



Global Practice Guide

Real Estate II: Issues in Ownership of Real Property

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

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About this Guide

This multi-part Guide of Issues in Real Estate Investment and Finance presents jurisdictional overviews of real estate investment and financing laws in jurisdictions around the world, covering the following four general topics:

Part I -- Foreign Investment

Part II -- Ownership of Real Property

Part III – Finance

Part IV – Leasing

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Issues In Ownership Of Real Estate

Argentina

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

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, perpetual fee simple ownership of real property permitted.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Although a private contract of sale of a property ("*Boleto de Compraventa*") will contain valid and binding obligations as between the parties under Argentine law, it will not be accepted for registration in the relevant Land Registry ("*Registro de la Propiedad Inmueble*"), unless the terms of transfer have been included in a deed of conveyance "*escritura pública*" executed before a notary public.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

In the City of Buenos Aires the deed of conveyance must be presented for registration at the Land Registry within a period of 45 days (40 days in the case of the province of Buenos Aires) after its execution before a notary. If it is presented later, it may be subject to any charges or encumbrances that have been presented in the meantime. In addition the notary is responsible for checking the title deeds to the property and ensuring that there are no charges or encumbrances over the property of which the purchaser is unaware. The customary time period of ownership that is searched in Argentina is 20 years.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

There is no title insurance system in Argentina. The Land Registry registers ownership of real property, and such registration is effective *vis a vis* third parties.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

An Argentine corporation (*sociedad anónima*), an Argentine limited liability company (*sociedad de responsabilidad limitada*), or an Argentine trust are the most common forms of entities used.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Although there are specific REIT regulations for publicly offered REITS, they have not been used in practice. However, several other Argentine entities may be used to form an entity similar to a REIT, such as an Argentine corporation (*sociedad anónima*), an Argentine limited liability company (*sociedad de responsabilidad limitada*), or an Argentine trust.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

The provincial stamp tax ("*Impuesto de sellos*") is a local tax levied on monetary acts, contracts or transactions which are evidenced in writing. While each provincial jurisdiction and the City of Buenos Aires has its own particular legislation, their provisions are very similar.

In principle, the tax is imposed on contracts executed in the relevant provincial jurisdiction. In the case of real estate, if the contract is executed in a different jurisdiction from the location of the real estate, in principle tax will be due both in the jurisdiction where the real estate is located as well as the jurisdiction of execution of the contract, unless there is provision for the avoidance of double taxation in the relevant provincial jurisdiction. Care must therefore be taken when dealing with real property to ensure that any contractual documentation is executed generally only in the jurisdiction where the property is located.

In practice, provincial stamp tax is normally borne in equal parts by the parties, however in as far as the tax authorities are concerned they may claim the full amount of the tax from any of the parties to the transaction.

The transfer of real property is subject to stamp tax on the higher of the values resulting from the value of the property in the deed of acquisition and the fiscal value as established in the provincial (in the City of Buenos Aires the municipal) cadastral records. The applicable rate in most provincial jurisdictions is 4% and 2.5% in the City of Buenos Aires (usually 1% is paid at the time the preliminary sale contract ("*Boleto de Compraventa*") is executed and the remaining balance is payable upon the execution of the notarial deed of conveyance).

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

As stated above, the provincial stamp tax ("*Impuesto de sellos*") is a local tax levied on monetary acts, contracts or transactions which are evidenced in writing. While each provincial jurisdiction and the City of Buenos Aires has its own particular legislation, their provisions are very similar in many respects. However, no stamp tax applies to transfers of interests in entities which own real estate in the City of Buenos Aires.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

The provincial stamp tax may be applicable. See prior answers for additional information.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

Australia

Prepared by Lex Mundi member firm Clayton Utz

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, although in the Australian Capital Territory most land is owned by long term leasehold from the Federal Government

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

For Torrens Title land transfers in registrable form are used. For Old System land (which is now quite rare) deeds of conveyance are used.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Ownership of real property is recorded in the registers of the relevant State Government department. The register can be searched electronically or manually. Searches are usually performed by lawyers or specialist search companies.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title is State Government guaranteed. Assurance is rarely used and is expensive.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

The most common form of investment vehicle is companies or trusts. Joint ventures are effected by unincorporated or incorporated joint ventures and partnerships are effected by unincorporated or incorporated joint ventures and partnerships are sometimes used. There is no one vehicle which is universally tax effective for any entity.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Yes, there is legislation permitting the creation of real estate investment trusts and such trusts are widely used.

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

Goods and Services Tax of 10% is imposed by the Federal Government on vendors of real estate in relation to the supply of the real estate to the purchaser. The Goods and Services Tax is often passed on to the purchaser. There are exemptions depending on the use to which the land is being

put. State Governments impose stamp duty on the purchasers of real estate at rates of up to 5.5% of the consideration under the sale contract.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

In regard to goods and services tax, the position is as set out above. A sale of 100% of the shares of a company or units in a trust, which owns land of a certain value and where that land is a particular majority of the assets of the company or trust, stamp duty will be payable by the purchaser of the shares at the same rate as if the sale was a sale of land.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

The sale of real estate in Australia is highly regulated. Certain warranties are imposed by statute and cannot be contracted out. In some jurisdictions disclosures have to be made and in others certain documents like title searches, zoning certificates and drainage diagrams have to be annexed to the contract. Non-compliance can lead to rescission rights for the purchaser. The position varies markedly from state to state.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

Only the registered proprietor is required to be registered on the title. In some jurisdictions if the registered proprietor is a trustee its capacity as trustee in the name of the trust can be recorded on the title.

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Issues In Ownership Of Real Estate

Austria

Prepared by Lex Mundi member firm CHSH Cerha Hempel Spiegelfeld Hlawati

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Austrian law does not know the common law concept of Fee Simple ownership, but basically provides for one single and autonomous form of full ownership in real property.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

The acquisition of ownership in real estate requires (i) a valid title on the transfer of real estate (e.g. purchase agreement), and (ii) its registration with the land register as appropriate modus. The validity of a real estate transfer agreement itself is not subject to formal requirements, yet its registration with the land register requires the legalisation of the signatures on a written real estate transfer agreement containing specific and utmost strict documentation language. The registration of the title constitutes the property as right in rem, i.e. with effect against third parties.

Austrian law follows the Roman principle of superficies solo credit, so that, in principal, the owner/acquirer of land also owns/acquires buildings and constructions thereon.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

The land register mentioned under 2. above covers the virtually entire surface of Austria and is operated by the Austrian district courts (Bezirksgerichte), each responsible for the area of its local jurisdiction. The land register is public and may be accessed via www-websites by inter alia other courts, notaries public and attorneys; in particular, excerpt of the land register may be drawn at low costs.

Registration with the land register, in particular its constitutive effect and the connected "rule of confidence", entails the only minor importance of title search, title documentation and related title insurance or title opinion with regard to Austrian real estate: an up-to-date excerpt of the land register proves the current legal title with only remote exposure risk.

The district court administering the land register of its area also keeps title documents with respect to each plot of land. At the respective court such documents may be reviewed by anyone and may inform in particular on rights and obligations agreed on between the parties to former transfers.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurances or title opinions are not customary for (ordinary) Austrian real estate transactions (see above under 3.).

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

Depending on various criteria such as investment purpose, investment size or tax considerations, a limited liability company (Gesellschaft mit beschränkter Haftung, GmbH), a stock corporation

(Aktiengesellschaft, AG) or a private foundation (Privatstiftung) may be the most common investment vehicles.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Austrian law does not provide for specific regulations on real estate investment trusts (REIT). Such laws recently being introduced in a growing number of (continental) European countries, including Germany, the introduction of such laws in Austria is discussed. However, already based on the current Austrian legislation, investment vehicles similar to REITs may be established, e.g. through (nominal) profit participation rights (Nominal-Genussrecht).

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

A direct transfer of ownership in real estate is subject to a real estate transfer tax at a rate of 3.5% calculated on the transfer (purchase) price.

The registration of ownership with the land register is subject to a registration fee amounting to 1% of the purchase price.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

In case of the acquisition of all shares in a company holding real estate the real estate transfer tax of 3.5% mentioned above under 7. is also triggered. However, such tax can lawfully be avoided by having a minimum share of the target company acquired by a third party (e.g. another company) who may openly act as trustee on behalf of the principal acquiring entity.

In case of a share deal by which the legal entity acquired owns real property the land register registration fee mentioned above under 7. is not triggered.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Regarding real estate transfer tax and registration fee see above under 7. and 8.

Real estate is subject to numerous state laws, distinct in each of the nine Austrian federal states (Bundesländer), regarding the regulation of inter alia foreign and agricultural real estate acquisition control, regional planning and zoning as well as construction permits. In each of these subjects the nine laws follow the same principles, yet may substantially differ in detail.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

Pursuant to some of the state laws on foreign real estate acquisition control (see above under 9.) the ultimate beneficial owner must be disclosed for assessment as to in how far the acquirer is to be considered "foreigner" in the meaning of the law. However, the mentioned laws often provide for unclear wording as to the degree to which authorities must actually trace identity of ownership up a holding structure; respective Austrian administrative practice is often arbitrary.

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Issues In Ownership Of Real Estate

Bahamas

Prepared by Lex Mundi member firm McKinney, Bancroft & Hughes

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in The Bahamas.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed of conveyance is used to convey ownership of real estate.

