolivian tax system is based on source income and not on universal income, There are no taxes levied solely on foreign individuals or entities acquiring real estate.

- 5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate, which relate solely to foreign direct or indirect owners of real estate.**

There are no reporting requirements for reporting the acquisition, ownership or disposition of real estate, which relate solely to foreign direct or indirect owners of real estate.

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Issues Relating To Foreign Investment

Brazil

Prepared by Lex Mundi member firm Demarest e Almeida

1. Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.

Brazilian legislation does not provide for any type of restriction on the foreign ownership of real property in the urban area, except for the properties considered as coastal land, which are owned by the Federal Government.

As a general rule, the acquisition of real property in Brazil by foreign nationals is not permitted or has some restrictions in the following cases:

(i) With regard to rural land:

- Corporations or individuals which reside or are domiciled abroad are forbidden to acquire rural real estate (except, with regard to a foreign individual, in the event such individual intends to immigrate to Brazil, he will be allowed to execute, in his country, a private purchase and sale promise, provided that within 3 years as of the execution of such contract he fixes his domicile in Brazil and exploits the property);
- Foreign individuals living in the country and foreign corporations duly authorized to operate in Brazil may acquire rural land provided that they respect some limitations regarding the area, established by law;
- The acquisition described above is subject to the effective exploitation of the land, according to projects to be presented to the governmental authorities;
- The acquisition, by foreigners, of rural property located within the so called International Border Area ("Faixa de Fronteira") which is "the internal strip of land with a width of 150 km "parallel" to the terrestrial border line of the Brazilian territory", is subject to the obtaining of a prior consent granted by the National Defence Council ("Conselho de Defesa Nacional").

(ii) With regard to real estate owned by the Federal Government:

- Foreign corporations and/or individuals are not allowed to acquire real estate owned by the Federal Government located in areas characterized as essential for the national security without prior approval of the President.

Additionally, the foreign companies that desire to own properties in Brazil shall be enrolled with the Brazilian Federal Revenue.

Regarding the Brazilian legal entities whose majority capital is owned by foreigners, whether individuals or legal entities, residing or with registered office abroad, the only limitation that it is subject is acquisition of real properties comprised within the International Border Area.

Within urban zones, there are no restrictions to own any kind of the assets described in the question.

2. Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

Please refer to the answer above.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

The Brazilian corporate law does not require a local partner. Brazilian companies must be formed with at least two partners, which can be legal entities or individuals, Brazilians or not. In the event the partners are not resident in Brazil, they must keep attorneys-in-fact in Brazil with powers to represent them in corporate matters in general.

At least one individual resident in Brazil must be appointed as the company's manager. The manager will be in charge of the company's management and representation. The manager will be entitled to validly bind the company and to perform the managing acts within the company's purposes, with due observation of the limits established in the articles of association.

In order to acquire interest in local companies, foreign entities must be previously enrolled with the Brazilian Taxpayers Registry (CNPJ).

4. What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

None

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

In March 3, 1998, Law n. 9613 was enacted to prevent, detect and punish money laundering activities in Brazil (the "AML Law").

The AML Law provided for the creation of the Financial Activities Control Council (Conselho de Controle de Atividades Financeiras - the "COAF"), responsible for monitoring the compliance with the AML Law, imposing administrative penalties and analyzing evidences of money laundering. The COAF is managed by a board, composed by a chairman, appointed by the Brazilian President, and eight counselors, appointed by the Ministry of Economy.

The rules governing anti-money laundering do not impose a specific duty to real estate investors, and thus AML Law is also applicable thereto. The COAF has recently enacted (October 23, 2006) Regulation n. 14 on real estate-related transactions, imposing duties to legal entities and individuals participating thereto (whether foreigners or nationals), including the record of transactions involving R\$100,000.00 (approximately US\$ 47,000.00, or more).

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Issues Relating To Foreign Investment

Bulgaria

Prepared by Lex Mundi member firm Penkov, Markov & Partners

1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.

No state governmental permission is required for foreign investors and/or Bulgarian companies established by foreign investors to acquire rights over real estate.

2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

Before the accession of Bulgaria to the EU ownership of land could only be acquired by Bulgarian citizens and companies duly registered in Bulgaria. Bulgarian companies 100% owned by foreign entities or individuals were entitled to acquire land as Bulgarian entities. Foreigners and foreign entities had limited real property rights (right of construction, right of use) and could obtain ownership over buildings. In fulfilment of Bulgaria's obligations under the EU Accession Agreement and the Protocol for the transitional measures, respective amendments were made to the Bulgarian Constitution.¹

Since 1st January 2007, foreigners and foreign entities are entitled to acquire ownership rights over land in the following cases:

1. under the terms and conditions related to the EU accession;
2. on the grounds of international agreements and treaties, duly ratified, promulgated and entered into force; and
3. in cases provided by the law of inheritance.

Bulgaria, however, is entitled to restrict the acquisition of land for second homes of EU citizens and EU entities for a 5-year period from the date of the accession; that is until 1st January 2012. This restriction is not applicable with respect to EU citizens with a duly issued resident permit. An EU citizen with a duly issued resident permit is entitled to freely acquire ownership over land.

Bulgaria has restricted the acquisition of an agricultural and forest land for a 7-year period after the accession; that is until 2014. This reservation shall not be applied with respect to independent agricultural producers who wish to stay permanently in Bulgaria.

Usually, investments in real property and development projects are made through local companies established in Bulgaria. A Bulgarian company is free to acquire real property in Bulgaria regardless of the nationality of its shareholders.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

Foreign investors are not required to invest with a local partner. Depending on the particular project and the experience of the foreign investor on the local market the involvement of local partner may be advisable.

¹ Article 22 of the Bulgarian Constitution.
www.lexmundi.com

4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

Transfer tax

There are no state taxes being levied solely on foreign individuals acquiring or transferring real estate properties.

The sale of real property is generally subject to transfer tax applicable to both foreign and local persons. Transfer tax, depending on the specific resolution of the competent municipal council at the local of the property, is levied at a rate from 0,1 to 3% of the purchase price agreed between the parties or estimate according to the tax evaluation of the property, whichever is higher.

Generally, the transferee has the legal obligation to pay the tax, unless the parties have agreed to share the tax. The tax should be paid on the day of execution of the notary deed. The payment is condition precedent for the registration of the transaction with the recordation office.

The following sales of real property are exempt from transfer tax:

- the real property is contributed to the share capital of a company by means of contribution in-kind. In such a case the specific procedure provided for in the Bulgarian Commercial Act has to be observed and a notary deed should not be drafted; or
- the real property is transferred between two companies pursuant to a merger, a de-merger or a partial business transfer.

VAT

The VAT rate is 20%.

According to the VAT Act transactions involving development land² are VAT taxable except when the transaction concerns land adjacent to used buildings.

In general, land transactions and limited real property rights over land transactions are supplies free from VAT. For the purposes of VAT Act "land" is defined as agricultural land, farming land, woodland and forest. However, the seller is free to elect such transaction as VAT assessable.³ The establishment of right of construction is considered VAT exempted until the completion of the basic construction. Transactions involving used buildings or their parts are VAT exempt.

Taxation of capital gains

Capital gains arising from the sale of land and buildings are taxed at the usual corporate tax rate of 10%. If the capital gain is realised by a foreign legal entity and/or individual the respective double taxation treaty should be checked.

Real property tax

The owners or the users of real property have to pay:

- local real property tax determined by specific resolution of the competent municipal council at the local of the property is levied at a rate from 0,1 to 2,5% of the tax evaluation of the real property; and
- local household waste fee, the rate of which is determined on an annual base by the respective town / municipal council.

² The precise definition is provided by the Spatial Development Act.

³ Article 45(7) of the VAT Act.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no special reporting requirements for reporting acquisition, ownership or disposition of real estate property applicable solely to foreign owners of real estate. Foreign investors shall comply with the same reporting requirements applicable to the local ones.

Real property in private ownership is acquired through an acquisition agreement in form of a notary deed. The deed is signed between the parties before a notary public. State or municipal real property is acquired by virtue of a written contract. The respective title documents (being a notary deed or written contract) are subject to registration with the recordation office at the recordation agency.

The acquisition of real estate property shall be reported before the competent Bulgarian tax authorities within 2-month term as of the date of acquisition.

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Issues Relating To Foreign Investment

Canada, Alberta

Prepared by Lex Mundi member firm Blake, Cassels & Graydon LLP

- 1. Is provincial governmental permission required for foreign investors to acquire real estate? If so, please identify.**

No. Except as noted in item 2 below, all real and personal property located in Alberta may be taken, acquired, held and disposed of by a non-Canadian citizen in the same manner as by a Canadian citizen.

- 2. Are there other provincial restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

Foreign registered or foreign-controlled entities should be aware that an acquisition of Canadian real estate may need to comply with merger control provisions contained in the *Investment Canada Act* (Canada) and anti-trust provisions contained in the *Competition Act* (Canada). The anti-trust provisions contained in the *Competition Act* (Canada) are triggered if: (a) on a combined basis, the parties have assets in Canada or gross revenues from sales in, from or into Canada of over CDN\$400 Million; and (b) the assets or target firm being bought are valued over, or generate gross revenues from sales in or from Canada of over CDN\$70 Million.

The Province of Alberta imposes restrictions. Pursuant to regulations under the *Agricultural and Recreational Land Ownership Act* (Alberta), a foreign-controlled company may only acquire an interest in up to two parcels of controlled land totalling in the aggregate no more than 20 acres, unless the acquisitions of an interest by such foreign-controlled company meets one of the exemptions under the regulations or the approval of the Government of Alberta is obtained. Controlled land is essentially any land outside of the boundaries of a city, town, or village.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

There is no advantage using a local partner.

- 4. What provincial taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

There are no provincial taxes levied in Alberta solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate.

Direct ownership of Canada real estate by an investor not resident in Canada will lead to taxation of income either on a withholding basis or, if the activity amounts to carrying on of a business, on a basis generally equivalent to the taxation of a Canadian resident.

A source withholding tax of 25% on rental payments to non-residents is imposed. There is no reduction of this rate under the Canada-U.S. Tax Convention.

The Canadian government imposes a withholding tax of 25% on various payments by Canadian residents to foreigners. Bilateral tax treaties between Canada and the investor's country may help by setting a lower withholding tax rate. Canadian withholding tax on arm's length interest payments (other than interest on certain participating debt) by Canadian resident borrowers to foreign lenders was eliminated as of January 1, 2008.

Moreover, pursuant to the new Protocol to the Canada-U.S. Tax Treaty (which has not yet been ratified), withholding tax on non-arm's length payments of interest to U.S. residents entitled to the benefits of the Canada-U.S. Tax Treaty will be eliminated gradually over the next few years, following ratification of the Protocol.

If the vendor of Canadian real estate is not a resident of Canada, a clearance certificate is required from the Canadian government pursuant to Section 116 of the *Income Tax Act* (Canada), failing which the purchaser may hold back from the closing proceeds an amount equal to 50% of the purchase price.

Although not imposed solely on foreign investors, a foreign investor should be aware of the following (a) although Alberta imposes no land transfer tax, it charges a registration fee for transfers at the rate of 0.02% of the value of the real estate; (b) if the purchase of real estate is accompanied by the purchase of certain goods, such as furniture or appliances, there is no provincial retail sales tax payable on the personal property acquired; and (c) a federal goods and services tax of 5% is payable on a "supply" of real property in Canada, unless otherwise exempted under the *Excise Tax Act* (Canada). A "supply" includes the sale of real property, as well as a lease, licence or other similar arrangement. If the foreign investor is registered under the *Excise Tax Act* (Canada), federal goods and services tax would not in fact be payable.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

The *Investment Canada Act* (Canada) applies to all non-Canadians seeking to acquire control of existing Canadian businesses or established new Canadian businesses, whether through the acquisition of assets or shares. A transaction will be "reviewable" if its value exceeds CDN\$5 Million in case of a direct acquisition, CDN\$50 Million in the case of an indirect acquisition (share acquisition), or, at the discretion of the Canadian government, if the business in question falls into a class related to Canada's cultural heritage or national identity. Reviewable transactions require a determination that the investment is likely to be a "net benefit to Canada". Transactions involving investors who are residents of World Trade Organization (WTO) member countries relating to direct acquisitions by or from a WTO investor have a review exemption threshold of CDN\$299 Million as of 2010, adjusted upward for inflation annually. Indirect acquisitions involving a WTO investor are not reviewable. If the transaction is not reviewable, it will be "notifiable", requiring filing of information about the parties, the nature of the business and the value of the assets with the applicable governmental agency within 30 days after the close of the transaction.

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Issues Relating To Foreign Investment

Canada, Manitoba

Prepared by Lex Mundi member firm Thompson Dorfman Sweatman LLP

1. Is provincial governmental permission required for foreign investors to acquire real estate? If so, please identify.

No. All property can be owned by companies or individuals who are not Canadian citizens or residents.