A deed of assent is used to transfer title in the probate of an estate.

A crown grant is used when the Crown conveys property directly to the purchaser.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Ownership of the real property is recorded at the Registry of Records in The Bahamas by name of owner. Ownership of the real property can be searched by an inspection of the public records for a period of 30 years.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Both title insurance and title opinions are available to the purchasers of real property, however purchasers normally rely on legal counsel's title opinion in The Bahamas.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

The most common form of investment vehicle is an International Business Company (IBC)

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

No.

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

Stamp duty is levied on the transfer of land on an ad valorem basis of the value of the property. Every deed of conveyance, assignment or transfer of realty where the amount or value of the consideration:

- does not exceed \$20,000 will be assessed at 2%
- exceeds \$20,000 but not more than \$50,000 will be assessed at 4%

- exceeds \$50,000 but not more than \$100,000 will be assessed at 6%
- exceeds \$100,000 but not more than \$250,000 will be assessed at 8%
- exceeds \$250,000 will be assessed at 10%

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

See above.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Real property tax is paid annually and is assessed differently depending on whether the real property is owner occupied, unimproved property or other property such as commercial property.

In respect of owner occupied property:

- exceeding \$100,000 but not exceeding \$500,00 a real property tax of 1% of the assessed value of the property.
- exceeding \$500,000 a real property tax of 1.5%

In respect of Unimproved Property (Vacant Land):

- not exceeding \$3,000 a real property tax of \$30
- exceeding \$3,000 to \$100,000 a real property tax of 1% of the assessed value of the property.
- exceeding \$100,000 a real property tax of 1.5%

In respect of all other property:

- not exceeding \$500,000 a real property tax of 1%
- exceeding \$500,000 a real property tax of 2%

Bahamians are exempt from real property taxes with respect to unimproved property. Bahamians are also exempt from real property taxes with respect to all property in the family islands.

There is no other significant variation of real estate law among political subdivisions of The Bahamas.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

The ultimate beneficial owner of an IBC is not obligated to disclose on the public registry. However the beneficial owner is required to provide details to the Central Bank and the Investment Board.

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Issues In Ownership Of Real Estate

Barbados

Prepared by Lex Mundi member firm Clarke Gittens Farmer

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in Barbados.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

For land still under the common law system, a deed is used to convey ownership of real estate. Section 59 Property Act Cap. 236 of the Laws of Barbados.(Property Act) A deed will be construed as conveying the entire estate or interest that the grantor owns unless a contrary intention is expressed in the deed. Section 67 Property Act.

For land in respect of which title has been declared under the registered system, a disposition is effected by a transfer, lease or other prescribed form in accordance with the Land Registration Regulations 1988 made under the Land Registration Act Cap 229 of the Laws of Barbados (Land Registration Act) or a form approved by the Registrar of Titles (Sections 40 and 110 Land Registration Act)

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

In order for there to be notice of the existence of a dealing with land under the common law system, the instrument effecting the transaction must be recorded at the Registration Office of the Land Registry. Property Act Section 58 The most common method of finding out the status of a parcel of land is to conduct a title search by means of a grantor/grantee search at the Land Registry. A title search may be conducted by an attorney; however, a title search is generally conducted by a legal clerk, either working for a lawyer or the search company (there is only one such company, privately held). In Barbados a good root of title must begin with an instrument of disposition that is at least 20 years old. Section 50 Property Act.

For land that has been registered, instruments effecting transactions dealing with the land must be submitted to the Registrar of Titles for registration, and the Registrar has power to compel a person to submit such an instrument for registration (Land Registration Act Section 43)

To determine the status of registered land, generally an official search is requested from the Registry. Land Registration Act Section 38. Land is indexed by parcel number, not by proprietors' names as is the case with land still under the common law system.

The official search provides the particulars of subsisting entries in the register respecting the parcel of land to which the search relates.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is not readily available in Barbados. Opinions on title can be obtained from attorneys at law, but many attorneys at law do not have significant professional liability insurance.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

Limited liability companies are the most common forms of investment vehicles. For persons resident overseas, these are often BVI or Cayman companies, which are registered in Barbados as external companies and which hold the land. On a sale, the shares of the company are sold outside of Barbados.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

No

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Under the Property Transfer Tax Act Cap 84A of the Laws of Barbados (PTT Act) (Section 4) property transfer tax is payable in respect of every transfer of property. A transfer of property means any transfer, whether by sale, exchange, gift, or other disposition inter vivos whereby any property or any estate or interest in any property is legally or equitably transferred to or vested in a purchaser or any other person on his behalf or by his direction. (PTT Act Section 2).

No property transfer tax is payable on leases that do not exceed 25 years. (PTT Act Section 5C)

The tax is payable when the document is presented for stamping and recording (see below on stamp duty) and in the case of a sale is charged on the consideration stated in the deed or the improved value of the land as set out on the land tax demand notice (whichever is greater). It is payable by a vendor on a sale. The PTT Act contains a few very specific exemptions to transfer tax liability. The Minister of Finance also has power to waive the tax, usually for large projects where significant investment has been made. An application must be made to the Ministry of Finance in this regard, providing significant details of the project and its benefit to the island.

Stamp Duty is also payable under the Stamp Duty Act Cap 91 of the Laws of Barbados Stamp Duty Act) Section 3. This is payable by the person at whose direction the document was prepared, (Stamp Duty Act Section 30). in practice, usually the vendor.

There is also a nominal fee for recording or registration of the deed or transfer.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Stamp Duty and Property Transfer Tax are payable on share sales generally, whether or not the company in respect of which the shares are being sold held real estate or not. Both taxes are based on the consideration for the sale or the value of the shares, whichever is greater.

For a company that is a special purpose vehicle with real estate as its only asset, the value of the real estate will generally be taken as the value of the company and the value of the shares, and consequently the quantum of the tax, will flow from this.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Property Transfer Tax is at the rate of 2.5% of the consideration for the sale or the value of the property transferred (whichever is greater) for both land and share sales.

Stamp duty is at the rate of 1% of the consideration for the sale in both cases.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No

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Issues In Ownership Of Real Estate

Belize

Prepared by Lex Mundi member firm Barrow & Williams Attorneys-at-Law

1. Is perpetual fee simple ownership of real property permitted?

Yes, perpetual fee simple ownership of real property is permitted. If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

Belize has 2 title systems: Unregistered title system and Registered Title system. The two title systems have different forms of instruments that are used to convey fee simple ownerships. Examples of instruments used under the unregistered title system are as follows: Deed of Conveyance, transfer certificate of title, and Deed of Gift. The instrument used under the registered title system is a transfer form.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

The transfer instrument is forwarded to the Lands Department for processing along with payment of stamp duty fee and recording fees. The Lands Department then processes the transfer instrument and in turn issues the recorded title.

Title searches are performed conducted at either of the two land registries. If the title falls under the unregistered land system then title searches are manually performed at Lands Titles Unit by researching the deeds books. If the title falls under the registered land system then title searches are manually performed at the Lands Registry.

The search is performed by the purchaser's attorney, and title researchers, either working for an attorney or a title company.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)?

There are several title companies which issued title insurances to purchasers of real property. Furthermore, a purchaser may request a title opinion from an attorney. What is the cost of obtaining such assurances? This is at the discretion of each title insurance company and each attorney.

5. What are the most common forms of investment vehicles?

Domestic Limited Liability companies. What are the most common entities employed to own investment real estate in a tax efficient manner? Domestic Limited Liability Companies incorporated under the Companies Act, Chapter 250 of the Laws of Belize.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Yes

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Stamp Duty of 5% of the purchase price with the first \$20,000.00BZ exempt. This is paid by the buyer

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Only if the seller is in the business of subdividing and selling properties for a living or becomes a real estate agent and is registered for general sales tax should he pay 10% of the purchase price.

9. How significant is local regulation and taxation of real estate?

Of low significance as there is only one transfer tax which is stamp duty payable by the buyer and the seller only pays a General sales tax if he is registered for general sales tax. How significant is the variation of real estate law among political subdivisions of this jurisdiction? Not significant. Belize has one set real estate laws that govern all subdivisions of the jurisdictions.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No, because if the entity has nominee directors then the nominee director of the entity will be the only persons disclosed on the public record.

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Issues In Ownership Of Real Estate

Bolivia

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

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, under Bolivian law perpetual fee ownership of real property is permitted.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Usually notarized public deed related to contracts whereby real estate property is transferred.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Real estate must be duly registered before the Real Estate Office pertaining to the jurisdiction where the property is located. The Real Estate Office performs the search.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Real estate ownership is verified by public deed and title, and also by the registration certificate issued by the Real Estate Office. The cost of such certificate is approximately ten American dollars (U\$S. 10.00.-).

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

Partnerships and Corporations are the most common forms of investment vehicles, both enjoy the same tax treatment.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

No, Bolivian registration does not contemplate real estate investments trust.

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

The buyer usually pays the real estate transfer tax equal to 3% of the property value. However, and according to Bolivian law, parties may convey that the seller pays such tax. Additionally, a registration fee of 0.005% must be paid to register the property before the Real Estate Office.

- 8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?**

Please refer to question number 7.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Real estate law and regulations are very significant to each jurisdiction where the Real Estate Office operates.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

Yes, the title holder of the property must be duly registered before the Real Estate Office.

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Issues In Ownership Of Real Estate

Brazil

Prepared by Lex Mundi member firm Demarest e Almeida

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple property ownership is permitted in Brazil.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Except with regard to transfer of title by certain corporate acts, which may be directly annotated with the Real Estate Registrar, Brazilian law requires that ownership to real estate is performed through the execution and registration, by the parties, of a public deed.

However, it is very common in Brazil that the parties adjust that the payment will be done in installments and, therefore, prior to the execution of the public deed, the parties use to execute a private agreement through which both parties commit to sell and purchase the real estate, and upon payment of the last installment, the public deed is executed and presented for registration before the Real Estate Registrar.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Brazil real property title is handled through a "Registered Land" system. The acquisition and transfer of a real estate property is perfected by means of possession of the property and recordation of the title with the competent Real Estate Registry Office. The Real Estate Registry Offices maintain a record of all transactions registered involving a certain property. Title search may be conducted upon request to the Real Estate Registry Office of the jurisdiction the property is recorded before entering into real estate transactions, by any interested party.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Currently, there is no title insurance in Brazil.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

Limited liability companies ("Sociedade por Quotas de Responsabilidade Limitada") and corporations are the most common forms of entities used.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Federal Law n. 8668/93 provides for Real Estate Investment Funds (*Fundos de Investimento Imobiliário* - the "REIF"), which are non-corporate vehicles, investing most of their equities in real estate assets or related rights. They are close-end funds that issue negotiable shares representing the assets thereof, listed either on stock exchanges or over-the-counter markets.

The management of REIF is entrusted to a financial institution duly authorized by CVM (Brazilian SEC), which holds the assets and rights on a fiduciary basis on behalf of the REIF's shareholders, which means that such assets and rights are to be kept separated from the administrator institution's own assets. The funding of the transactions is made by means of the issuance by the REIF of shares representing the real estate and its gains and earnings.

The offering of the shares issued by a REIF requires the registration of the REIF as well as the offering of shares with the CVM, according to CVM Regulation n. 205/94, as amended.

Setting-up a REIF takes approximately 60 to 90 days, comprising registration with the CVM and listing on the stock exchange or the over-the-counter market entity.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Any transfer of interest in real estate is subject, upon being recorded, to a transfer tax (ITBI) on the value of the property represented by the corresponding transfer document, which may be a deed or a private agreement (see answer to question 2 above). The ITBI is a Municipal Tax thus being ruled by each municipality and its respective regulations may contain exemptions to transfer tax liability. Such exemptions are availed of presenting a transfer tax affidavit to the Real Estate Registry Office together with the request for recording the deed.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

The transfer tax referred to above may also be applicable to certain transfers of an interest in an entity which owns real estate.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Although subject to non-significant variations, most Brazilian Municipalities levy a tax of two (2) percent of the value of the property which is declared in the deed. This amount is paid by the buyer, unless the parties agree otherwise.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

Canada, Alberta

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

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in Alberta.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A transfer of land is used to convey ownership of real estate. A transfer will be construed as conveying the entire estate or interest that the transferor owns unless any limitations are clearly expressed. An assignment of lease is utilized for the transfer of a leasehold interest in land unless a leasehold title has been issued, in which case a transfer of land is used.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

A title search is conducted at the government land titles registration office to ascertain the registered ownership of the real property. The title search may be conducted by a lawyer, a paralegal or law clerk working for the lawyer or, in some circumstances, a title insurance company.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

There is a government guarantee of registered title that applies in Alberta. In many transactions, purchasers rely upon title opinions from the purchaser's lawyer. Title insurance is available in Alberta. Insurance companies are regulated by the Province of Alberta. Title insurance rates are set by various title insurance companies and are generally approximately \$0.60-\$0.70 per thousand dollars of value of the real property insured.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

There are many forms of investment vehicles utilized to hold beneficial ownership of real estate in Alberta: an unlimited liability company, a general partnership, a limited partnership, a trust or a real estate investment trust. Sometimes two or more beneficial owners of real estate hold as tenants in common (or co-tenants). Registered ownership is almost always held in the name of a limited liability company. The most common entities employed to hold beneficial interest in real estate are limited partnerships, trusts or unlimited liability companies, depending upon the tax rules applicable in the home jurisdiction of the investment vehicle and in Alberta.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Real estate investment trusts are permitted in Alberta and other provinces in Canada. Certain rules govern the tax status of REITs under the Income Tax Act (Canada).

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

There are no provincial land transfer taxes in Alberta.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Land transfer tax is not applicable to the transfer of shares in a corporation owning real estate or transfers of interests in limited partnerships.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

There are no local land transfer taxes in Alberta.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

The ultimate beneficial ownership of entities need not be disclosed as a matter of public record.

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Issues In Ownership Of Real Estate

Canada, British Columbia

Prepared by Lex Mundi member firm Farris, Vaughan, Wills & Murphy LLP

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, perpetual fee simple ownership of real property is permitted in British Columbia.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A Freehold Transfer is used to convey fee simple ownership (*British Columbia Land Title Act*, Section 185). The instrument must be in the prescribed form, be originally executed by the owner and, with certain limited exceptions, the owner's signature must be witnessed by a lawyer or notary public within Canada or a notary public outside Canada.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

The most common method to search the ownership of real property is to search the title to the property in the appropriate Land Title Office within British Columbia. Searches may be conducted at a Land Title Office or via the internet at www.bconline.gov.bc.ca.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

The *Land Title Act* of British Columbia creates a title registration system based on the Torrens System. Certain lands owned by the federal government and by first nations are outside the registration system. Title insurance is available in British Columbia, although is not widely used.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

A British Columbia limited partnership, a British Columbia corporation or a corporation incorporated outside British Columbia that is extra-provincially registered in British Columbia are the most common forms of entities used.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

REITs may own real estate in British Columbia.

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

The *British Columbia Property Transfer Tax Act* imposes transfer tax, with certain limited exceptions, on the transfer of a fee simple interest or leasehold interest with a term, including potential renewals, of more than 30 years. The tax is payable at the time of registration of the transfer of the fee simple or leasehold interest. The tax is based on the fair market value of the interest being transferred and

the rate of tax is 1% on the first \$200,000 plus 2% on the balance. The tax is payable by the transferee.

In addition, GST may be payable by the purchaser of a fee simple interest under the *Federal Excise Tax Act*. GST is 6%.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

British Columbia Property Transfer Tax Act does not apply to transfers of the entity owning the real estate.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

See No. 7 above.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

Canada, Manitoba

Prepared by Lex Mundi member firm Thompson Dorfman Sweatman LLP

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Fee Simple ownership is the principal form of ownership in Manitoba. Other forms of ownership for which titles may be issued are leaseholds and air space parcels.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A transfer of land is used to convey registered ownership of real estate in Manitoba. The form of transfer of land is prescribed by regulation. If the form of ownership is an unregistered leasehold, an assignment of lease may be used to transfer that leasehold interest, notice of which may be registered by way of caveat.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

The ownership of real property is recorded and searched at the Land Titles Office for the district in which land is situate. In Manitoba, there are six such districts. Two different types of title are kept at the Land Titles Office, Paper Title and Electronic Title. The majority of titles in Manitoba are Electronic.

Electronic Titles can searched by accessing the Land Titles Office on-line database, while Paper Titles must be examined by either personally inspecting the title at the Land Titles Office; ordering a photocopy of the Paper Title; or ordering a certified copy of the Paper Title. As a general rule, the searches are conducted by lawyers or law clerks and assistants working for the lawyers.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

The Real Property Act (Manitoba) states that every certificate of title, subject to a number of enumerated exceptions, is conclusive evidence at law and in equity that the person named on the certificate is entitled to hold the land in question. Notwithstanding, a purchaser may also wish to obtain title insurance in the event that any defects in title are discovered. In Manitoba, a title insurance policy for residential property is approximately \$200.00.

Title insurance is also available for commercial properties; however the price is variable depending on the value of the property and type of policy. For example, in an Owner's Policy (i.e.: no mortgage needed for the purchase) the cost of the policy will be dependent upon the purchase price of the property. On the other hand, if a Lender's Policy is purchased (i.e.: the purchaser requires a mortgage) the policy will be dependent upon the value of the mortgage.

A basic Owner's Policy will offer coverage for title or interest vesting in the estate which is other than as stated; defect in charge, lien or encumbrance on the title; un-marketability of the title; and lack of right of access to and from the land.

The Western Law Societies Conveyancing Protocol is a second option which offers purchasers protection similar to that of title insurance. The Conveyancing Protocol will indemnify loss suffered by a purchaser resulting from an intervening registration at the Land Titles Office.

Another form of assurance is to have a Solicitor provide a report on title or Title Opinion. A Title Opinion states that the client has received good and marketable title, based on a review of the due diligence searches conducted on the real estate. The client may seek compensation for losses suffered via the Solicitor's professional indemnity policy, if the Solicitor has been negligent in providing the Title Opinion.