2. Are there other provincial restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

Generally, all real property in Manitoba can be taken, held, possessed, and conveyed equally by Canadians and Non-Canadians equally under The Law of Property Act (Manitoba). A similar provision appears federally in the Citizenship Act (Canada).

The exception to the general rule above is farm lands which cannot be acquired or held by a non-resident of Canada either personally or through a corporation in which the non-resident has direct or indirect power or control. Specific provisions are found in The Farm Lands Ownership Act (Manitoba).

Farm land is considered to be all land, in excess of 5 acres, outside a city, town, or village but does not include mineral rights of the land or land used for extracting minerals or supplying telecommunications or pipeline services.

An application can be made to exempt farm lands from the Act to allow foreign ownership. The cost of such an application is \$250.00.

Also foreign investors who invest by way of a Manitoba Corporation should be aware of the restriction on non-resident directors under The Corporations Act (Manitoba). A Manitoba Corporation must have at least 25% Canadian resident directors. There are other jurisdictions in Canada that allow corporations to exist without resident Canadian directors, however.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

No, foreign individuals have a standalone right to invest. However, this may be regulated federally by the Investment Canada Act (Canada), where notice must be given of a non-Canadian gaining controlling interest in a Canadian company, or commencing a new business activity in Canada.

For Farm land, the same considerations set out above relate to foreign investment. If investment is by a foreign individual or corporation it is prohibited.

4. What provincial taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

Foreign individuals or entities are not subject to any extra provincial or municipal taxes. However, the Income Tax Act (Canada) does not afford the same treatment to non-residents as it does to "Canadian Controlled Private Corporations".

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

No provincial reporting requirements. However, there are reporting requirements under the Investment Canada Act (Canada) for foreign investment in Canadian companies. Acquiring control of a Canadian corporation for investment in real estate, or commencing a business activity in Canada would be subject to these reporting requirements. As well, acquiring control of a Canadian corporation with asset values above certain thresholds is reviewable under the Investment Canada Act (Canada). Currently the threshold for direct acquisitions is \$50 million Canadian Dollars for investors from non-WTO members and \$265 million Canadian dollars.

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Issues Relating To Foreign Investment

Canada, Nova Scotia

Prepared by Lex Mundi member firm McInnes Cooper

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

No. All property can be owned by companies or individuals who are not Canadian citizens or residents.

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

There are no provincial restrictions imposed on ownership of real property by foreign investors and all real property in Nova Scotia can be taken, held, possessed, and conveyed equally by Canadians and Non-Canadians equally under the Real Property Act (Nova Scotia).

Generally there are no provincial restrictions on foreign ownership of shares in a company to which the Nova Scotia Companies Act applies. There is no provincial residency requirement for directors. A company must have a recognized agent who is resident in the Province.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

There are no provincial laws requiring a foreign investor to invest with a local partner. Whether or not investment with a local partner is advisable would depend on considerations other than purely legal ones.

- 4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

Foreign individuals or entities are not subject to any extra provincial or municipal taxes.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

Any real property which has not been migrated to our new Land Registration System is subject to the Land Holdings Disclosure Act (Nova Scotia) which requires a non-resident acquiring real property in the Province to provide a disclosure statement to the Minister of Lands and Forests setting out his full name and address, the description of the real property and the purpose for which the real property was acquired. Since most conveyances of real property will require migration to the Land Registration System, this act will rarely apply.

Please refer to the Canada (National) survey for applicable federal issues

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Issues Relating To Foreign Investment

Canada, Ontario

Prepared by Lex Mundi member firm Blake, Cassels & Graydon LLP

- 1. Is provincial governmental permission required for foreign investors to acquire real estate? If so, please identify.**

No. Except as noted in item 2 below, all real and personal property located in Ontario may be taken, acquired, held and disposed of by a non-Canadian citizen in the same manner as by a Canadian citizen.

- 2. Are there other provincial restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

Foreign registered or foreign-controlled entities should be aware that an acquisition of Canadian real estate may need to comply with merger control provisions contained in the *Investment Canada Act* (Canada) and anti-trust provisions contained in the *Competition Act* (Canada). The anti-trust provisions contained in the *Competition Act* (Canada) are triggered if: (a) on a combined basis, the parties have assets in Canada or gross revenues from sales in, from or into Canada of over CDN\$400 Million; and (b) the assets or target firm being bought are valued over, or generate gross revenues from sales in or from Canada of over CDN\$70 Million.

Otherwise, there are generally no restrictions imposed on foreign investors, although certain tax, reporting and registration provisions may apply. For example, the *Extra-Provincial Corporations Act* (Ontario) requires foreign registered or foreign-controlled entities to obtain licenses to carry on business in the province. This may include an interest (other than by way of security) in real estate.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

A local partner is not required. However, a non-resident intending to provide mortgage loans in a number of provinces will have to consider the mortgage brokers legislation of the respective province, which imposes certain constraints. For example, in the Province of Ontario, in order to carry on a business involving lending on a security of real estate, a person or entity must be registered under the *Mortgage Brokers Act* (Ontario) as a mortgage broker. To become registered, an individual, partnership, association or corporation must be a Canadian citizen or permanent resident of Canada. The Act does not permit corporation to carry on business as mortgage brokers if the total percentage of shares held by non-resident exceeds 25%, the percentage of shares held by a single non-resident exceeds 10%, or if the corporation has not been incorporated in Ontario or federally.

- 4. What provincial taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

Direct ownership of Canada real estate by an investor not resident in Canada will lead to taxation of income either on a withholding basis or, if the activity amounts to carrying on of a business, on a basis generally equivalent to the taxation of a Canadian resident.

A source withholding tax of 25% on rental payments to non-residents is imposed. There is no reduction of this rate under the Canada-U.S. Tax Convention.

The Canadian government imposes a withholding tax of 25% on various payments by Canadian residents to foreigners. Bilateral tax treaties between Canada and the investor's country may help by setting a lower withholding tax rate. Canadian withholding tax on arm's length interest payments (other than

interest on certain participating debt) by Canadian resident borrowers to foreign lenders was eliminated as of January 1, 2008.

Moreover, pursuant to the new Protocol to the Canada-U.S. Tax Treaty (which has not yet been ratified), withholding tax on non-arm's length payments of interest to U.S. residents entitled to the benefits of the Canada-U.S. Tax Treaty will be eliminated gradually over the next few years, following ratification of the Protocol.

If the vendor of Canadian real estate is not a resident of Canada, a clearance certificate is required from the Canadian government pursuant to Section 116 of the *Income Tax Act* (Canada), failing which the purchaser may hold back from the closing proceeds an amount equal to 50% of the purchase price.

Although not imposed solely on foreign investors, a foreign investor should be aware of the following: (a) a land transfer tax is payable upon the transfer of ownership of real property. The land transfer tax is imposed at graduated rates, but for most commercial transactions, it is approximately 1.5% of the total consideration for the transfer of real property in the Province of Ontario. In addition, real estate located within the City of Toronto is also subject to an additional land transfer tax equating to approximately 1.5% of the value of the real property transferred; (b) if the purchase of real estate is accompanied by the purchase of certain goods, such as furniture or appliances, harmonized sales tax is payable in Ontario by a purchaser at a rate of 13% of the value of the tangible personal property acquired, unless otherwise exempt under the *Excise Tax Act* (Canada); and (c) a harmonized sales tax of 13% is payable on a "supply" of real property in Canada, unless otherwise exempted under the *Excise Tax Act* (Canada). A "supply" of real property includes the sale of real property, as well as a lease, license or other similar arrangement. If the foreign investor is registered under the *Excise Tax Act* (Canada), harmonized sales taxes would not in fact be payable.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

The *Investment Canada Act* (Canada) applies to all non-Canadians seeking to acquire control of existing Canadian businesses or established new Canadian businesses, whether through the acquisition of assets or shares. A transaction will be "reviewable" if its value exceeds CDN\$5 Million in case of a direct acquisition, CDN\$50 Million in the case of an indirect acquisition (share acquisition), or, at the discretion of the Canadian government, if the business in question falls into a class related to Canada's cultural heritage or national identity. Reviewable transactions require a determination that the investment is likely to be a "net benefit to Canada". Transactions involving investors who are residents of World Trade Organization (WTO) member countries relating to direct acquisitions by or from a WTO investor have a review exemption threshold of CDN\$299 Million as of 2010, adjusted upward for inflation annually. Indirect acquisitions involving a WTO investor are not reviewable. If the transaction is not reviewable, it will be "notifiable", requiring filing of information about the parties, the nature of the business and the value of the assets with the applicable governmental agency within 30 days after the close of the transaction.

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Issues Relating To Foreign Investment

Canada, Quebec

Prepared by Lex Mundi member firm Blake, Cassels & Graydon LLP

- 1. Is provincial governmental permission required for foreign investors to acquire real estate? If so, please identify.**

No. All movable and immovable property located in Quebec may be taken, acquired, held and disposed of by a non-Canadian citizen in the same manner as by a Canadian citizen.

- 2. Are there other provincial restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

Foreign registered or foreign-controlled entities should be aware that an acquisition of Canadian real estate may need to comply with merger control provisions contained in the *Investment Canada Act* (Canada) and anti-trust provisions contained in the *Competition Act* (Canada). The anti-trust provisions contained in the *Competition Act* (Canada) are triggered if: (a) on a combined basis, the parties have assets in Canada or gross revenues from sales in, from or into Canada of over CDN\$400 Million; and (b) the assets or target firm being bought are valued over, or generate gross revenues from sales in or from Canada of over CDN\$70 Million.

The Province of Quebec prohibits the acquisitions by non-resident of any interest in agricultural land without the prior consent of the government. In addition, Quebec imposes certain restrictions on the ownership of classified cultural properties.

Otherwise, there are generally no restrictions imposed on foreign investors, although certain tax, reporting and registration provisions may apply. For example, *An Act respecting the legal publicity of sole proprietorships, partnerships and legal persons* requires foreign registered or foreign-controlled entities to obtain licenses to carry on business in the province. This may include an interest (other than by way of security) in real estate.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

A local partner is not required.

- 4. What provincial taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

Direct ownership of Canadian real estate by an investor not resident in Canada will lead to taxation of income either on a withholding basis or, if the activity amounts to carrying on of a business, on a basis generally equivalent to the taxation of a Canadian resident.

A source withholding tax of 25% non-rental payments to non-residents is imposed. There is no reduction of this rate under the Canada-U.S. Tax Convention.

The Canadian government imposes a withholding tax of 25% on various payments by Canadian residents to foreigners. Bilateral tax treaties between Canada and the investor's country may help by setting a lower withholding tax rate. Canadian withholding tax on arm's length interest payments (other than interest on certain participating debt) by Canadian resident borrowers to foreign lenders was eliminated as of January 1, 2008.

Moreover, pursuant to the new Protocol to the Canada-U.S. Tax Treaty (which has not yet been ratified), withholding tax on non-arm's length payments of interest to U.S. residents entitled to the benefits of the Canada-U.S. Tax Treaty will be eliminated gradually over the next few years, following ratification of the Protocol.

If the vendor of Canadian real estate is not a resident of Canada, a clearance certificate is required from the Canadian government pursuant to Section 116 of the *Income Tax Act* (Canada), failing which the purchaser may hold back from the closing proceeds an amount equal to 50% of the purchase price. A similar clearance certificate notification and withholding procedure is applicable under Quebec income tax legislation.

Although not imposed solely on foreign investors, a foreign investor should be aware of the following: (a) a land transfer tax is payable upon the transfer of ownership of real property. The land transfer tax is imposed at graduated rates, but for most commercial transactions, it is approximately 1.5% of the total consideration for the transfer of the real property in the Province of Quebec. In addition, real estate located within the City of Montreal is also subject to an additional land transfer tax equal to about 0.5% of the value of the real property transferred; (b) if the purchase of real estate is accompanied by the purchase of certain goods, such as furniture or appliances, provincial retail sales tax is payable by a purchaser at a rate of 7.5% of the value of the tangible personal property acquired; and (c) a federal goods and services tax of 5% is payable on a "supply" of real property in Canada, unless otherwise exempted under the *Excise Tax Act* (Canada). A supply includes the sale of real property, as well as a lease, license or other similar arrangement. If the foreign investor is registered under the *Excise Tax Act* (Canada), the federal goods and services tax would not in fact be payable.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

The Investment Canada Act (Canada) applies to all non-Canadian seeking to acquire control of existing Canadian business or establish new Canadian businesses, whether through the acquisition of assets or shares. A transaction will be "reviewable" if its value exceeds CDN\$5 Million in case of a direct acquisition, CDN\$50 Million in the case of an indirect acquisition (share acquisition), or, at the discretion of the Canadian government, if the business in question falls into a class related to Canada's cultural heritage or national identity. Reviewable transactions require a determination that the investment is likely to be a "net benefit to Canada". Transactions involving investors who are residents of World Trade Organization (WTO) member countries related to direct acquisitions by or from a WTO investor have a review exemption threshold of CDN\$299 Million as of 2010, adjusted upward for inflation annually. Indirect acquisitions involving a WTO investor are not reviewable. If the transaction is not reviewable, it will be "notifiable", requiring filing of information about the parties, the nature of the business and the value of the assets with the applicable governmental agency within 30 days after the close of the transaction.

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Issues Relating To Foreign Investment

Channel Islands, Jersey

Prepared by Lex Mundi member firm Mourant Ozannes

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

Yes, the ownership and occupation of residential property is strictly controlled. Apart from a few exceptions (for example purchasing, but not occupying, residential property by share transfer), a person wishing to purchase and/or occupy residential property in Jersey must qualify under Jersey's Housing Laws and Regulations and obtain consent from the Housing Minister of the States of Jersey.

For commercial property, foreign ownership is permitted, but again the consent of the Housing Minister is required.

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

Apart from those consents referred to above at 1. there are no other restrictions imposed on ownership of real estate by foreign investors, nor for acquisition of interest in entities which own real estate in Jersey.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

No it is not necessary to invest with a local partner.

- 4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

There are currently no taxes levied solely on foreign investors acquiring or transferring real estate in Jersey.

Stamp Duty is usually payable on the sale or transfer of real estate and on leases with a term of 9 years or more.

Goods and Service Tax (currently 3%) may also be payable on certain transactions.

If the Landlord of premises is not resident in Jersey, then the tenant or property agent is obliged to withhold tax at the rate of 20% from the rental and pay this to the Comptroller of Income Tax in Jersey.

For acquisition of residential property by way of share transfer a tax equivalent to the Stamp Duty payable on a freehold sale or transfer is now paid by the purchaser or the lender, but only if the ownership of the shares confer a right of occupation of that property.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no specific reporting requirements relating solely to foreign direct or indirect ownership of real estate in Jersey.

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Issues Relating To Foreign Investment

Chile

Prepared by Lex Mundi member firm Claro y Cia., Abogados

1. Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.

In general, there is no governmental permission required for foreign investors to acquire real estate in Chile.

However, nationals of bordering countries (including entities whose main offices are located in a bordering country, or which 40 percent or more of their capital belongs to nationals of a bordering country, or which effective control is in the hands of nationals of any such country) are prevented from acquiring the ownership of, or other *in rem* rights in, or holding in possession or tenancy, real estate totally or partially located in the zones of the national territory which the authority has declared as "national border land".

In the event of a national of a bordering country acquiring *mortis causa* any national border land, such individual or entity must transfer the relevant real estate to an eligible acquirer within one year from the death of the original owner. If the affected person or entity does not comply with the referred obligation, the State will be entitled to expropriate the relevant real estate.

The President of the Republic, on grounds of national interest, may release certain nationals of bordering countries from the aforementioned prohibition, on a case by case basis, authorizing them to acquire or transfer the ownership of, or other *in rem* rights in, or the possession or tenancy of one or more determined real estate located in national border lands.

Furthermore, the lands belonging to the State located up to ten kilometers from the national border, may only be acquired, leased or received under any other title, by Chilean individuals or entities. Same rule shall apply with respect to those lands belonging to the State located up to five kilometers from the sea coast, measured from the line of the highest tides. However, in the latter case, foreigners with domicile in Chile may acquire, receive in lease or obtain under any other title the aforementioned lands upon prior favorable report of the Navy Under-Secretariat of the National Defense Ministry (*Subsecretaría de Marina del Ministerio de Defensa Nacional*). Notwithstanding, beaches belonging to the State, within an 80-meter wide strip of land measured from the line of the highest tides, may not be transferred under any title, and may only be subject to administrative acts by the referred Navy Under-Secretariat of the National Defense Ministry.

However, the ownership of beaches belonging to the State located in the X, XI, and XII Regions (i.e. the southernmost Regions of the country) may be transferred to Chilean individuals or non-profit entities, with the prior approval of the Office of the Commander-in-Chief of the Chilean Navy and provided that the acquirer settles in the relevant region. For a period of ten years after any such acquisition, the respective property may not be transferred *inter vivos*, except in qualified cases with the acquiescence of the Ministry of National Properties and the Office of the Commander-in-Chief of the Chilean Navy.

In addition, by means of a supreme decree based on reasoned grounds, and upon prior report from the Office of the Commander-in-Chief of the Chilean Navy, beaches belonging to the State, within the above-referenced 80-meter strip, may be transferred to Chilean non-profit entities which legal purpose is the development and promotion of the arts and letters, being prevented, with the prohibition of creating liens over, or transferring, the same, in whole or in part.

2. Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

There are no additional restrictions imposed on ownership of real estate by foreign investors.

Note, however, that foreign investment in real estate, as any other foreign investment in Chile (including in Chilean entities that own or hold real estate), must be performed

through one of the foreign investment mechanisms available in Chile, that is, either Decree Law 600, which contains the Chilean Foreign Investment Statute (eligible, as of the time of this report, only for investments representing US\$5,000,000 or more), or Chapter XIV of the Compendium of Foreign Exchange Regulations of the Central Bank of Chile (eligible, as of the time of this report, only for investments representing more than US\$10,000).

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

It is not mandatory to perform the investment together with a local partner. There are no special reasons or advantages in associating with a local partner, except where the investment is related to certain regulated activities, such as telecommunications or fishing, which require specific levels of Chilean presence for the grant of concessions and authorizations.

4. What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

A. The transfer of real estate by a foreign individual or entity is subject to the following taxation:

(a) If the seller is a foreign individual or entity, any capital gains derived from the sale of real estate located in Chile may not be subject to taxes in Chile, provided that the following requirements are met: (i) the real estate is not an asset of a company whose income is subject to income tax ("First Category Tax"), (ii) the seller is not customarily engaged in the purchase and sale of real estate, as described in the Chilean Income Tax Act, and (iii) the real estate is not sold to a related party. The parties to a transaction would be deemed "related" under the Chilean Income Tax Act when the seller is a partner or shareholder in the purchaser when the latter is a closely held corporation, or holds ten percent or more of the stock in the purchaser when the latter is a publicly held corporation, or has an economic interest in the purchaser whichever its legal nature.

(b) Gains resulting from the sale or contribution of real estate are fully taxable if such a sale fails to comply with any of the above-mentioned requirements. Therefore, gains derived from the sale of real estate located in Chile will be subject to (i) a 17 percent First Category Tax that must be declared and paid by the seller, and (ii) a 35 percent additional tax ("Additional Withholding Tax") at the moment of their distribution or remittance abroad to non-resident individuals or entities (a credit is granted for the First Category Tax already paid).

A Chilean purchaser would also be required to make a provisional withholding of 20 percent of the total amounts remitted abroad to the foreign seller. The amount so withheld must be declared and paid to the Chilean Treasury within the first 12 days of the month following the date on which payment is made, and may be used as a tax credit against the Additional Withholding Tax that may actually be due at the end of the fiscal year in which the transaction is executed.

(c) Real estate in Chile is subject to a "real estate property tax" (*impuesto territorial*) calculated on the basis of the fiscal valuation of the real estate. The real estate property tax is paid annually in four installments.

B. The transfer of interests in entities which acquire real estate is subject, in general terms, to the following taxation:

The tax treatment applicable on capital gains obtained from the sale or disposal of ownership rights or shares in Chilean companies that acquire or hold real estate would largely depend on the nature of the entities whose ownership rights or shares are sold.

As a general rule, capital gains obtained from the sale of ownership rights in a limited liability company (*sociedad de responsabilidad limitada*) or shares issued by a Chilean corporation or stock company (*sociedad anónima* or *sociedad por acciones*) would be subject to 17 percent First Category Tax and, upon their distribution or remittance abroad to non-resident individuals or entities, a 35 percent Additional Withholding Tax (a tax credit will be given for the First Category Tax already paid).

Please note that gains resulting from the sale of shares held in a Chilean corporation or stock company may be subject to a 17 percent First Category Tax, as a sole tax, on the amount of the capital gain, provided that the following requirements are met: (i) the shares are held for a period of one year or more, (ii) the sale of such shares is not made to related parties (see above), and (iii) the seller is not customarily engaged in the trading of securities.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no special reporting requirements in connection with the acquisition, ownership or disposal of real estate which relate solely to foreign direct or indirect owners of real estate, except for those reporting requirements, as applicable to any foreign investment in Chile, derived from the foreign investment regimes indicated in 2 above.

¹Please note that the President of the Republic of Chile recently sent a bill to Congress that would increase the corporate tax rate from 17% to 20% for year 2011 and to 18.5% for year 2012. The tax rate would be reduced again to 17% as of year 2013. The final terms and conditions of the increase of the corporate tax rate will be discussed in Congress.

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Issues Relating To Foreign Investment

Cyprus

Prepared by Lex Mundi member firm Dr. K. Chrysostomides & Co LLC

1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.

Third country nationals (i.e. non-EU citizens and corporate entities) have restrictions on owning immovable property in Cyprus.

According to the Acquisition of Immovable Property by Aliens Law, Cap. 109, as amended, the acquisition of a secondary residence (i.e. holiday home or office premises for foreign entities) in Cyprus by third country nationals, is subject to limitations as regards the maximum size of the land (approx. 4000m²) and the number of properties that can be purchased (only 1). Moreover, family members cannot own more than one property unless they are financially independent adults and/or comprise separate family units.

In order to register such property in their name, third country nationals are required to apply for and obtain permission from the local District Administration Office where the property is situated. With the exception of the type and size of the land mentioned above, third country nationals are not entitled to own any other immovable property.

2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

The above restrictions apply equally to non-EU corporate entities and Cyprus companies owned or run by third country nationals. Foreign entities that have bearer shares cannot own immovable property.

A Cyprus company may invest in land (as opposed to a secondary residence or office premises), for as long as no third country national has a controlling majority on its board or has a shareholding or voting majority of more than 49%, in all cases.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

For immovable property acquisition other than for a secondary residence, investors from third countries must have a local or EU partner who will hold not less than 51% of the shares and/or the votes and/or the seats on the board of a corporate entity.

4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

There are no specific taxes for third country nationals. Upon transfer of the property, the Land Registry will collect transfer fees from the buyer on a graduated scale, in accordance with the purchase price (to be assessed by the Land Registry), as follows:

Up to EURO 85,430	3%	
From EURO 85,431 to 170,860		5%
Over EURO 170,860		8%

Transfers to spouses and close relatives are subject to minimal transfer fees. Upon sale of the immovable property, capital gains tax is levied at 20% on the gain, which is adjusted to take into account inflation and proven improvement expenses. Natural persons are entitled to a one-off tax deduction of EURO 17,086 while those who have utilized the sold premises as a permanent residence for at least the past five years, are entitled to a one-off deduction of EURO 85.430. There is no one-off capital gains tax relief for legal entities.

VAT at 15% is levied only on new buildings.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no specific requirements for third country nationals, other than the application (Form Comm. 145) to the pertinent District Administration Office for permission to register property in their name. In the case of new or under construction buildings, a building permit will need to accompany the application. It is not possible to complete the registration of the property in the name of a buyer, if the property does not have a separate title deed. For new developments, the issue of separate title deeds may take two or more years, depending on the District.

In such a case, the contract of sale should be stamped by the office of the Commissioner of Stamp Duty and lodged with the Land Registry for Specific Performance purposes, within two months from signing. The lodging of the contract creates an encumbrance against the property and the Vendor cannot sell, transfer or mortgage it without the buyer's written consent.

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Issues Relating To Foreign Investment

Czech Republic

Prepared by Lex Mundi member firm PRK Partners

1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.

According to Section 17 of Act No. 219/1995 Coll., Foreign Exchange Act, as amended (the “**Foreign Exchange Act**”) there is a different regime for (i) lands within the Agriculture Land Fund, i.e. agriculture lands and land intended for the forest function, i.e. forest lands and (ii) other real estate not specified in letter (i).

After the accession of the Czech Republic to the European Union (with effect from 1 April 2004) the Czech Republic had a transitional period concerning acquisition of certain real estate by foreign persons.

As regards real estate other than the agriculture lands and forest lands the transitional period was five years and terminated as of 30 April 2009. The Czech Parliament has not yet amended the Foreign Exchange Act to reflect termination but Section 31 of that Foreign Exchange Act states that the provisions of the Foreign Exchange Act are applicable if an international treaty binding for the Czech Republic has not stated otherwise. The same general requirement is also included in the Czech Constitution. The international treaty which states otherwise is the Treaty of Accession of the Czech Republic to the European Union.

Therefore the foreign investors are entitled to acquire real estate other than the agriculture lands and the forest lands without any restraints.

As regards the agriculture lands and the forest lands the transitional period was determined for seven years and therefore it is still in effect. It will end as of 30 April 2011. Until then the rules for acquisition of the agriculture lands and the forest lands are as follows:

The agriculture lands and the forest lands may be acquired by:

1. Czech citizens;
2. foreigners with Czech citizenship;
3. foreigners with a residence permit for a citizen of a member state of the European Community if this foreigner is registered as an agriculture entrepreneur in the relevant municipality and if his/her permanent residence in the Czech Republic is at least three years; and
4. other foreigners only (i) by way of legacy, (ii) for diplomatic representation of a foreign state on condition of reciprocity, (iii) as the common property of the married couple if one of them is a Czech citizen, (iv) from a related person, sibling or the husband/wife, (v) by exchange for other agriculture land of the forest land in the Czech Republic, (vi) upon a preemptive right within co-ownership, (vii) if the agriculture land or forest land constitutes a functional unit with a building owned by a foreigner, and (viii) if expressly stated by special law.