As discussed above, The Real Property Act (the "Act") provides that every certificate of title is evidence of a purchaser's entitlement to hold title to the property in question. The effect of this provision allows an individual to make a claim against the Government of Manitoba, for any errors made by a Land Titles Office in the transfer and issuance of title. The Assurance Fund, established under the Act for the purpose of satisfaction of these claims, is capped at \$75,000.00. However, in reality the size of the fund is actually \$125,000.00. In the event that a judgement exceeds the \$75,000.00 amount, the shortfall will be paid out of the public funds of the government.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

Common forms of investment vehicles include General Partnerships, Limited Partnerships, Co-ownership, Trusts and Corporations. However, the most common form of entity used to own investment real estate is a Corporation. What is the most tax efficient manner to hold real estate will depend on the owner(s) and the circumstances of ownership.

It is also possible to have an investment vehicle own real property as a bare trustee. For example, a corporation may be the registered owner of land, but hold it in trust for others.

In the case of a Real Estate Investment Trust (REIT), the REIT will hold the land for the unit holders.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

The federal Income Tax Act contains a number of provisions regulating Real Estate Investment Trusts.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

As a general rule, Manitoba imposes a Land Transfer Tax upon every person who tenders for registration a Transfer of Land. The Land Transfer Tax is calculated pursuant to a sliding scale formula based on the Fair Market Value of the property.

A number of transactions which are exempt from the Land Transfer Tax. For example, situations wherein the transferred land is farm land, transferred from one farmer to another, and will continue to be used as farm land will be exempt from the Land Transfer Tax. Another example is an inter-spousal transfer.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

In Manitoba, the transfer of an interest in a corporate entity which owns real estate will not attract Land Transfer Tax levied against the land.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

The only land transfer tax in Manitoba is imposed by the Province. On a municipal level, there are a number of taxes which can be assessed against the value of the land such as a School Tax or a general Municipal Tax. These rates vary depending on the Municipality.

Real estate law does not vary among municipalities, as the law of property is governed by the Province of Manitoba. There are some peculiarities when dealing with land on First Nation (aboriginal) reserves.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

The beneficial owners of the entity are not required to be disclosed as a matter of public record. However, if a shareholder owns more than ten percent of the issued voting shares in a corporation, they will be indicated on the annual return of the corporation filed in the Companies Office (Manitoba).

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Issues In Ownership Of Real Estate

Canada, Nova Scotia

Prepared by Lex Mundi member firm McInnes Cooper

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in Nova Scotia.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed is used to convey ownership of real estate. The most common form of deed is a warranty deed which contains covenants on the part of the grantor for quiet enjoyment, good title in fee simple, right to convey, free from encumbrances and further assurances. A deed without such covenants will be construed as conveying the entire estate or interest that the transferor owns unless any limitations are clearly expressed. An assignment of lease is generally utilized for the transfer of a leasehold interest in land.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Transfers evidencing the ownership of real property and most other title-related documents are recorded electronically in the government land registration office for the county where the real property is situated. All properties in the province are in the process of being converted from the old names based Registry of Deeds system to the new parcel based land registration system. Conversion is mandatory whenever ownership is transferred for value, a new mortgage is placed or the land is subdivided into 3 or more lots including the remainder (non-family). With respect to those real properties which have been converted to the land registration system, transfer and other title-related documents may be registered and title searches may be conducted online. With respect to those real properties which have not yet been converted to the land registration system, the Registry of Deeds records are in the process of being converted to electronic format and, depending on the county in which the property is located, title searches may need to be conducted at the applicable land registry office. A title search may be conducted by anyone upon payment of the applicable fee at the land registration office but generally title searches are conducted by a lawyer, a paralegal or law clerk working for the lawyer, an independent title searcher or, in some circumstances, a title insurance company.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

There is a government guarantee of registered title that applies in certain circumstances in Nova Scotia subject to any discrepancy in the location, boundaries or extent of the parcel and certain overriding interests. In many transactions, purchasers rely upon title opinions from the purchaser's lawyer. The cost of such opinions will vary depending on the value of the property. Title insurance is available in Nova Scotia. Title insurance rates are set by various title insurance companies and depend upon the nature of the property (i.e. commercial vs. residential). For residential properties there is usually a fixed rate for properties up to a certain value and an additional charge of approximately \$1.00 per thousand dollars of excess value. A lender's policy may be issued for no additional charge when issued along with an owner's residential policy. Lender's policies issued alone generally cost slightly less than owner's policies.

The rate for commercial properties with a value between \$2,000,000 and \$5,000,000 is approximately \$0.75 per \$1,000.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

There are many form of investment vehicles utilized to hold beneficial ownership of real estate in Nova Scotia: a limited liability company, an unlimited liability company, a general partnership, a limited partnership, a trust or a real estate investment trust. Sometimes two or more beneficial owners of real estate hold as tenants in common (or co-tenants). Registered ownership is almost always held in the name of a limited liability company. The most common entities employed to hold beneficial interest in real estate are limited partnerships, trusts or unlimited liability companies, depending upon the tax rules applicable in the home jurisdiction of the investment vehicle and in Nova Scotia.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Real estate investment trusts are permitted in Nova Scotia. Certain rules govern the tax status of REITs under the *Income Tax Act* (Canada).

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Deed transfer tax is levied at the municipal level in Nova Scotia upon transfer of real estate by deed. Whether or not a deed transfer tax applies depends upon the municipality in which the property is located. Both registered and unregistered transfers of real estate are subject to such taxation. Long term (in excess of 21 years) leases also attract tax. Mortgages are not subject to deed transfer tax. All sales of real property are subject to Harmonized Sales Tax ("HST") in Nova Scotia unless specifically exempted. This is a combined tax including the Federal Goods and Services Tax and the Provincial Sales Tax. The current combined rate of this tax is 13%. The tax is collected by the Seller from the Buyer and remitted to the government. There are several exceptions to the application of the HST to sales of real property, the most common being an exemption for "used residential" property. In certain circumstances, there are elections available which may permit the Vendor to avoid collecting the HST on closing and allow the Buyer to self-remit. A sale of real property may result in a capital gain for the Seller which will result in capital gains tax being payable. A sale by a non-resident will require that a Compliance Certificate be obtained from the Canada Revenue Agency. A Buyer is entitled to withhold 25% of the purchase price pending issuance of a Compliance Certificate.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

In those municipalities which impose a deed transfer tax the tax applies to the sale price of every property that is transferred by deed. A transfer of shares in a corporation owning real estate or the transfer of an interest in a limited partnership do not involve a deed and therefor do not attract deed transfer tax.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Local regulation and taxation of real estate is very significant. For example, the rate of deed transfer tax can vary from 0% (where no tax is imposed) to 1.5% depending on the municipality. Subdivision regulation, zoning and land use by-laws can also vary significantly between municipalities as can the rates of residential and commercial real property taxes assessed annually.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

The ultimate beneficial ownership of entities need not be disclosed as a matter of public record.

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Issues In Ownership Of Real Estate

Canada, Ontario

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

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in Ontario.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed/transfer of land is used to convey ownership of real estate. A deed/transfer will be construed as conveying the entire estate or interest that the transferor owns unless any limitations are clearly expressed. An assignment of lease is generally utilized for the transfer of a leasehold interest in land.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Transfers evidencing the ownership of real property and all other title-related documents are recorded in the government land registry office in the locality where the real property is situated. Within the past few years, the government has introduced an electronic land registration system throughout the province. The majority – although not all – of the real properties located in the province have now been converted to this electronic land registration system. With respect to those real properties which have been converted to the electronic land registration system, transfers and other title-related documents may be registered and title searches may be conducted online via computer. With respect to those real properties which have not yet been converted to the electronic land registration system, transfers and other title-related documents are registered in paper format and title searches are conducted at the applicable land registry office. A title search may be conducted by a lawyer, a paralegal or law clerk working for the lawyer or, in some circumstances, a title insurance company.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

There is a government guarantee of registered title that applies in certain circumstances in Ontario. In many transactions, purchasers rely upon title opinions from the purchaser's lawyer. Title insurance is available in Ontario. Insurance companies are regulated by the Province of Ontario. Title insurance rates are set by various title insurance companies and are generally approximately \$0.75 per thousand dollars of value of the real property insured, subject to variation depending on the amount of insurance coverage being obtained. As well, title insurance companies generally offer a discounted premium of approximately \$0.10 per \$1,000 of coverage for a lender's policy when such policy is being obtained contemporaneously with or within a short period of time following the issuance of an owner's policy.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

There are many forms of investment vehicles utilized to hold beneficial ownership of real estate in Ontario: a limited liability company, an unlimited liability company, a general partnership, a limited partnership, a trust or a real estate investment trust. Sometimes two or more beneficial owners of

real estate hold as tenants in common (or co-tenants). Registered ownership is almost always held in the name of a limited liability company. The most common entities employed to hold beneficial interest in real estate are limited partnerships, trusts or unlimited liability companies, depending upon the tax rules applicable in the home jurisdiction of the investment vehicle and in Ontario.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Real estate investment trusts are permitted in Ontario and other provinces in Canada. Certain rules govern the tax status of REITs under the Income Tax Act (Canada).