2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

There are no other state restrictions imposed on ownership of real estate by foreign investors or to acquisition of interests in entities which own real estate, except for those described in question 1.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

The foreign investors are not required to invest with the Czech partner.

4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

There are no national taxes levied solely on foreign individuals or entities.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

Save for the situation described below, there are no requirements for reporting obligations for foreign investors in case of acquisition of real estate. There is a possibility, under the specified conditions in the Foreign Exchange Act and in specific cases, of a requirement to report investments in connection with acquisition of interest in Czech companies.

In this connection please be informed that it is necessary under the Czech real estate law to register the ownership of the real estate (except for small accessory buildings) into the Real Estate Cadastre.

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Issues Relating To Foreign Investment

Denmark

Prepared by Lex Mundi member firm Kromann Reumert

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

Foreign investors cannot acquire real estate in Denmark without permission from the Danish Ministry of Justice. Danish legislation is not aimed directly at foreigners; there is a residence requirement, not a nationality requirement. To buy real estate in Denmark without permission, you have to be a resident of Denmark. According to Ministry practice, a person will not be considered having his or her permanent address in Denmark until after 5 years of living here.

The rules apply also to foreign enterprises, associations, etc., as such legal persons do not have residence, or do not have their registered office, in Denmark. However, enterprises may set up Danish subsidiaries, which subsidiaries are free to acquire real estate. Such subsidiaries will be Danish legal persons, even if 100% foreign-owned and even if made for the purpose of owning real estate in Denmark.

Although EU citizens may not have resided in Denmark for a total of 5 years, persons and enterprises may acquire title to real estate in Denmark without the permission of the Ministry if persons/enterprises:

are employees working as salaried employees,

are seeking to establish themselves in Denmark for the purpose of undertaking business as independent contractors, or intend to set up agencies/branches in Denmark or to supply or receive services in Denmark.

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

No, see above.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

There is no such requirement.

- 4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

There are no taxes levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no such specific requirements.

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Issues Relating To Foreign Investment

Ecuador

Prepared by Lex Mundi member firm Pérez, Bustamante & Ponce

1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.

In general, foreign investors have the same rights as local investors regarding acquisition and ownership of real estate in our country.

Limitations in this regard are imposed by the Constitution and the Law on Defence and Public Security. The Constitution establishes that foreign individuals or companies may not acquire real estate in national security areas or protected areas, in accordance with the law. Protected areas are determined by various laws.

The Law on Defence and Public Security determines that foreign individuals or corporations, and local companies with foreign shareholders cannot acquire or hold real estate in security zones. This law considers security zones those located in the border area - the border area encompasses a land area twenty (20) miles from the boundary lines into the country, a maritime space of ten (10) nautical miles and the airspace above- and other restricted areas established by the President of the Republic.

Therefore, there is no governmental permission available for acquisition of real estate in security zones or protected areas.

Additionally, it should be noted that nationals as well as foreign individuals and companies that do not have the status of residents in the Galapagos Islands may invest in that province only if they are associated with a permanent resident. This limitation includes acquisition of real estate.

In this case, foreigners can obtain permanent resident status after living or staying in the Islands for five years, or they may invest in association with a permanent resident, provided that the latter holds at least 51% of the investment.

2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

There are no other restrictions imposed on ownership of real estate by foreign investors or other restrictions to acquire interests in entities which own real estate under local law different from the ones mentioned above.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

As mentioned above, the law requires a non-resident of Galapagos to have a permanent resident partner if he wants to invest in the Galapagos Islands. This limitation includes acquisition of real estate.

This limitation is only applicable to investments in the Galapagos Islands and it is neither applicable nor necessary regarding investments made by foreigners in continental real estate.

4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

There are no state taxes levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate under local law.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no reporting requirements for the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

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Issues Relating To Foreign Investment

Greece

Prepared by Lex Mundi member firm Zepos & Yannopoulos

1. Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.

Restrictions exist as regards only acquisition of property located in border areas. Such border areas comprise some of the best-known and interesting investment-wise parts of the country including a number of popular islands (e.g. Rhodes).

The restrictions apply to both Greek and EU nationals as well as to non-EU nationals, including physical persons and legal entities. Such restrictions are far more limited for Greek and EU nationals, since the areas considered as “border areas” are less extensive than those for non-EU nationals. Also, in terms of procedure, the granting of an approval for non-EU nationals is more complicated and time-consuming than the applicable procedure for domestic and EU investors, the latter being rather short.

In particular, the acquisition of land located at border areas requires the prior approval of the competent authority.

- Greek and EU citizens can acquire land at border areas following a permission granted by a Special Committee of the competent prefecture where the land is located.
- Non-EU citizens' permission must be granted by the Minister of Defense.

2. Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

The above explained restrictions apply not only to the direct acquisition of the land in border areas, but also to the indirect acquisition which is effected by means of a transfer of shares in a company owning real

estate in such areas. In particular, the transfer of shares or the change of the shareholding structure of any type of a company, which owns property in border areas, requires the prior approval of the competent authority. An exception is established to this rule for transfers referring to shares listed in the Athens Stock Exchange.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

There is not a requirement for foreigners to invest with a local partner. However, a partnership with a local partner could prove beneficial with respect to exploring the business customs and practices in Greece.

4. What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

None.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no reporting requirements solely addressed to foreign acquisition of real estate.

However, there are certain reporting requirements that apply to acquisition of property in general. These mainly include the obligation to provide certain information to credit and financial institutions for certain financial transactions and in case of direct acquisition of property to file the transfer of ownership agreement with the competent real estate registries.

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Issues Relating To Foreign Investment

Hungary

Prepared by Lex Mundi member firm Nagy és Trócsányi

1. Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.

In case of non-agricultural lands, foreigners (individuals or entities) may acquire title of real estates only with a permit granted by the competent Governmental Administrative Office. The permit may be given only, if it does not violate any local municipality or other public interests. Such restriction shall not apply to EU nationals as they can acquire nonagricultural real estates under the same conditions as the Hungarian citizens (that is without permit).

The title of the agricultural lands cannot be acquired by foreigners (natural persons or legal entities). Such prohibition does not apply to EU nationals wishing to settle in Hungary to independently engage in agricultural production, and who have been legitimately residing in Hungary for at least three consecutive years and are pursuing agricultural activities, as the general provisions pertaining to Hungarian individuals shall apply to them. Note that Hungarian legal entities are also prohibited to acquire title of agricultural real estates.

2. Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

No. See answer to question 1.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

No.

4. What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

There are no such taxes that are levied solely on foreign individuals or entities.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

No. See answer to question 1.

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Issues Relating To Foreign Investment

India

Prepared by Lex Mundi member firm Amarchand & Mangaldas & Suresh A. Shroff & Co.

1. **Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**
 - a. Foreign direct investment in the real estate sector falls under the automatic route, provided, the investor meets the prescribed conditions (discussed below in 1.2).
 - b. As per the Consolidated Foreign Direct Investment Policy issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India, foreign direct investment upto 100% is permitted under the automatic route in townships, housing, built-up infrastructure and construction-development projects, (which includes, but not restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure) subject to certain conditions mentioned therein. Some of the key conditions are mentioned in brief below:
 - (i) There are minimum area development requirements for development of serviced housing plots and for construction-development projects and also for a combination of the above two projects.
 - (ii) Minimum capitalization requirements differ for wholly owned subsidiaries and for joint ventures with Indian partners.
 - (iii) There is a lock in on the Original investment from completion of minimum capitalization. However, the investor may be permitted to exit earlier with prior approval of the Government through the Foreign Investment Promotion Board.
 - (iv) At least 50% of the project must be developed within a period of five (5) years from the date of obtaining all statutory clearances. The investor would not be permitted to sell undeveloped plots.
 - (v) The investor shall be responsible for obtaining all necessary approvals, including those of the building/ layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/ bye-laws/ regulations of the State Government/ Municipal/Local Body concerned.
 - c. Please note that the conditions above do not apply to FDI in industrial parks, development of special economic zones, hotels & tourism sector and hospitals.
 - d. Further, foreign investment in any form is prohibited in a company or a partnership firm or a proprietary concern or any entity, whether incorporated or not (such as Trusts) which is engaged or proposes to engage in among others: (i) the either Real Estate Business, or construction or farm houses, or (ii) trading in transferable development rights. Real Estate Business does not include development of townships, construction of residential/commercial premises, roads or bridges.

2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

- a. Investments can be made by non-residents in the shares/fully, compulsorily and mandatorily convertible debentures/ fully, compulsorily and mandatorily convertible preference shares of an Indian company, which own real estate, provided they comply with the conditions mentioned above in 1.2. Further, it is clarified that every projects of the Indian company, in which foreign investment is proposed to be made, must be compliant with the conditions in 1.2 above.
- b. Foreign investment in any form is prohibited in a company or a partnership firm or a proprietary concern or any entity, whether incorporated or not (such as Trusts) which is engaged or proposes to engage in among others: (i) the either

Real Estate Business, or construction of farm houses, or (ii) trading in transferable development rights. Real Estate Business does not include development of townships, construction of residential/commercial premises, roads or bridges.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

- a. No, a foreign investor is not required to invest with a local partner as per the law, however, given the federal complexities of legislations/laws and compliances (including regular interaction with the State Government authorities), we have noted that majority of foreign investors have preferred to invest in India with a local/Indian partner for the sake of convenience.

4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

- a. There are no specific state taxes that are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate. However, every instrument (including instruments pertaining to transfer of shares of an entity/company) executed in India and specifically included under the India Stamp Act, 1899 or the State Stamp Act is chargeable with a stamp duty equivalent to an amount mentioned in the schedule of the respective Stamp Act itself. Further, all the State Governments prescribe their respective rates of fees for the registration of the documents and other ancillary purposes.
- b. Government also levies/imposes direct tax in the form of capital gains tax (on the gains/profits arising from the transfer of capital assets). In certain cases, the Government of India prescribes/charges fees in the name of the unearned increase in the value (i.e. the difference between the premium paid and the market value) of the land allotted at the time of the sale, transfer, assignment or parting with the possession of the land and transfer charges etc.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

- a. An Indian company receiving investment from outside India for issuing shares/convertible debentures/preference shares under the foreign direct investment scheme, should report the details of the amount of consideration to the Regional Office concerned of the Reserve Bank of India within thirty (30) days from the date of receipt in the Advance Reporting Form. Indian companies are required to report the details of the receipt of the amount of consideration for issue of shares/convertible debentures, through an AD Category - I bank, together

with a copy/ies of the FIRC/s evidencing the receipt of the remittance along with the KYC report on the non-resident investor from the overseas bank remitting the amount. The report would be acknowledged by the Regional Office concerned, which will allot a Unique Identification Number for the amount reported.

- b. The equity instruments should be issued within one hundred and eighty days (180) days from the date of receipt of the inward remittance or by debit to the NRE/FCNR (B) account of the non-resident investor. After issue of shares (including bonus and shares issued on rights basis) and shares issued under ESOP/fully and mandatorily convertible debentures/fully and mandatorily preference shares, the Indian company has to file Form FC-GPR, within thirty (30) days from the date of issue of shares. Part A of Form FC-GPR has to be duly filled up and signed by Managing Director/Director/Secretary of the company and submitted to the Authorized Dealer of the company, who will forward it to the Reserve Bank of India along with the relevant documents. Part - B of form FC-GPR should be filed on an annual basis by the Indian company, directly with the Reserve Bank of India.

Reporting of transfer of shares between residents and non-residents and vice-versa is to be done in Form FC-TRS. The Form FC-TRS should be submitted to the AD Category – I bank, within sixty (60) days from the date of receipt of the amount of consideration.

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Issues Relating To Foreign Investment

Republic of Korea

Prepared by Lex Mundi member firm Hwang Mok Park, P.C.

1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.

Generally, the answer is no with some exceptions. Foreign investors are not required to obtain governmental permission to acquire real estate in Korea except that the land is located in any of the following districts or areas: (1) military bases and reservations for military installations; (2) designated cultural properties; (3) ecological and scenic conservation areas; and (4) special wildlife and plant reserves.

Also, it shall be noted that the Korean government may restrict the acquisition or transfer of land in Korea by investors of a nation which restricts the acquisition or transfer of land in the nation's territory by a Korean national under the reciprocity principle.

2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

No, there are no state restrictions imposed on ownership of real estate by foreign investors other than the restriction set forth in 1 above and the reporting requirements we will describe in 5 below. There are also no state restrictions on acquisition of interests in entities which own real estate.

Under Korean law, title to real estate shall pass upon registration of such title transfer with the real estate registration office. As an administrative matter, a foreign individual or company who does not have a (resident) registration number to effect a real estate registration in Korea, may apply for one with the relevant government agency.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

No. There is no difference between sole investment by a foreign investor and joint investment with a local partner under Korean law.

4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

There are no state taxes levied solely on foreign investors.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

Under the Foreign Exchange Transaction Act and the Regulation on Foreign Exchange Transaction ("RFET"), a foreign individual or company who is not a resident in Korea shall file a real estate acquisition report accompanied by an executed copy of the sale and purchase agreement with the foreign exchange bank or the Bank of Korea (as the case may be as prescribed in RFET).

Furthermore, a foreign individual/company is required to file a report on the acquisition of land title to the head of the competent local authority within 60 days of the execution of the sale and purchase agreement under the Foreigners Land Acquisition Act. However, the above requirement need not be fulfilled where a report on real estate transaction has been filed in accordance with the Business

Affairs of Licensed Real Estate Agents and Report of Real Estate Transactions Act; or in the event that a report on home purchase transaction has been filed in accordance with the Housing Act.

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Issues Relating To Foreign Investment

Kuwait

Prepared by Lex Mundi member firm Abdullah Kh. Al-Ayoub & Associates

1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.

Generally, only Kuwaiti and GCC individuals or entities are permitted to acquire or own real estate in Kuwait. Pursuant to Law No.1 of 2004, GCC citizens are treated similarly like Kuwaitis as regards ownership of real estate. Pursuant to the above law, GCC individuals and entities, which are entirely owned by GCC nationals, are permitted to acquire real estate (for residential as well as business purposes) without requiring any special governmental permission.

Foreigners other than GCC citizens are not permitted to acquire real estates except under certain conditions stipulated in Law No.74 of 1979 concerning the acquisition of real estates by non-Kuwaitis. Pursuant to this law, Arab and foreign countries may acquire ownership of real estates allocated for the location of their diplomatic missions, and residence of the ambassador and members of such mission provided a decree must be issued to this effect by the Council of Ministers.

Further, any Arab citizen, holding the nationality of an Arab state, may acquire the ownership of only one estate in Kuwait for residential purpose in any of the residential areas, if a decree is issued by the Council of Ministers giving him this right upon fulfilling certain conditions prescribed by law or any other conditions stipulated by the Council of Ministers.

Limited liability companies, which are partly or wholly owned by foreign individuals or entities (except GCC individuals or entities), are prohibited from acquiring real estates in Kuwait. However, joint stock companies which are partly owned by non-Kuwaitis and where its objects do not include real estate investment, may acquire the estate required for the management thereof or for the achievement of its purposes, pursuant to a decree issued by the Council of Ministers, granting such right and provided certain conditions stipulated in the law shall be observed.

Further, under the Direct Foreign Capital Investment Law No.8 of 2001, foreign investors (individuals or corporate entities) can own or acquire real estate necessary for investment in specific projects, as prescribed under the law, pursuant to a permission granted by the Foreign Capital Investment Committee. Such permission would be granted only if the acquisition of real estate is necessary for the investment purpose and upon fulfilling certain requirements set under the law.

2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

Please see 1 above.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

As advised above, foreigners (except GCC and Arab nationals) are not permitted to acquire real estates in Kuwait except pursuant to a permission granted by the Foreign Capital Investment Committee under the Direct Foreign Capital Investment Law. Under the Direct Foreign Capital Investment Law, foreign investors are not required to invest with a local partner. As regards GCC and Arab nationals, there is no requirement to invest in real estate with a local partner as the law permits them to acquire real estates on their own.

4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities, which acquire real estate?

There are no taxes levied solely on GCC and Arab nationals or entities owned by GCC citizens in transactions related to acquiring or transferring of real estate or interests in entities which acquire real estate. Further, there are no taxes levied solely on foreign investors acquiring or transferring real estate under the Direct Foreign Capital Investment Law. The fees imposed by the Real Estate Registration and Authentication Department towards transferring real estate, amounting to ½ % of the estate value, will be applicable upon Kuwaitis as well as foreign individuals or entities.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no special reporting requirements for acquisition, ownership or disposition of real estate relating to foreign ownership of real estate. However, all alienation in respect of a real estate (either by a Kuwaiti or a foreign national) must be registered with the Real Estate

Registration and Authentication Department, as per the registration procedures prescribed in the Decree No.5 for the year 1959 enacting the Real Estate Registration Law.

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Issues Relating To Foreign Investment

Latvia

Prepared by Lex Mundi member firm LAWIN

1. Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.

Yes. Foreign investors, except for citizens of EU member states or companies registered in EU member states, shall obtain a municipal permission for the acquisition of land in Latvia.

2. Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

Yes. Generally foreign investors may not acquire land in state borderland territories, national park territories, protection zones of shore dunes of Baltic sea and Riga See Gulf, protection zones along water bodies and water courses, agricultural and forestry territories and mineral deposit fields of national importance. With certain exceptions until May 1, 2011 citizens of EU member states or companies registered in EU member states may not acquire forestry and agricultural land in Latvia.

Generally foreign investors from the countries with which Latvia has concluded and ratified investment protection treaties until 31 December 1996 may acquire interest in

local entities which own real estate without any restrictions. Local companies in which foreign investors from other countries have acquired more than 50% of share capital shall obtain municipal permission for retention of title to the property.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

There are no mandatory requirements to invest with a local partner. However, it might be recommended for facilitated acquisition of land property.

4. What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

Non-residents are subject to personal income tax or corporate income tax on the gains from the sale of real property in Latvia. Non-resident natural persons are subject to 15% personal income tax on gains from the sale of real property or from the sale of shares in a company that holds real estate. Non-resident legal entities are subject to 2% corporate income tax on the proceeds from the sale of real property located in Latvia or on the sale of shares in Latvian companies which have more than 50% of assets in real estate. The tax should be withheld at source if payment is being made by a Latvian resident.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

If the foreign investor intends to obtain the land property in Latvia, the foreign investor shall submit an application to local municipality, specifying the prospective use of the land property. If the prospective use of the property complies with the terms of the Territory Plan of local municipality and if the land property is not located in any of the restricted areas specified above, the municipality within 20 days shall issue permission for the acquisition of land. The foreign investor's title to the property may be registered with the public Land Register only after the receipt of the permission.

If the foreign investor from the restricted countries specified above has acquired more than 50% of share capital of Latvian registered company owning the land property, the Latvian registered company shall obtain the permission from the local municipality within 1 month from the date the shareholder changes have been notified to the Companies Registry of the Republic of Latvia. If the permission is not granted, the company shall alienate the property within a period of 2 years.

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Issues Relating To Foreign Investment

Lithuania

Prepared by Lex Mundi member firm LAWIN

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

No.

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

Foreigners are prohibited from acquisition of land into ownership, unless they comply with the criteria of European and Transatlantic Integration. To meet the said criteria a legal entity is required to be established in or a natural person is required to hold the citizenship or a permanent residency of, one of the following states:

- a Member State of the European Union or a state that is a party to the European Treaty (Association Agreement) with the European Communities and their Member States;
- a Member State of the Organisation for Economic Co-operation and Development (OECD), a Member State of the North Atlantic Treaty Organisation (NATO) or a Member State of the Agreement on the European Economic Area.

Land may also be acquired into ownership by non-Lithuanian citizens having permanent residence in Lithuania.

With certain minor exceptions, even when complying with the above-described criteria, foreigners are not allowed to acquire agricultural and forestry land into their ownership until 1 May 2011 (i.e. until expiry of the 7-year transitional period after Lithuania's accession to the EU).

There are no restrictions imposed on foreign investors (irrespective of their origin) to acquire interests in Lithuania-based entities which own real estate.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

No. A local partner may be beneficial only to the extent he may have more knowledge about local business environment and bureaucratic procedures.

- 4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

There are no such taxes. Capital gains of either Lithuanian or foreign entities from the sale of real estate in Lithuania are subject to a corporate income tax (levied on Lithuanian entities) or withholding tax (levied on foreign entities) at the same rate of 15%. The only difference is that capital gains of a Lithuanian entity are taxed along with other taxable income (i.e. after allowed deductions), which is not the case for the taxation of foreign entities.

With certain minor exceptions, capital gains of foreign individuals (non-residents) and foreign entities generated from the sale of interests in Lithuanian-based entities are not subject to taxation in Lithuania.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

None.

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Issues Relating To Foreign Investment

Malaysia

Prepared by Lex Mundi member firm Skrine

1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.

Yes. Pursuant to the National Land Code 1965, a non-citizen or a foreign company may acquire real estate only with the prior approval of the State Authority save and except where the real estate is subject to the category "industry" or to any condition requiring its use for industrial purposes.

In addition, the approval of the Economic Planning Unit of the Prime Minister's Department ("EPU") may be required depending on the nature of acquisition. Please refer to Paragraph 2 for further details.

2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

In addition to the State Authority's consent referred to in Paragraph 1, pursuant to the *Guideline on the Acquisition of Properties* issued by the EPU:

A. Foreign interest is not allowed to acquire:

- i) Residential units valued less than RM500,000 per unit (prior to 1 January 2010 the threshold was RM250,000);
- ii) Properties other than residential units valued less than RM500,000 per unit;
- iii) Residential units under the category of low and medium cost as determined by the State Authority;
- iv) Properties built on Malay reserved land; and
- v) Properties allocated to Bumiputera interest in any property development project as determined by the State Authority.

B. Subject to Paragraphs 1 and 2C, the approval of EPU is not required for acquisition by foreign interest of commercial unit, agricultural land and industrial land valued at RM500,000 and above but the property must be registered under a locally incorporated company and this condition must be complied with and notified to the EPU before the real estate is transferred.

Subject to Paragraph 1, the approval of EPU is not required for acquisition by foreign interest of residential units valued more than RM500,000 per unit or pursuant to the "Malaysia My Second Home" Programme.

C. The following property acquisitions, except for residential units, require the approval of the EPU:

- i) All direct acquisition of property valued at RM20 million and above, resulting in the dilution in the ownership of property held by Bumiputera interest and/or government agency; and

- ii) All indirect acquisition of property by other than Bumiputera interest through acquisition of shares, resulting in a change of control of the company owned by Bumiputera interest and/or government agency, having property more than 50% of its total assets and the said property is valued more than RM20 million.

The approval would be subject to the following conditions:

- a) Equity:

The locally incorporated company is to have at least 30% Bumiputera interest shareholding;

- b) Paid-Up Capital:

- 1) The locally incorporated company, if owned by local interest, is to have at least RM100,000 paid-up capital;
- 2) The locally incorporated company, if owned by foreign interest, is to have at least RM250,000 paid-up capital.

D "Bumiputera" means:

- i) for Peninsular Malaysia

Malay individual or aborigine as defined in Article 160(2) of the Federal Constitution;

- ii) for Sarawak

individual as defined in Article 161A(6)(a) of the Federal Constitution;

- iii) for Sabah

individual as defined in Article 161A(6)(b) of the Federal Constitution.

"Bumiputera interest" means any interest, associated group of interests or parties acting in concert, which comprises:

- i) Bumiputera individual; and/or
- ii) Bumiputera institution and trust agency; and/or
- iii) local company or local institution whereby the parties as stated in item (i) and/or (ii) hold more than 50% of the voting rights in that local company or local institution.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

Acquisitions that come within Paragraph 2C would be subject to the equity condition stated at Paragraph 2C(a).

4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

- (i) Stamp Duty

Generally, stamp duty will be chargeable on the transfer instruments of the real estate. The amount of stamp duty payable is prescribed under the Stamp Act 1949. The stamp duty

chargeable on a Memorandum of Transfer (Form 14A) or a Deed of Assignment for a sale of a real estate is : For every RM100 or fractional part of RM100 of the amount of the money value of the consideration or the market value of the property, whichever is the greater- (i) RM1.00 on the first RM100,000; (ii) RM2.00 on any amount in excess of RM100,000 but not exceeding RM500,000; RM3.00 on any amount in excess of RM500,000. The stamp duty for acquisition of a real estate is normally paid by the buyer.

Generally, stamp duty will also be chargeable on the transfer of interests in entities whether it owns real estate or not. The amount of stamp duty payable on transfer of any shares in entities as prescribed under the Stamp Act 1949 is: RM3.00 for every RM1,000 or fractional part of RM1,000 (to be computed on the price or value thereof on the date of transfer, whichever is the greater).

(ii) Registration Fees

Registration fees will be imposed on the Memorandum of Transfer (Form 14A) upon presentation of the same for registration at the Land Registry or Land Office. This varies from State to State. Generally, the registration fees are borne by the buyer of a real estate.