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

The Province of Ontario imposes the land transfer tax upon the buyer receiving a direct transfer of real estate. Both registered and unregistered transfers of real estate are subject to such taxation. In addition to taxing the transfer of freehold interests in real estate, long term (in excess of 50 years) leases also attract tax. Mortgages are not subject to land transfer tax. There are certain exemptions from land transfer tax that may be applicable generally involving transfers between non-arm's length entities.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Generally speaking, land transfer tax is not applicable to the transfer of shares in a corporation owning real estate; however, if an exemption previously applied to an unregistered transfer to an affiliated corporation (see item 7 above), and a change of control subsequently occurs within three years of the initial transfer, the subsequent share transfer will trigger the obligation to pay land transfer tax. Transfers of interests in limited partnerships (other than very small holdings of under 5%) will be treated the same as a transfer of a co-ownership interests in real estate and thus attract land transfer tax.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

For commercial properties the tax amounts to approximately 1.5% of the value of the consideration passing from the buyer to the seller. 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 land transferred.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

The ultimate beneficial ownership of entities need not be disclosed as a matter of public record.

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Issues In Ownership Of Real Estate

Canada, Quebec

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

1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Yes, absolute property ownership is permitted in Quebec. Modes of ownership include divided (e.g. condominiums) and undivided co-ownership and superficies (e.g. separation of ownership between owner of sub-soil and works above the soil) and dismemberments of ownership include emphyteusis (e.g. ground lease).

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

A deed/transfer of land is used to convey ownership of real estate. A deed/transfer will be construed as conveying the entire interest that the transferor owns unless any limitations are clearly expressed. An assignment of lease is generally utilized for the transfer of a leasehold interest in land.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

Generally a title search is conducted at the government land registry office to ascertain the registered ownership of the real property and encumbrances. The title search may be conducted by a notary, a lawyer, a paralegal or law clerk working for the lawyer or, in some circumstances, a title insurance company.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

There is no government guarantee of registered title that applies in Quebec. In most transactions, purchasers rely upon title opinions from the purchaser's lawyer. Title insurance is also available in Quebec. Title insurance rates are set by various title insurance companies and are generally approximately \$0.75 per thousand dollars of value of the real property insured, subject to variation depending on the amount of insurance coverage being obtained. As well, title insurance companies generally offer a discounted premium of approximately \$0.10 per \$1,000 of coverage for a lender's policy when such policy is being obtained contemporaneously with or within a short period of time following the issuance of an owner's policy.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

There are many forms of investment vehicles utilized to hold ownership of real estate in Quebec: a limited liability company, an unlimited liability company, a general partnership, a limited partnership, a trust or a real estate investment trust. Sometimes two or more owners of real estate hold as co-owners. Registered ownership is almost always held in the name of a limited liability company, often a nominee for the true owners. The most common entities employed to hold interest in real estate are limited partnerships, trusts or unlimited liability companies, depending upon the tax rules applicable in the home jurisdiction of the investment vehicle and in Quebec.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Real estate investment trusts are permitted in Quebec and other provinces in Canada. Certain rules govern the tax status of REITs under the Income Tax Act (Canada).

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

The Province of Quebec imposes the land transfer tax upon the buyer receiving a direct transfer of real estate. In addition to taxing the transfer of interests in real estate, long term (in excess of 40 years) leases also attract transfer tax. Mortgages or hypothecs are not subject to land transfer tax. There are certain exemptions from land transfer tax that may be applicable generally involving transfers between non-arm's length companies.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Generally speaking, land transfer tax is not applicable to the transfer of shares in a corporation owning real estate; however, if an exemption previously applied to an unregistered transfer to an affiliated corporation (see item 7 above), and a change of control subsequently occurs within two years of the initial transfer, the subsequent share transfer will trigger the obligation to pay land transfer tax.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

For commercial properties the tax amounts to approximately 1.5% of the value of the consideration passing from the buyer to the seller.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

The ultimate beneficial ownership of entities need not be disclosed as a matter of public record.

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Issues In Ownership Of Real Estate

Cayman Islands

Prepared by Lex Mundi member firm Walkers

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Fee simple ownership of real property is permitted. Other forms of ownership are leasehold title and strata titles.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

There are prescribed forms of transfer which must be used. For transfers of freehold property, transfers of land are used and for transfers of leasehold property, transfers of lease are used.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Title to real estate is evidenced by registration at the Cayman Islands Land Registry where parcel files are open to inspection. Registration is of title rather than of transactions but some information on previous transactions will be available in the parcel files kept for each title.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Where a property is registered with absolute private title, there is a state guarantee whereby any proprietor, who suffers loss arising from an error in the register which cannot be rectified, is entitled to compensation from the Cayman Islands Government. Title insurance is available, however, it is expensive and it is not commonly used.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

The structures most commonly used are local limited liability companies, foreign companies and trust arrangements. A foreign company wishing to purchase or lease real estate in the Cayman Islands must be registered at the Companies Registry as a foreign company. Any foreign company or Cayman company which is foreign controlled wishing to own income producing real estate investment must be licenced under the Trade and Business Licensing Law and the Local Companies (Control) Law. REIT's and real estate derivative from Cayman Islands real estate are not generally available nor commonly used.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

The Cayman Islands has not adopted and, as far as we are aware, is not considering adopting legislation permitting the creation of real estate investment trusts (REIT's) or similar entities. However, trustees (corporate and individual) are permitted to be registered as a proprietor of land, a lease or a charge of immoveable property. Foreign corporate trustees must, however, be

registered as a foreign company at Companies Registry before they can be registered as a proprietor of land, lease or charge in the Cayman Islands.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

There are no taxes payable when you sell real estate in the Cayman Islands. However, stamp duty is payable (subject to certain exemptions) when you buy, lease or mortgage real estate. Stamp duty is payable on the transfer of land or strata title, the transfer or grant of a new lease, any agreement or memorandum of agreement for the purchase of land or strata title and the assignment of any rights under such an agreement and a debenture or mortgage of land.

Generally, the stamp duty in relation to the acquisition of freehold or leasehold land is paid by the buyer and for the grant of a lease, by the tenant. This, however, is negotiable between the parties. The current rates of stamp duty payable are set out below:

Stamp duty is payable on an agreement or memorandum of agreement for the purchase of land or strata title. Such agreement may be stamped with a minimal fixed duty of CI\$100 or with ad valorem duty, depending on whether the agreement contains or grants a right of possession. If the agreement confers or does not specifically prevent any right of occupation ad valorem duty is payable. Where full ad valorem duty is paid on the agreement no additional duty will be payable on the transfer, provided the transfer has been executed in conformity with the agreement and relates to the same real estate as the agreement. If there is an assignment of any rights of an agreement relating to the purchase of land or strata title, depending upon the terms of the assignment, either varying, fixed or ad valorem duties are payable.

The current rates of stamp duty payable on a transfer of land or lease vary from 0% to 7.5% depending on whether the buyer is a Caymanian citizen and the location of the real estate. Normally the price paid for the real estate is accepted as the market value but the stamp duty authorities are entitled to (and sometimes do) carry out their own valuation.

There is an equivalent duty payable on the transfer of shares in a corporation owning real estate in the Cayman Islands where a change in beneficial ownership is involved. This is called share transfer tax and is payable on the issue or transfer of equity capital in a land holding company, as referred to in the Land Holding Companies Share Transfer Tax Law (2007 Revision). There are a few exemptions, which include transfers for natural love and affection between certain family members, transfers to successors entitled under an estate and transfers which do not bring about a change in beneficial ownership. However, all stamp duty exemptions are at the discretion of the Financial Secretary of the Cayman Islands.

The current rates of stamp duty payable on a lease agreement or a lease are (i) 5% of the aggregate rent if the term is less than one year (ii) 5% of the average annual rent if the term does not exceed five years (iii) 10% of the average annual rent if the term exceeds five years but does not exceed ten years (iv) 20% of the average annual rent if the term exceeds ten years and (v) the same duty as on a sale based on the full market value of the real estate if the term exceeds thirty years.

Stamp duty is payable on any mortgage (legal or equitable) or charge of immoveable property. The current rate of stamp duty is either 1% or 1.5% depending on the sum secured. Stamp duty at the rate of 1% is payable if the sum secured is less than CI\$300,000.00 and where the sum secured is more than CI\$300,000.00, stamp duty at the rate of 1.5% of the sum secured will be payable.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

As stated above, a transfer tax is payable on the value of any transfer or issue of equity capital in a land holding company pursuant to the Land Holding Companies Share Transfer Tax Law (2007 Revision). The tax is paid on the value of the shares, not the consideration paid for the shares. The obligation to pay the tax falls upon the land holding corporation. There are a few exemptions, however, all exemptions are at the discretion of the Financial Secretary of the Cayman Islands.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

There are no political subdivisions in the Cayman Islands and therefore no variations of real estate law.

As stated above, the current rates of stamp duty payable on a transfer of land or lease vary from 0% to 7.5%, depending on whether the buyer is a Caymanian citizen and the location of the real estate.

The charge to duty on a conveyance or transfer of immoveable property located in West Bay, Block 5C (parcels with water frontage only, but including any parcel subsequently derived from another parcel with water frontage existing at July 1, 2006), 5D, 10A, 10E, 11B, 11C, 11D, 12C (parcels with water frontage only, but including any parcel subsequently derived from another parcel with water frontage existing at July 1, 2006), 12D, 12E and 17A, George Town, Block 13B, 13C, 13E, 13EH (parcels with road frontage on west Bay Road, Eastern Avenue and North Church Street), 13D, 14BG, 14BH, 14BJ, 14CJ, OPY and 18A is currently 7.5% of the consideration.

Except as provided for above, the charge to duty on a conveyance or transfer of immovable property is (i) 4% of the consideration, if the transferee is a Caymanian, (ii) 2% of the consideration if the transferee is Caymanian and (a) the consideration exceeds CI\$200,000 but does not exceed CI\$300,000 in the case of land with a building or (b) in the case of land without a building, the consideration exceeds CI\$50,000 but does not exceed CI\$75,000, (iii) 0% if the transferee is Caymanian and (a) in the case of land with a building, the consideration is CI\$200,000 or less or (b) in the case of land without a building, the consideration is CI\$50,000 or less and (iv) 6% of the consideration, in any other case.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

Jersey Channel Islands

Prepared by Lex Mundi member firm Mourant Ozannes

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

The most common estate or ownership of land in Jersey is that known as "à fin d'héritage" (i.e. in perpetuity). This is similar to the English fee simple absolute (freehold). The other principal estate in land in Jersey is a contract lease for longer than nine years. Apartments and flats are generally acquired by "flying freehold" or share transfer.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A contract must be passed before the Royal Court of Jersey in order to transfer ownership of property in Jersey (save for leasehold interests of less than nine years).

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Once contracts have been passed before the Royal Court of Jersey they are registered in the Public Registry of the Island of Jersey and entered on an electronic database, known as the Public Registry Index and Document Enrolment database ("PRIDE"). All contracts dealing with acquisition and transfers of title to property must be registered in the Public Registry (except for leases under nine years duration). If property is acquired by a share transfer, there are no requirements to register the transfer. The Public Registry and the PRIDE database may be accessed and searched by anyone, however searches are generally carried out by the lawyers acting for a prospective purchaser/lessee.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

There is no state guarantee of title in Jersey. Purchasers must instead rely on the researches and enquiries of their lawyers who provide evidence of title. Title researches will go back at least 40 years and often much further. Insurance may be obtained for certain defects in title.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

Companies and individuals are the most common means of holding property in Jersey. However, due to restrictions on residential property ownership in Jersey, a valid reason will be required before consent is given to a transfer of residential property to a company (such as the property is to be developed). It is also common for investors to purchase units in a Jersey Property Unit Trust ("JPOT") which holds property in other European jurisdictions, such as the United Kingdom, as part of its trust assets.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

There is legislation permitting the creation of JPUTs and such trusts are widely used for holding property in other European jurisdictions. A Jersey company or a Jersey Limited Partnership could be constituted to acquire assets in other jurisdictions.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Stamp duty is payable on all transfers of interests in real estate, save for leasehold interests of less than nine years. Such duty is calculated on a sliding scale depending on the value of the transaction.

In addition, Goods and Services Tax at a rate of 3% is imposed on the vendors of interests in commercial real estate.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Stamp duty and transfer tax is not presently payable on the transfer of interests in entities which own real estate. However, this will change in the very near future, as a law introducing a land and transactions share transfer tax is in process of being introduced.

Depending on the circumstances of the individual landowning entity and nature of the transaction, Goods and Services Tax at a rate of 3% may be payable.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Goods and Services Tax at a rate of 3% is generally chargeable on transfers of interest in commercial real estate, save for leasehold interests of less than nine years.

Jersey is divided into twelve Parishes, each of which set rates that are payable by property owners and occupiers in the Parish. Such rates vary from Parish to Parish.

The application of real estate law is uniform across the entire jurisdiction.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

This is not required.

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Issues In Ownership Of Real Estate

Chile

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

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Perpetual fee simple ownership of real property is permitted under Chilean law.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

The purchase or any other agreement which purpose is to transfer fee simple ownership of the real property must be executed by means of a public deed. Note that any such agreement only grants the purchaser a right to acquire the ownership of the real property. Ownership is acquired pursuant to the recordation referred below.

The conveyance of the fee simple ownership of a real property is effected by the recordation of the abovementioned agreement in the Real Estate Property Registry of the respective Real Estate Registrar¹.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

The ownership of real property is recorded in a public record named Real Estate Property Registry of the respective Real Estate Registrar. Such recordation must contain certain main aspects of the agreement, such as date of recordation; nature of the agreement, date and Notary Public's Office where the agreement was executed; individualization of the parties; name and boundaries of the real property; and the page and number of the preceding recordation of the property.

The title search is a task that is performed by legal counsel, who should study the legal documentation regarding the real property and its owner(s), for a term of at least 10 years (which is the maximum term for the statute of limitations), to verify the compliance of the applicable legislation and the existence of legal restrictions to acquire the ownership of the real property and the existence of possible liens, debts and any other contingencies affecting the real property.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

There is no title insurance or any other similar assurances available to purchasers of real property.

The only assurance of ownership to a purchaser is a title opinion from a legal counsel, based on the title search. The cost of such opinion and title search varies depending on factors such as the complexity of the search, the value of the real property and the legal counsel experience. The rates normally fluctuate between US\$2,000 and US\$10,000.

¹ Note that this recordation corresponds to the *traditio*, the most common mean of acquiring fee simple ownership in our legal system.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

In general, the most common forms of investment vehicles are corporations and limited liability companies. Such vehicles are customarily employed to own real estate in a tax efficient manner.

In this regard, public and private investment funds are also recommended vehicles to own investment real estate, as they are granted by the law with attractive tax benefits. However, please note that the Chilean Congress has recently passed a law which states the termination of the tax benefits associated to investment funds, which shall take place from year 2012.

Capital gains derived from the sale of real estate owned by individuals are regarded as non taxable income, provided that:

- (i) real estate property does not belong to the fixed asset of companies which are not required to declare effective income based on complete accounting;
- (ii) the sale is not made to a related entity, and
- (iii) the seller is not deemed as customarily engaged in the sale of the real estate property.

Another efficient manner of owning real estate property are the “low-cost houses”, commonly known as “DFL 2”, which in general terms are those housing constructions with a built area no greater than 140 square meters. The main tax benefits associated with this kind of properties are, among others, the following:

- (i) they are exempted from land-ownership taxes;
- (ii) income derived from these properties is generally exempted from income taxes;
- (iii) capital gain obtained in the transfer of these properties is exempted from income taxes, if the transfer is performed pursuant to a leasing agreement; and
- (iv) the inheritance donation of these properties are exempted from inheritance and gift taxes, provided the property has been built was or acquired by the donor or decedent from the DFL 2's construction thereof.

In addition to the aforesaid benefits, dividends associated to mortgages employed to acquire low-cost houses may be deducted by the taxpayer from their individual taxable base.

Finally, individuals who have bought or built one or more housing constructions with loans guaranteed with mortgages, may deduct from their individual taxable income, subject to certain restrictions, the amount of the interests related to such loans. This same benefit applies to loans entered into by an individual to pay off another housing loan.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Note that Chile has no legislation on trusts as conceived and developed in common law countries.

Regarding the creation of real estate investment entities, as indicated in the previous question, the actual investment funds tax regime will expire in the year 2012.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Aside from registration and notaries fees, the transfer of real estate property is not levied with taxes, regardless of the taxes that would be applicable upon the transfer thereof, if any, as explained in Question 5 above.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

There are no specific taxes regarding the transfer of interests in entities which own real estate. The general rules on capital gains apply.

With respect to the transfer of an undivided share or quota of co-owned real estate property, the same rules described in Question 5 above apply.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Local regulation is a significant issue for any real estate development project.

The zoning, urbanization, construction permits, authorized uses and authorized usage rate per site, among others, are specified by local regulations in accordance with the regional and municipal master regulatory maps.

There is no variation of real estate law among political subdivisions of this jurisdiction. There is only one applicable real estate law in Chile.

About taxation, please note that land ownership is generally taxed with a land ownership tax (*impuesto territorial*), which is levied onto the property's fiscal value with rates that generally range from 0% to 1.2%, depending on the property's tax value. Note also that property cannot be transferred if this territorial tax has not been paid.

Land ownership taxes may be deducted as a credit from certain income taxes, provided certain conditions are complied with.

For more information regarding land ownership taxes, please refer to Question 5 above.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

There is obligation to disclose the ultimate beneficial owners of entities which own real estate.

On an ancillary matter, if the acquisition of a real estate involves a foreign investment performed under the Foreign Investment Statute of the Republic of Chile ("DL 600"), the Foreign Investment Committee --governmental agency in charge of foreign investments under DL 600-- is allowed to request information regarding the foreign investor, including, among others, the name of the ultimate beneficial owners of the investment.

In addition, if a transaction regarding a real estate is considered suspicious under the Money Laundering and Counter-Financing of Terrorism Act, the Financial Intelligence Unit --governmental agency in charge of the investigation of money laundering-- is allowed to request any information regarding the transaction, including, among others, the name of the ultimate beneficial owners of the investment.

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Issues In Ownership Of Real Estate

Colombia

Prepared by Lex Mundi member firm Brigard & Urrutia

1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Yes, perpetual fee simple ownership of real property is permitted. In fact, Colombian Constitution sets forth in its article 58 a constitutional right of private property by means of which the ownership right is guaranteed and protected as well as the other rights acquired in compliance with civil regulations. Therefore, according to Colombian Constitution the ownership right legally acquired cannot be affected by posterior laws.