(iii) Real Property Gains Tax

Under the Real Property Gains Tax Act 1976 a disposer of real property or shares in a real property company has to pay real property gains tax on the chargeable gains arising from the disposal. Under the Real Property Gains Tax (Exemption) (No.2) Order 2009 (P.U.(A) 486/2009), any person is exempted from the payment of tax on the chargeable gain in respect of any disposal of a chargeable asset on or after 1 January 2010 where the disposal is made after five years from the date of the acquisition of such chargeable asset. Where disposal of a chargeable asset is made within five years from the date of acquisition of such chargeable asset, the payment of tax on the chargeable gain in respect of the disposal of such chargeable asset on or after 1 January 2010 is based on the condition that the amount of chargeable gain shall be determined in accordance with the formula provided under Section 2(2) of the Real Property Gains Tax (Exemption) (No.2) Order 2009 (P.U.(A) 486/2009). The effective rate of Real Property Gains Tax is currently 5%.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

Pursuant to Paragraph 1, applications are to be made to the State Authority for their prior approval for the acquisition of real estate by non-citizen or foreign company. Pursuant to Paragraph 2C, applications are made to the EPU for their approval for direct acquisition and indirect acquisition of real estate.

For purposes of Real Property Gains Tax, both the disposer and acquirer are required to submit returns through prescribed forms with the Director General of Inland Revenue within a prescribed time.

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Issues Relating To Foreign Investment

Netherlands

Prepared by Lex Mundi member firm Houthoff Buruma

- 1. Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.**

There is no governmental permission required for foreign investors to acquire real estate in the Netherlands

- 2. Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

There are no other national restrictions imposed on ownership of real estate by foreign investors to acquire interests in entities which own real estate in the Netherlands.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

Foreign investors are not required to invest with a local partner. An investment with a local partner is not necessarily.

- 4. What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

There are no national taxes levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate.

- 5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.**

There are no reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate in the Netherlands.

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Issues Relating To Foreign Investment

New Zealand

Prepared by Lex Mundi member firm Simpson Grierson

1. Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.

Consent from the New Zealand Government's Overseas Investment Office is required for an overseas person to acquire an interest in real estate (which includes both freehold and leasehold interests) if the real estate being acquired:

- is rural (or non-urban) land greater than 5 hectares; or
- includes or adjoins land that is considered to be "sensitive" pursuant to the Overseas Investment Act 2005. Land is considered to be "sensitive" for the purposes of the Overseas Investment Act if it includes or adjoins foreshore, seabed, lakebed, certain islands, land that is subject to a heritage order, registered historic places or areas, land held for conservation purposes, any scientific reserve, scenic, historic or nature reserve, land that is designated for use as a reserve, public park or public open space.

The Overseas Investment Office website (www.oio.linz.govt.nz) includes flow charts setting out the types of land which require consent for overseas investment.

2. Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

Consent from the New Zealand Overseas Investment Office is required by an overseas person to acquire interests in entities if the overseas person is acquiring 25% or more ownership or controlling interest in an entity, and:

- The entity being acquired owns or leases "sensitive land" in New Zealand (being the type of land identified above); or
- The value of the securities or consideration provided, or the value of the entity being acquired exceeds NZ\$100 million.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

There is no such requirement. However, an application for governmental consent must show that the overseas investment in New Zealand real estate will be of benefit to New Zealand, and there are stringent requirements and specific information must be provided to the Overseas Investment Office to satisfy those requirements.

The Overseas Investment Office website (www.oio.linz.govt.nz) provides further information on the requirements for making an application for the acquisition of land or significant business assets.

4. What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

There are currently no taxes (such as land tax or capital gains tax) levied solely on foreign investors acquiring or transferring real estate.

Depending on the nature of the transaction a Goods and Services Tax (equivalent to 12.5% of the purchase value) may be payable.

The cost for filing an application to the Overseas Investment Office is between NZ\$19,100 and NZ\$22,000. This application fee is non-refundable regardless of whether consent is granted.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

Overseas investors must comply with the representations and plans for the real estate set out in their application to the Overseas Investment Office.

Where consent to the overseas investment in real estate has been granted subject to certain conditions, the overseas investor must provide information to the Overseas Investment Office (the nature and timing of that information being in accordance with those specified by the Overseas Investment Office) for the purposes of monitoring compliance with those conditions.

There are certain reporting requirements specified by the Overseas Investment Office once consent is granted, for example, the Overseas Investment Office will specify dates by which the overseas investor is to confirm such things as the completion of the acquisition.

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Issues Relating To Foreign Investment

Norway

Prepared by Lex Mundi member firm Advokatfirmaet Thommessen AS

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

As a basic rule, state governmental permission is required for the acquisition of real estate. There are, however, major exemptions to this duty to apply for concession. After the passing of the Concession Act of 28 November 2003 no 98, foreign investors are not subject to any other restrictions than those that also apply to domestic investors.

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

There are no other state restrictions on the acquisition of real estate by foreign investors. Furthermore, there are no restrictions on the acquisition of interests in entities which own real estate.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

It is not required to invest with a local partner.

- 4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

No such taxes are levied.

- 5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.**

There are no reporting requirements that relate solely to foreign direct or indirect owners of real estate.

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Issues Relating To Foreign Investment

Philippines

Prepared by Lex Mundi member firm Romulo Mabanta Buenaventura Sayoc & de los Angeles

1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.

Foreign investors are not permitted to acquire private land in the Philippines. Foreign investors may, however, acquire improvements (i.e. buildings) separate from the land on which they are built. Foreign investors may also acquire units in a condominium provided that the title to the land on which the condominium is built is held by a condominium corporation, and provided further that no more than 40% of the condominium units (in terms of area) are owned by foreigners.

Provided foreign ownership of the particular type of real estate is permitted under Philippine law, no specific governmental permission is required for foreign investors to acquire the same.

2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

Foreign investors may acquire interests in entities that own real estate provided that such entities remain to be "Philippine nationals."

Under the Foreign Investments Act of 1991 (Republic Act No. 7042), the term "Philippine national" includes a corporation organized under the laws of the Philippines of which at least 60% of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

Where foreign ownership of the particular type of real estate is permitted under Philippine law (i.e. improvements, condominium units; see response to question 1), foreign investors are not required to invest with a local partner to acquire such real estate.

Where foreign ownership of the particular type of real estate is not permitted under Philippine law (i.e. land; see response to question 1), foreign investors may invest in a corporation that will acquire such real estate, provided that at least 60% of the corporation's capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines.

Investment in such a corporation together with a trusted local partner may be advisable provided that the local partner has the financial capacity to make the investment and does not act merely as a "dummy" of the foreign investor.

4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

There are none.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are none.

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Issues Relating To Foreign Investment

Poland

Prepared by Lex Mundi member firm Wardyński & Partners

1. Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.

As a rule, pursuant to the Act on Acquisition of Real Estate by Foreigners of 24 March 1920 (Journal of Laws of 2004, No. 167, item 1758 as amended), the acquisition of Polish real estate by foreigners requires them to obtain permission from the Minister of Internal Affairs and Administration, otherwise the transaction is invalid. The above Act does not apply to closed-end investment funds and special, open-end investment fund to which rules and limitations stipulated for closed-end investment fund apply within the meaning of the Investment Funds Act of 27 May 2004 (Journal of Laws of 2004, No. 146, item 1546 as amended).

Under the above Act on Acquisition of Real Estate by Foreigners, a “foreigner” is defined as: (1) an individual not holding Polish citizenship, (2) a legal entity having its registered (head) office abroad, (3) a company with no legal personality incorporated under the laws of foreign countries by the above mentioned parties and having its registered office abroad, (4) a legal entity or commercial company with no legal personality that has its registered office in Poland but is directly or indirectly controlled by the above mentioned parties.

However, bearing in mind that Poland is a member state of the European Union (hereafter “EU”), foreigners from the European Economic Area (hereafter “EEA”) are treated on privileged conditions.

As a rule, the obligation to obtain permission by entities that are not citizens and/or entrepreneurs from the EEA, refers to any form of acquisition of ownership right or perpetual lease right to a real estate excluding real estate constituting its habitual residence and together with a garage, unless such real estate is located within a Border Zone. As a rule, citizens and/or entrepreneurs from the EEA are free to acquire Polish real estate without permission unless such real estate is designated as agricultural real estate or forest real estate

(restriction limited for a 12-year period following Polish accession to the EU).

2. Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

Under sanction of invalidity, foreigners are, as a rule, also expected to obtain permission prior to taking hold of and/or acquiring interests in commercial companies that have real estate located in Poland, or prior to any other activity which might allow them to control such companies. Foreigners are not expected to obtain permission if the given interests are allowed into turnover on the regulated market. As a rule if a given company with real estate in Poland is already the owner or perpetual lessee of real estate located in Poland, which is deemed to be the company under control, foreigners prior to taking hold of and/or acquiring interests in such company are obliged to obtain the permission of the Minister of Internal Affairs and Administration. Although, as explained above, citizens and entrepreneurs from the EEA are not allowed to directly acquire agricultural or forestry real estate, the Act does not forbid them from taking hold of and/or acquiring interests in companies that are owners or perpetual lessees of such real estate.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

Foreign investors are not required to invest with a local partner; however, setting up a Polish company to conduct business in Poland is advisable. Foreign investors usually seek to obtain loans from Polish financial institutions; but due to difficulties in undertaking due diligence studies, Polish banks are hardly ever willing to lend funds to foreigners. It is also easier to deal with the Polish authorities when registered in Poland as there is less bureaucracy and fewer documents are required. Most commonly, Foreign investors form a Polish limited liability company with the minimum permissible share capital (5,000 PLN i.e. app. 1,250 EUR), they lease premises for a registered office ("seat"), and open a Polish bank account. The above activities are not complicated and not as time consuming as they once were.

4. What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

There are no national taxes levied solely on foreign individuals or on entities acquiring or transferring real estate or interests in entities which acquire real estate.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no special reporting obligations for foreign investors. Information on the acquisition or disposal of real estate and/or interests taken hold of and/or acquired by foreigners are automatically notified to the Minister of Internal Affairs and Administration by the public notary or other relevant authorities. Pursuant to the Act on Acquisition of Real Estate by Foreigners, the Minister of Internal Affairs and Administration keeps a register of real estate and interests taken hold of and/or acquired by foreigners with or even without permission.

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Issues Relating To Foreign Investment

Portugal

Prepared by Lex Mundi member firm [Morais Leitão, Galvão Teles, Soares da Silva & Associados](#)

1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.

No. All real estate located in Portugal may be acquired, held and disposed of by any foreign entities in the same manner as by nationals.

2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

No.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

No. However, a foreign investor may find a relationship with a local partner advantageous due to local business bureaucracy and practices.

4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

None. In Portugal all taxes are imposed both to foreign entities and nationals. However, there are tax exemptions and tax rates exclusive of non-resident entities:

- Real Estate Municipal Tax ("IMI"): it is a tax on the fiscal value of the properties located in Portugal. The tax rate depends on the nature of the property (plot: 0,8%, building: between 0,4% and 0,7%, evaluated building: between 0,2% and 0,4%). Such tax is annually due by the owner of the property. Foreign entities subject to a favourable tax regime according to a list approved by the Portuguese Minister of Finance are charged with a 1% (or 2% for vacant property over one year).
- Real Estate Transfer Municipal Tax ("IMT"): it is a tax on the higher of two values: the contractual price of the property, due by the transferee, or the fiscal value of the property. Its rate depends on the nature of the property (plot: 5%, building: 6,5%) and on the purpose of the acquisition (in case of acquisition for the purpose of house purchase, the rate will depend on the value on which the tax is charged, being the maximum rate of 6%). Foreign entities subject to a favourable tax regime according to a list approved by the Portuguese Minister of Finance are charged with an 8% tax rate.
- Taxation of capital gains: the capital gains obtained from the transfer of shares, issued by entities resident in Portugal and traded in regulated stock markets, by non-resident entities or natural persons that do not have fixed establishment in Portugal, are exempt from the payment of individual income tax ("IRS") and corporation tax ("IRC"). This rule shall not apply to non-resident entities without fixed establishment in Portugal, which (i) are held, directly or indirectly, by resident entities in more than 25%, (ii) are subject to a favourable tax regime according to a «blacklist» approved by the Portuguese Minister of Finance, or to non-resident entities or natural persons that have obtained capital gains with the transfer of shares in resident corporations,

which assets comprise more than 50 % of real estate located in Portugal, or being a holding (“SGPS”) are in a dominant position in relation to resident corporations, which assets comprise more than 50 %, of real estate located in Portugal.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

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Issues Relating To Foreign Investment

Russia

Prepared by Lex Mundi member firm Egorov, Puginsky, Afanasiev & Partners

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

There are no permissions required to acquire real estate (apart from restrictions stated in the next item).

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

It is prohibited for foreign investors, both legal entities and individuals, to acquire land plots within territories contingent to the State Border of the Russian Federation.

Foreign investors and legal entities with more than 50% shares held by foreign investors may hold land plots of agricultural category under lease agreement only.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

There is no requirement to invest with a local partner in Russia. Sometimes there is more trust to foreign investors than to local, for instance in some state and private partnership projects. At the same time architectural activity may be carried out in Russian by a foreign architect only together with a Russian partner.

- 4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

There are no special taxes for foreign investors, though some rates are higher for them. For instance, a non-resident individual transferring real estate is subject to 30 % income tax (residents are usually taxed at 13 % rate).

- 5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.**

There are no such requirements in Russia.

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Issues Relating To Foreign Investment

South Africa

Prepared by Lex Mundi member firm Bowman Gilfillan

1. Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.

No government consent is required for foreign investors to acquire real estate, unless it is a very large transaction that requires permission from Competition Law Authorities, or unless the investor wishes to borrow up to half of the purchase price in South Africa, in which case approval from Exchange Control Authorities is required. Any money coming in to South Africa may be repatriated when the investment is sold, provided there is a paper trail for the money coming in.

A government committee has been investigating whether restrictions on foreign investors are desirable, but no legislation has been proposed yet.

2. Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

At present there are no other restrictions on direct real estate investments or on investments in entities owning real estate. A foreign company would have to register as an external company with the Registrar of Companies and as an income taxpayer with the Revenue Authorities.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

No, unless the investment is in mining, in which case a local black empowerment partner is required.

4. What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

There are no special taxes levied solely on foreign investors. Foreign investors are subject to the same taxes (transfer duty, Value Added Tax, income tax, or Capital Gains Tax) as local investors when acquiring or disposing of real estate.

When a non-resident individual or entity sells and transfers a residential property at a price of more than R2million an amount has to be withheld and paid to the Revenue authorities as a provision for any Capital Gains Tax that may be payable. It is possible to obtain a directive so that only the exact amount of Capital Gains Tax is withheld.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no reporting requirements specifically for foreign investors acquiring or disposing of direct or indirect ownership of real estate.

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Issues Relating To Foreign Investment

Spain

Prepared by Lex Mundi member firm Uría Menéndez

- 1. Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.**

As a rule, real estate located in Spain may be acquired, held or disposed by any foreign investors in the same manner as by nationals.

Exceptionally, the Government is authorized to require a governmental permission if it suspends the liberalization regime (in case of investments affecting the public policy, the national security or the public health).

- 2. Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

No.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

No. However, foreign players may wish joint venturing with local partners due to their knowledge of local bureaucracy and business practices (especially when they wish to get involved in real estate development).

- 4. What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

No. However, for tax reasons, international developers usually channel their interest in joint ventures with local partners through a Dutch entity (which is only acceptable to the Spanish tax authorities if such an entity has economic substance and is effectively managed from The Netherlands) and look to set up a number of special-purpose vehicles so that each of the specific developments is owned by a different project company. The main advantage of this structure is to facilitate the future sale of the developments to other investors by offering shares in each of the project companies, which does not trigger capital gains tax for the international developer in Spain. For the local partner, the share deal does not offer any tax benefits. They must pay capital gains tax regardless of how the sales are structured.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

The acquisition of real estate assets located in Spain by foreign entities or by citizens resident abroad must be reported to the Spanish authorities if (a) the accumulated amount exceeds Euro 3,005,060 or (b) the investment comes from a jurisdiction qualifying as a tax heaven under Spanish regulations.

The transfer by foreign investors of said real estate assets must also be reported to the Spanish authorities.

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Issues Relating To Foreign Investment

Sri Lanka

Prepared by Lex Mundi member firm F.J.& G. de Saram

- 1. Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.**

No

- 2. Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

No.

The answer given by us in the previous survey is no longer applicable as Companies (Special Provisions) Law No. 19 of 1974 has now been repealed by the Companies Act No. 7 of 2007 therefore, that provision is no longer applicable.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

no answer

- 4. What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

Under the Finance (Amendment) Act No.8 of 2004 (the Principal Act being the Finance Act No.11 of 1963) no person who is not a citizen of Sri Lanka can acquire immovable property without the payment of a 100% tax. The amount of the tax is equivalent to the value of the property (ordinarily, the purchase price).

The 100% tax will apply to a transfer of immovable property to a company incorporated in Sri Lanka, if more than 25% of the issued shares in such company are owned by persons who are non citizens.

By Order made by the Minister of Finance and Planning published in Gazette Extra Ordinary No.1386/18 dated 30th March 2005 transfer of property of certain class or description specified in the Order has been exempted from the payment of the 100% tax.

According to the Exchange Control Laws of Sri Lanka, in a sale of land (being a capital transaction), by a foreign investor, the investor can only remit abroad, the amount of money which he actually paid at the time he acquired the land. Any balance monies will be held in a blocked account in Sri Lanka.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no such reporting requirements.

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Issues Relating To Foreign Investment

Switzerland

Prepared by Lex Mundi member firm Pestalozzi

1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.

In Switzerland, the type of real estate use determines whether or not non-resident aliens require a permission to acquire local real estate: whereas the acquisition of real estate that is used for residential purposes needs a permission (see below section 1.1), the acquisition of real estate that is used for business purposes is allowed without permission, even for sole investments purposes (see below section 1.2).

- a. The acquisition of the following real estate by non-resident aliens requires permission: residential premises (one-family houses and apartment buildings) and condominiums as well as building land for residential premises. To acquire residential real estate, non-resident aliens, both individuals and legal entities, must obtain permission from the competent Cantonal authorities, granted in accordance with the Federal Act on the Acquisition of Real Estate by Non-resident Aliens. Permissions, however, are only granted for a limited number of specific reasons. Therefore, the acquisition of residential real estate by non-resident aliens is restricted to a large extent. Also, permissions are only granted on the condition that the real estate is permanently used for its stated purpose. Modifications of any kind require prior approval by the competent authority.

Under the above-mentioned Act, the term "acquisition" is defined broadly. It includes the ownership, building rights, rights of abode and the beneficial use of a building and of land. The term "non-resident aliens" includes (i) non-Swiss citizens residing outside of Switzerland, (ii) non-Swiss citizens without EU or EFTA citizenship residing in Switzerland and without right of domicile in Switzerland (so called "C Permit"), (iii) companies domiciled outside of Switzerland (also if controlled by Swiss citizens or by EU or EFTA citizens residing in Switzerland), (iv) companies domiciled in Switzerland being controlled by non-Swiss residents, and (v) fiduciaries, which basically do not require an approval, but which acquire real estate for non-Swiss residents on a trust basis.

Without valid permission, the acquisition of residential real estate by non-resident aliens is not valid, and the transfer of the real estate may not be registered. In the case of an unlawful acquisition, the authorities must revoke the concerned permission and confiscate any profits derived from the real estate.

- b. In contrast to the above, the acquisition of business premises by non-resident aliens does not require a special permission. This major exception applies also to building land for business establishments, if construction starts within one year after the acquisition. Business premises may further include an adequate amount of land reserve as well as residential premises which are essential for the particular business. The exception applies to both, the acquisition of business premises for the own use by the acquirer and the acquisition of business premises as investments. The exception does not apply to the trade with or the renting out of residential premises. Therefore, these activities do require permission (which, as mentioned above, is only granted for a limited number of specific reasons).

2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

Besides the above-mentioned Federal Act on the Acquisition of Real Estate by Non-resident Aliens, no other state restrictions apply to the ownership of real estate by foreign investors.

The acquisition of interests in Swiss legal entities is subject to the above-mentioned restrictions, if the actual purpose of a legal entity is to acquire real estate. Also, if any Swiss legal entity is controlled by non-resident aliens, then such entity itself is considered to be a non-resident alien. As such, the legal entity is subject to the principles outlined above: To the extent that it acquires business premises, no permission is required. To the extent that it acquires residential real estate, permission is required.

A dominant position exists whenever a non-resident alien can, either alone or together with other non-resident aliens, decisively influence the management of the concerned entity - either financially, through voting power, or otherwise. In particular, a dominant position of non-resident aliens is presumed in either of the following cases (i) the ownership of more than one third of the capital of a corporation or of a limited liability company or of a cooperative and, if any, of the participation certificates, (ii) the control over more than one third of the votes (either in the shareholders' or the partners' meeting), (iii) the right to appoint the majority of the members of the board of a foundation or of the foundation's beneficiaries, or (iv) the grant of repayable loans equal to more than half of the difference between the assets of the corporate body and its debts toward persons who are not subject to permission.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

There is no mandatory legal requirement to invest with a local partner.

Investment with a local partner might be helpful to become familiar with local business practice and to get access to the local market.

4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

There are no Federal or Cantonal taxes levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate. Taxes like income and property taxes, real estate tax, real estate gains tax, real estate transfer tax etc. are levied on everybody regardless of the nationality and regardless of the place of domicile.

However, many double taxation treaties that Switzerland entered into with other countries do not have a provision similar to article 13 paragraph 4 of the OECD model tax convention (e.g. the treaties with Argentina, Austria, Germany, Italy, Japan, Luxembourg, and New Zealand; but not e.g. Canada, France, Mexico, UK, and USA). Thus, individuals or entities domiciled in these countries cannot be subjected to taxes levied on the transfer of indirect ownership in Swiss real estate.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

To acquire direct or indirect ownership in residential real estate, a non-resident alien must obtain permission from the authority of first instance, i.e. a Cantonal authority. In certain cases, for instance to grant a permission for national-political reasons, a federal authority is competent to decide. In these (rare) cases, the acquirer must file the application with the Cantonal authority of first instance for the attention of the federal authority. The competent Cantonal authority is the authority at the place where the concerned real estate is situated. For the acquisition of shares of a legal entity and for the participation in a partnership, the competent authority is determined according to where the largest part (based on the value) of the concerned real estate is situated.

Land registrars, registrars of commerce and auction authorities leave a closer examination of the requirement of permission and, if necessary, the taking of evidence, to the authority of first instance and refer the acquirer to the said authority. Upon final decision permitting the acquisition of real estate, the land registrars proceed with the entry into the land register in cases where such entry is required by the law.

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Issues Relating To Foreign Investment

United Arab Emirates

Prepared by Lex Mundi member firm Afridi & Angell

Each Emirate of the United Arab Emirates has its own laws and regulations affecting the ownership of real estate located in the respective Emirate, including in relation to foreign investment. This paper deals with those laws and regulations affecting the Emirate of Dubai only.

1. Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.

In the Emirate of Dubai, Article 4 of Law No. (7) of 2006 concerning Land Registration (“**Law No. 7**”) permits nationals of non-Gulf Cooperation Council (“**G.C.C.**”) countries (“**Foreign Investors**”) and companies owned in full or in part by Foreign Investors to acquire, in certain areas of Dubai and subject to the approval of the Ruler, the following rights: (i) absolute ownership of land without restrictions as to time and (ii) usufruct or leasehold of land for a period not exceeding 99-years.

Regulation No. (3) of 2006 (“**Regulation No. 3**”) specifies an exhaustive list of all the areas in the Emirate of Dubai in which Foreign Investors can hold such real estate rights.

Pursuant to Article 4 of Law No. 7, G.C.C. nationals have the equivalent rights to own real estate in Dubai as do U.A.E. nationals.

2. Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

There are no official regulations or restrictions affecting the change in ownership of entities owning real estate in Dubai except that companies which must be owned at least 51% by a U.A.E. national (that is, a limited liability company located outside of free trade zones and other designated areas and registered pursuant to the laws of Dubai) must maintain such majority shareholding.

As part of an anti-avoidance policy (regarding registration fees payable to the Dubai Land Department), it has recently been suggested by the Dubai Land Department that all changes in ownership of entities owning real estate should be notified to the Land Department.

There are no restrictions on the remittance of funds (except in relation to transactions involving Israeli parties and/or currency).

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

Foreign Investors are not required to invest with a local partner when investing in real estate as permitted pursuant to Article 4 of Law No. 7 and in the areas of Dubai specified in Regulation No. 3.

Investment in areas in Dubai outside of the areas specified in Regulation No. 3 is only permissible by U.A.E. and G.C.C. nationals, by companies owned in full by them and by public joint stock companies. Investment in such areas by Foreign Investors through a local partner, or sponsor, is not without risk.

There are several methods pursuant to which a foreign entity may be licensed on a permanent basis in the U.A.E, including: (i) incorporating a Limited Liability Company (“**L.L.C.**”); (ii) establishing a

Branch office or Representative office; and (iii) establishing a wholly owned entity in one of the U.A.E. Free Trade Zones.

By establishing a presence under one of these methods, a foreign entity is permitted to engage in all activities for which it is licensed in the U.A.E. However such foreign entities also remain subject to the relevant restrictions that reserve certain activities, such as commercial agency activities, for wholly U.A.E. owned enterprises.

Except in particular forms of business model (for example, the L.L.C.) foreigners investing in the U.A.E. are not required to invest with a local partner.

An L.L.C. located outside of free trade zones and other designated areas must be owned at least 51% by a U.A.E. national, and, in most cases, the main L.L.C. representative (the chairman, general partner, etc.) must be a U.A.E. national. In contrast, a free zone company can be owned 100% by foreigners and there are no requirements that a U.A.E. national need hold a position within the company. Companies located in free zones are not allowed to trade with the local U.A.E. market directly.

4. What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

No national taxes or Dubai taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate.

There is a 2% fee levied by the Dubai Land Department for the registration of title to real estate. That fee, under current legislation, ought to be split equally between the buyer and the seller. The fee applies to purchases of real estate by Foreign Investors and locals alike.