Nevertheless, Colombian Constitution has recognized that private property has a social function which implies several obligations by owners. In that sense, the law has developed certain regulations pertaining to the protection of public interest.

Consequently, Colombian law sets forth that the owner of property has the right to use it without limitation. Nevertheless, property rights are subject to the law and to the public interest (Civil Code, Art. 669).

Finally, in Colombia the ownership right over a real property may be owned by one or more individuals or legal entities or the combination of them.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

Colombian Civil Code establishes that, in order to be valid and legally binding, the purchase of a real estate will have to be granted by means of a public deed signed by the seller and the purchaser before a Notary Public.

In addition, Colombian Civil Code establishes as a requirement for the transfer of the ownership of a real estate, the registration of the relevant title (public deed) before the Office of Public Registry of the place where the real estate is located at (*tradición*).

In conclusion, the instrument used to convey fee simple ownership has to include a public deed granted before a Notary Public (title) and the registration of the title in the public registry.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

In Colombia there is a public registry conducted by the Office of Public Registry (*Oficina de Registro de Instrumentos Públicos*), a national public entity member of the Superintendence of Notary and Registry (*Superintendencia de Notariado y Registro*) whose function is to keep a record of all the real properties in Colombia. There is an Office of Public Registry in the major municipalities of the country and the real properties are identified with an I.D. number.

Every act, agreement, judicial or arbitrational decision, that imply constitution, declaration, clarification, adjudication, modification, limitation, encumbrances, precautionary measures,

transference or extinction of the ownership right or any other right over a real estate is subject to registration in the Office of Public Registry.

As a result of the above mentioned, the Office of Public Registry issues a certificate of each property that certifies the ownership, encumbrances and liens that affect the property. The certificate is public and the registry may be consulted by any individual.

Purchaser generally performs the search.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

Taking into account that there is a public registry in Colombia that certifies the ownership, encumbrances and liens that may affect the properties, is not customary to obtain title insurance.

In spite of, is common practice for purchasers to make contact with a lawyer in order to perform a title search and issue a title opinion before the purchase of the property.

The cost of a title opinion depends on the complexity and number of documents that it is necessary to review as part of the title search. However, a title opinion will cost no more than US\$1,000.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

The most common forms of investment vehicles are Corporations, Limited Liability Partnerships and Trusts.

Regarding taxation of this vehicle, it is worth mentioning that there are no substantial differences between them.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Yes, Colombia's legislation (Resolution 400 of 1995 and Decree 2175 of 2007) actually permits the creation of real estate investment trusts, and real estate securitizations. In fact Brigard & Urrutia Abogados S.A. was the law firm that legally structured the first and only real estate investment trust in Colombia in 2006. This real estate investment trust has issued two (2) great emissions and has the faculty to continue executing real estate activities.

The real estate investment trust has just recently been adopted by investors in Colombia and the market has very well received it. The Superintendence of Financial Services (*Superintendencia Financiera*) is in charge of the regulation and surveillance of the trust structure and several legal requirements has to be accomplished in order to obtain the permission to create a real estate investment trust.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

In order to acquire a real property in Colombia, it is compulsory to pay the following:

1. Notary Fee:

- 0.27 % of the value of the real estate (notary fee)
- Copies of the public deed.
- VAT of 16% over the notary fee plus copies.

2. Registry Tax:

- 1.0 % of the value of the real estate (*Beneficencia*).

3. Registry Fee:

- 0.5 % of the value of the real estate.

4. Withholding Tax:

- In the event where the seller is an individual, should pay 1% of the value of the real estate.
- In the event where the seller is a legal entity, the purchaser will have to withhold 1% of the value of the real estate at the moment of the payment.

5. Income Tax:

- If there is a profit for the seller resulting from a difference between the value of acquisition of the property and the value of the selling, the seller will have to pay the income tax taking in into account some adjustments that may apply if the seller is an individual or a legal entity.

In Colombia local authorities of the Departments and Municipalities are vested to determine the rates of local taxes according to the national law. Thus, the mentioned rates may vary according to the location of the real estate.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

In the event of a transfer of an interest (shares or participations) in an entity which owns real estate, income tax will have to be paid.

The capital gain obtained on the sale of shares in a Colombian company is subject to income tax in Colombia at a rate of 34% (33% as of year 2008), except if the seller is a Colombian individual in which case he or she will be subject to taxes based on a progressive income tax table.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

With respect to the local regulation of real estate and how significant is the variation of real estate law among political subdivisions in Colombia, it is worth mentioning that article 313-7 of Colombian Constitution, and Law 388 of 1997 provide that local governments have the power to issue urban regulations in order to control and determine the use of the land and construction activities among others. Local governments have autonomy in the making of zoning regulations. Thus, some aspects related to real estate may change according to the municipality where the property is located. In that regard, local regulation of real estate is significant. Even though municipalities have autonomy in real estate property regulations, the variation of real estate law among political subdivisions of this jurisdiction is not significant.

Regarding taxation of real estate, local governments have the possibility to define and determine the rates of the taxes to real properties by virtue of article 317 of Colombian Constitution. Thus, property tax may vary according to the location of the real property at rates that range from 0.1% to 1.6% of the real property value. In that regard, local taxation of real estate is significant.

Notwithstanding the above, it is important to point out that all local regulations have to comply with general rules and certain parameters established by national laws in order to guarantee coordination between local governments and national government.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No, it is not necessary to disclose the ultimate beneficial owner. For purposes of the public registry, the Office of Public Registry is obliged to register the purchaser that appears in the public deed of transfer.

Consequently, it is possible to register a corporation as the owner of the real property and its beneficiaries will remain unknown to third parties.

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Issues In Ownership Of Real Estate

Cyprus

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

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Perpetual fee simple absolute property ownership is the norm in Cyprus.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Transfer of real estate is affected formally before the local Land Registry Office, in the presence of both parties or their duly authorised representatives.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Details of property may be obtained by conducting a search in the land register. Only the registered owner or anyone having a pending legal action or court decision against the owner, is entitled to conduct the search, either personally or through a duly authorised attorney.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

The presentation of the title deed, which is an extract from the land registry records, is normally considered sufficient evidence of title, and title insurance or title opinions are not issued as a matter of practice.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

A limited liability company by shares is the most common form of legal entity used.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Property of all descriptions can be settled into trust but trusts are not widely used for real estate investment. In the case international trusts, as the term is defined in the relevant law, the trust fund must not include any immovable property within the Republic. No other pertinent legislation is envisaged at present.

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

Sellers are subject to capital gains tax calculated at 20% on the gain realised upon the disposal of immovable property or upon disposal of shares in a company holding immovable property, after deduction of proven improvement expenses and adjustment for inflation. Natural persons are entitled to a one-off tax deduction of EURO 17,086, while those who have utilised 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. The seller must also provide updated tax clearances evidencing the settlement of any municipal property (see 9 below) and utilities taxes, prior to transfer.

Government stamp duty is payable by the buyer on the value of the contract and is calculated at 1.5 *per thousand* for amounts up to EURO 170 860 and 2 *per thousand* for amounts in excess.

Government transfer fees are payable to the land registry by the buyer at the time of transfer, calculated on a graduated scale on the value of the property, 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. The sale price stated by the parties is not binding on the land registry, which will conduct its own current market evaluation of the property and, if it is more than the amount stated, will calculate the fees accordingly.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

The same as above however, there is no one-off capital gains tax relief for legal entities.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

There is no differentiation on a local level, as regards municipal property tax. Municipal property tax is calculated at 8 *per thousand* annually upon the value of the property, as registered or recorded in the Land Registry books, based on the value of the property as at 1st January 1980. Public utilities taxes can however vary considerably between different municipalities.

In addition, government real estate tax is levied, collected and paid annually on all immovable property in the Republic. It is assessed upon the value of the property in the Land Registry books as at 1st January 1980, or in the absence of the above, upon the value of such property as determined by the Director of Lands and Surveys. At present, the relevant rates are as follows:

for properties valued up to EURO 170,860	NIL
from EURO 170,861 to 427,150	2.5%
from EURO 427,151 to 854,300	3.5%
EURO 854,301 and above	4%

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No. However, non-EU citizens who are ultimate beneficial owners of legal entities are subject to limitations on immovable property ownership in accordance with the law on the Acquisition of Immovable Property by Aliens, Cap. 109. Their names must be disclosed, otherwise the registration of the property in the name of such entities could be deemed illegal and may be cancelled.

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Issues In Ownership Of Real Estate

Denmark

Prepared by Lex Mundi member firm Kromann Reumert

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

In Denmark, real estate is typically purchased by a purchase agreement, followed by a deed of transfer, which is entered into the Danish land register.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

In Denmark, the ownership of real property is recorded in the land register, where all Danish properties are registered. The land register - which is open to the public - shows the identity of the registered owner.

The land register is fully computerized, and most attorneys and real estate agents are able to obtain online information from the register.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

In Denmark, there are no forms of assurances of ownership to purchasers of real property. However, the land register serves an important function in terms of securing the purchaser's title to the real property. Once the formal transfer document (the deed of transfer) has been registered for the real property, third parties - both other purchasers and creditors of the seller - will have to respect the purchaser's title to the real property.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

The most common forms of investment vehicles in Denmark are:

- Direct investment.
- Ownership by a limited liability company.
- Ownership by a limited partnership.