Developers of real estate may also operate their own system of fees payable in respect of purchases within their developments. There is no one system of fees operated by all developers.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no special reporting requirements for reporting acquisitions, ownerships or dispositions of real estate which relate solely to foreign direct or indirect owners of real estate.

Article 9 of Law No. 7 provides that all transactions that create, transfer, change or cancel rights over land (i.e. whether or not involving a Foreign Investor) must be recorded in the Land Register operated by the Dubai Land Department and that no transaction shall have effect unless registered in the Land Register.

Developers of real estate may also operate their own registration system for purchasers within their developments. There is no one system/procedure for registration operated by all developers.

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Issues Relating To Foreign Investment

USA, Arkansas

Prepared by Lex Mundi member firm Rose Law Firm, a Professional Association

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

No. All real and personal property located in Arkansas may be owned, held, devised, and alienated by an alien (non-U.S. citizen) in the same manner as by a citizen of U.S. and resident of Arkansas (Ark. Code Ann. § 2-3-101 et seq.; 18-11-101). Upon the death of an alien, the real property owned in the U.S. by purchase or descent passes as if the alien were a citizen of the U.S. (Ark. Code Ann. § 18-11-101).

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

Whenever any foreign (non-U.S.) party acquires any interest in agricultural land in Arkansas by any means (or in any lease in agricultural land for more than 10 years) or when any agent, trustee, or fiduciary acquires title to agricultural land on behalf of a foreign party, the foreign party, agent, trustee, or fiduciary must register the ownership in the office of the circuit clerk in the county in which the land is located within sixty (60) days after the acquisition, describing the property and providing the name and address of the foreign party (Ark. Code Ann. § 2-3-101 et seq.). The

registration requirement does not apply to agricultural land used for non-farming purposes (Ark. Code Ann. § 2-3-110).

Other issues related to foreign investment are governed by federal law.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

No. No advantage to using a local partner.

- 4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

None.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

See answer to second question above. In addition, foreign business trusts, as defined by statute, desiring to conduct business in Arkansas are required to register to do business with the Secretary of State (Ark. Code Ann. § 4-31-401 *et seq.*). Foreign corporations may also be required to register to do business in Arkansas (Ark. Code Ann. § 4-27-1501 *et seq.*).

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Issues Relating To Foreign Investment

USA, Delaware

Prepared by Lex Mundi member firm Richards, Layton & Finger, P.A.

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

No. All real and personal property located in Delaware may be taken, acquired, held and disposed of by an alien (non-US citizen) in the same manner as by a citizen of Delaware.

The responses in this outline apply equally to persons or entities that are residents of, or domesticated in, jurisdictions in the US other than Delaware.

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

Delaware does not impose any stand-alone restrictions on foreign investment. Issues of foreign investment are governed by federal law.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

No advantage to using local partner.

- 4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

None.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

None. There are, however, certain filing requirements for entities (not individuals) that are not formed under Delaware law and that do business in Delaware by virtue of owning real property in Delaware. This applies equally to those entities formed under the laws of another jurisdiction in the US and is not limited to non-US business entities.

Under the Delaware RICO statute, for example, any non-Delaware entity (whether US or non-US) desiring to acquire real property in Delaware must file an annual report with the Delaware Secretary of State. However, this reporting requirement does not apply to “any foreign financial, banking, insurance or lending organization whose lending activities are regulated by any other state or the [US].”

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Issues Relating To Foreign Investment

USA, Hawaii

Prepared by Lex Mundi member firm Case Lombardi & Pettit

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

No

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

No. However, to the extent a foreign entity wishes to transact business in the state (beyond merely holding title), that entity must apply for and obtain a Certificate of Authority, or Registration Statement for Partnership, or Statement of Foreign Qualification (as applicable, depending on the form of entity) from the State Department of Commerce and Consumer Affairs.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

Foreign investors are not required to invest with a local partner; however, from a practical standpoint it would be beneficial to have a partner who is familiar with the unique issues involved in the ownership of Hawaii property.

- 4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

Hawaii Revised Statutes § 235-68 (commonly called "HARPTA") provides that five percent (5%) of the amount realized upon the sale of Hawaii real estate must be withheld by the transferee if the seller is not a "resident" of Hawaii. A resident is defined in HRS § 235-1 and includes an individual, a domestic or qualified foreign corporation, a domestic or qualified partnership, a domestic or qualified limited liability company, or a resident estate or trust. This 5% withholding tax is designed to enforce Hawaii state income taxes on the sale or disposition of Hawaii real estate in the same manner as the enforcement provisions of The Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"). Similar to FIRPTA enforcement provisions, the state tax withholding requirement would not increase the amount of income tax paid by nonresidents since the amount withheld will be claimed as a payment on the Hawaii nonresident income tax return.

It is the transferee's responsibility to withhold and pay over the tax to the Department of Taxation unless the transferor provides Form N-289 which affirms that the transferor is either a resident person or the transaction is a non-recognition transfer such as a Section 1031 exchange, in which case no withholding is necessary.

The withholding also need not be paid if the property sold was occupied by the transferor as their principal residence during the year preceding the transfer and the sales price is less than \$300,000.

A nonresident individual or entity may apply for and obtain, in advance, a Withholding Certificate for Dispositions by Nonresident Persons of Hawaii Real Property Interest to avoid the withholding/payment requirement where there is no gain or where there are insufficient funds to pay the withholding after payment of closing costs. Applications are generally processed within ninety days.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

Where tax withholding is required pursuant to the HARPTA statute as discussed above, the amount must be paid over to the State of Hawaii Department of Taxation unless the seller provides Form N-289. Otherwise there are no special reporting requirements relating solely to foreign owners of Hawaii real estate.

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Issues Relating To Foreign Investment

USA, Massachusetts

Prepared by Lex Mundi member firm Foley Hoag LLP

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

No. All real and personal property located in Massachusetts may be taken, acquired, held and disposed of by an alien (non-US citizen) in the same manner as by a citizen of Massachusetts.

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

Massachusetts does not impose any stand-alone restrictions on foreign investment. Issues of foreign investment are governed by federal law.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

No advantage using local partner.

- 4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

None.

- 5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.**

None.

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Issues Relating To Foreign Investment

USA, Missouri

Prepared by Lex Mundi Armstrong Teasdale LLP

1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.

In general, foreign investors may acquire real estate in Missouri as if they were themselves citizens of the United States and residents of Missouri. RSMo 442.560. Thus, governmental permission is not required.

The major exception to this rule is the statutory prohibition against foreign ownership of Missouri agricultural land. RSMo 442.571; see also RSMo 442.591 for nonfarm use of agricultural land by foreign entities. Foreign investors are required to submit specific reports regarding ownership of agricultural land. RSMo 442.592.

2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

When a resident alien ceases residence, they must divest themselves of agricultural land within two years of cessation. RSMo 442.586.

Foreign investors wishing to acquire interest in entities which own agricultural real estate should report such ownership as required in RSMo 442.592.

3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

In general, foreign investors may acquire real estate in Missouri as if they were themselves citizens of the United States and residents of Missouri. RSMo 442.560. Thus, partnership with a local entity is not typically required. However, partnership with a local entity does not overcome the limitations imposed by RSMo 442.571. "No person may hold agricultural land as an agent, trustee, or other fiduciary for an alien or foreign business." *Id.*

4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

Foreign investors who acquire nonagricultural land in Missouri "shall incur the like duties and liabilities in relation thereto as if they were citizens of the United States and residents of [Missouri]." RSMo 442.560. Thus, there are no state taxes levied solely on foreign investors.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

A foreign investor who holds, acquires, or transfers any interest, other than a security interest, in agricultural land shall submit a report pursuant to the requirements of RSMo 442.592 to the Director of Agriculture.

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Issues Relating To Foreign Investment

USA, New Hampshire

Prepared by Lex Mundi member firm Sheehan Phinney Bass+ Green, PA

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

Individuals

No, provided that the foreigner is a resident. New Hampshire statutory law expressly allows all aliens residing in New Hampshire to “take, purchase, hold, convey or devise real estate[.]” N.H. Rev. Stat. Ann. § 477:20 (RL 259:19). But note, however, New Hampshire courts have interpreted this provision to prohibit all aliens not residing in New Hampshire from owning real estate, unless a treaty between the United States and the non-resident alien’s country of origin gives rise to such a right. *Hanafin v. McCarthy*, 95 N.H. 36 (1948).

Corporations

No.

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

Response to Question 1:

Individuals

No, with regard to aliens residing in New Hampshire. New Hampshire state law provides that “an alien resident in this state may take, purchase, hold, convey or devise real estate, and it may descend in the same manner as if he were a citizen.” N.H. Rev. Stat. Ann. § 477:20 (RL 259:19).

Yes, with regard to aliens not residing in New Hampshire. New Hampshire case law holds that the New Hampshire statute regarding the matter “does not permit the [non-resident alien] plaintiffs to take any interest in real estate in this jurisdiction” and that thus the validity of such transfers must arise from treaty obligations between the United States and the jurisdiction in which the alien at issue is a resident. *Hanafin v. McCarthy*, 95 N.H. 36 (1948).

Corporations

No, provided the corporation does no more than own property.

Response to Question 2:

Individuals

Maybe. The question of whether a non-resident alien individual could acquire interests in entities that own real estate would be one of first impression to the New Hampshire courts. Credible arguments can be made in support of both “yes” and “no” answers.

Corporations

No.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

Response to Question 1:

No.

Response to Question 2:
No particular legal advantage is gained.

4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

None.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

None.

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Issues Relating To Foreign Investment

USA, New Mexico

Prepared by Lex Mundi member firm Rodey, Dickason, Sloan, Akin & Robb, P.A.

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

There is no such requirement.

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

There are no such restrictions.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

There is no such requirement.

- 4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

There are no taxes levied solely on foreign investors acquiring or transferring real estate or interests in entities which acquire real estate.

- 5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.**

There are no such specific requirements.

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Issues Relating To Foreign Investment

USA, Oklahoma

Prepared by Lex Mundi member firm Crowe & Dunlevy, P.C.

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

No.

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

Yes, no foreign investor (including both natural persons and corporate entities not organized in a United States jurisdiction) is allowed to acquire title to or own land in the State of Oklahoma, except for a few limited exceptions. A foreign investor that takes up bona fide residence in Oklahoma has the right to own land in Oklahoma during the continuance of such bona fide residence. A foreign entity which initiates and completes the process of domestication in Oklahoma is considered a bona fide resident of Oklahoma and is therefore entitled to own land in Oklahoma. Once the foreign investor ceases to be a bona fide resident of Oklahoma, the foreign investor shall have 5 years to alienate the land. A non-resident foreign investor that acquires real estate in Oklahoma by devise, descent or by purchase, where such purchase is made under any legal proceeding foreclosing liens in favor of such foreign investor, may hold the real estate for 5 years from the date of acquiring title. These restrictions do not apply to American Indians born within the United States.

There are no restrictions on acquiring interests in entities which own real estate.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

There are no such restrictions, however investment with a local partner would be advisable.

- 4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

None.

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no such requirements.

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Issues Relating To Foreign Investment

USA, Virgin Islands

Prepared by Lex Mundi member firm Dudley, Topper and Feuerzeig, LLP

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

No. The permission of the territorial government of the U.S. Virgin Islands is not required.

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

No. There are no restrictions on ownership of real estate by foreign investors imposed by the government of the U.S. Virgin Islands.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

Foreign investors are not required to invest with a local partner, and local partnership is not necessarily advantageous, provided advisors with local knowledge are retained.

- 4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

The Foreign Investment in Real Property Tax Act ("FIRPTA") codified in § 897 of the United States Internal Revenue Code of 1986, as amended, is applicable in the Virgin Islands, and is paid to the Virgin Islands Government and collected by the Virgin Islands Bureau of Internal Revenue, in lieu of being paid to the United States Treasury and collected by the U.S. Internal Revenue Service. FIRPTA applies to dispositions of U.S. Virgin Islands real property interests made by nonresident alien individuals and foreign corporations (including corporations incorporated in a state of the United States).

5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no reporting requirements specific to the U.S. Virgin Islands, however, a foreign investor in Virgin Islands real property will be subject to the reporting requirements applicable to investors who invest in property in the United States. Please refer to the U.S. federal survey for additional information on these reporting requirements.

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Issues Relating To Foreign Investment

USA, Virginia

Prepared by Lex Mundi member firm McGuireWoods LLP

- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

No. The Commonwealth of Virginia does not require any state governmental permission for foreign ownership of real property.

- 2. Are there other state restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.**

No.

- 3. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?**

No.

- 4. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?**

There are no state taxes applicable solely to foreign individuals or entities. State and local fees generally applicable are detailed further in Part II of this Survey.

- 5. Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.**

There are no reporting requirements applicable solely to foreign direct or indirect owners of real estate. Entities formed in another jurisdiction may need to qualify with the Virginia State Corporation Commission before operating real property in Virginia.

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