The preferred ownership structure depends on various aspects and should be determined on a case by case basis. Some of the aspects which should be taken into consideration by foreign investors are described below.

In Denmark, persons or companies resident outside Denmark are not subject to limited tax liability on capital gains from shares. If for instance, the real property is owned by a Danish limited liability company the foreign owner(s) of the company will not be taxed on any capital gains on the shares, if

they are not subject to full tax liability in Denmark and if the shares cannot be allocated to a Danish permanent establishment. Further, no stamp duty or sales tax applies to the transfer of shares.

However, deductions of interests paid by Danish companies etc. may be limited according to Danish thin capitalization rules which mean that a direct investment or investment through a partnership or another tax transparent entity might be preferable. Further, a 30% withholding tax applies to interest payments made between controlled companies, but due to a number of exceptions the withholding tax generally only applies to interest payments to affiliated companies in low tax countries. A 28 % withholding tax also applies to dividends distributed to certain persons and companies. Therefore, in order to avoid such limitations and withholding taxes a direct investment or investment through a tax transparent entity might be preferable. In such case a limited tax liability will apply with respect to any income and gains relating to the real in property.

In Denmark it is also possible to invest in bonds or other securities issued by property companies.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Denmark has not adopted - and is not considering - legislation permitting the creation of real estate investment trusts or similar entities. However, the Danish Federation of Danish Investment Associations ("Investerings Foreningsrådet") has a dialogue concerning REITs with the Ministry of Economic and Business Affairs.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

The rate of stamp duty on registration of ownership of real estate is 0.6 % of the purchase price + DKK 1,400 (USD 1 = approx. DKK 5.18). This tax is either paid in full by the buyer or split between the seller and the buyer.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

In Denmark, no such taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Real estate owners have to pay local taxes on the property value of their land. Depending on the local authorities, the tax rate is between 1.6 and 3.4%. In addition, a maximum tax of 1% of the value of the buildings may be charged locally on some types of commercial properties (the difference between the public land assessment value and the land value).

Homeowners are liable to pay a tax on the value of their houses. The tax rate is 1%. However, the tax rate is 3% of the part of the value that exceeds a limit of DKK 3,040,000 (USD 1 = DKK 5.18).

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

Ultimate beneficial owners of entities which own real estate must not be disclosed as a matter of public record.

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Issues In Ownership Of Real Estate

Dominican Republic

Prepared by Lex Mundi member firm Pellerano & Herrera

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, perpetual fee simple ownership of real property is permitted. Nevertheless, depending on the kind of status of real property, such as family property or the agrarian property, or depending on several facts, such as the inheritance reservation or zoning dispositions, among others, there might be restrictions on the disposition and the use of said properties.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

To convey fee simple ownership persons may subscribe a purchase agreement, an exchange agreement, a donation act or a shares sale agreement.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

The ownership of real property is recorded in the Registry of Titles of the jurisdiction of the location of the real property. This is the institution where the search is performed as well, generally performed by potential buyers, financing institutions and any other interested party.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

The new Real Estate Registry Law provides that in the moment of the registry of the real estate rights, the interested party must pay a contribution to the Guarantee Fund held by the Supreme Court of Justice in order to ensure the payment of an indemnity to any owner that results prejudiced without any fault committed by him, because of the application of the law. However, this guarantee, even though previously provided as well in the former Real Estate Law, has never been implemented. This is why mostly foreign purchasers interested in benefiting from Title Insurance coverage hire the services of private companies with the payment of a fee.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

Local and offshore corporations are the most common forms of investment vehicles. Limited liabilities partnerships are the most common entities employed to own investment real estate in a tax efficient manner.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Our Civil Law system does not allow the creation of real estate investment trusts or similar entities, since it does not allow the division of the estate owned by an entity.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Buyers of real estate properties are subject to the payment of a 3% tax on the purchase price or the appraisal of the property performed by the Government, whichever is the higher amount.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

On the occasion of the transfer of movable goods, as shares, sellers are subject to the payment of the 2% tax on the nominal value of the shares, if shares are acquired by individuals. If shares are acquired by corporations, sellers are not subject to such obligation.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Besides what it has been stated in our answers to questions 7 and 8, it is important to know that, real estate properties owned by individuals with an appraisal of more than RD\$5,000,000, are subject to the payment of 1% of the property value, with some exceptions, as rural properties dedicated to agriculture, or properties owned by senior citizens being more than 65 years old. Corporations are subject to the payment of a 1% tax on their assets, including their real estate properties, payment that may be deducted in the end of the year from the Income Tax payment. Municipalities' city halls may impose non-material or rather low local taxes on the use of properties.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No, ultimate beneficial owners of entities which own real estate are not subject to be disclosed as a matter of public record.

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Issues In Ownership Of Real Estate

Estonia

Prepared by Lex Mundi member firm LAWIN

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in Estonia.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

According to Article 64¹ of the Law of Property Act for the transfer of immovable property ownership a notarised agreement between the entitled person and the other party (a real right contract) is required and a corresponding entry shall be made in the land register.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Estonia has a system of a strong land register. The land register is a register of real rights in immovable property. The system of the land register ensures the legal certainty of immovable property ownership and hedges risks of immovable property transactions because:

- the real rights related to a registered immovable are made public through the land register and nobody can be excused of nescience of the data of the land register;
- real rights in immovable property are created, amended or extinguished by making a respective entry in the land register and they can be relied on upon making transactions;
- entries regarding a registered immovable are made in the order of registering applications in the land registry journal;
- the rights entered in the land register can be amended only on the basis of the application or consent of the owner of the right or through judicial proceedings.
Registered immovables shall be plots of land, apartment ownerships and rights of superficies (incl. rights of superficies in apartment ownerships). Ownership relations and limited real rights established on the registered immovable for the benefit of third persons shall be entered in the land register in respect of an immovable:

- rights connected with securities: mortgages and real encumbrances;
- rights of use: rights of superficies, real servitudes and personal servitudes (usufruct and personal right of use);
- rights connected with acquisition: preemption right.
The land register is composed of register parts, a land registry journal and a land registry file:
- for each immovable a separate register part which sets out entries regarding that immovable shall be opened. Real rights in immovable property are created, amended and extinguished by making an entry;
- the land registry journal shall set out the applications submitted to the land registry department by which an entry in the land register is requested to be made;
- the land registry file shall hold the documents submitted on the immovable.

The register parts of the land register are public. Anyone may access them in the land registry department of the court and order transcripts of them. Upon entering into a notarised immovable property transaction the notary public shall verify the status of the land register. Today the register parts are still on paper. The Centre of Registers of the Ministry of Justice maintains a

central database of the land register where the data concerning register parts is electronic. This can be used through the Internet for a charge but this does not have a legal effect yet.

A land registry file may be examined in the land registry department of the court by a competent official or a private person with a legitimate interest in the matter.

The land register maintained in courts is a legal register – making entries in the register creates, amends or extinguishes real rights.

The land cadastre maintained in the Land Board is a technical register – it reflects the data regarding land surveying, the natural status, value and actual use of land. Cadastral reference data is also presented in the form of cadastral maps.

Both registers exchange data. The land register also contains cadastral reference data – area, address, intended purpose of land, etc. In the land register such data has only an informative meaning. If the cadastral data changes, relevant corrections shall be made in the land register on the basis of a notice of the Land Board.

So there are a number of opportunities to use the data of the land register:

- one may access documents in the land registry department of a court;
- one may order copies from the land registry department of a court;
- upon certification of an immovable property transaction the notary verifies the data of the land register and the marital property register;
- partial access to the data is available via the homepage of the Centre of Registers.

The transition to the fully electronic land register takes place by register parts. The register part where a respective mark is electronically visible has obtained legal force. If there is no such mark, the paper register part has legal force and electronic data has a merely informative meaning. The computerised data of the land register is available free of charge via the computer network to administrative and judicial agencies for performing the functions placed on them by law. Others can use the data for a service fee.

The electronic query system is connected with the query system of the commercial register. A subscriber contract must be entered into with the Centre of Registers for obtaining the right to inquire. The service fee is the monthly subscription fee of EEK 150 (which covers both the subscription fee of the land register and the commercial register) and the fee for specific inquiries (based on the amount of data, EEK 10-30 for the data regarding one registered immovable). The computerised data can be additionally processed based on the client's request.

A service fee for an inquiry where only an invoice is issued as an output will be charged on the basis of the machine-hour rate. The received service fee is used for the administration and development of the inquiry system.

The land register data can also be received by calling the paid number of the Centre of Registers and Infosystems **0900 1212** (12 EEK/min.). The information service is available from Monday to Thursday from 9:00 a.m. to 4:30 p.m. and on Friday from 9:00 a.m. to 4:00 p.m.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

Insurance service providers in Estonia are registered insurance companies and their branches, which are under supervision of the Financial Supervision Authority. The most usual class of property insurance is home and home asset insurance. What, to which extent and against what risks to insure, it is agreed upon in

insurance contract concluded between policy holder and insurance company. Directly it is possible to conclude insurance contract in a bureau of insurance company or in the internet. Generally home and home asset insurance is optional. It means that obligation to conclude an insurance contract is not derived from the law and the main presumption for conclusion of such contract is insurable interest.

The Estonian Insurance Association unites insurance companies operating in Estonia. The association was founded on February 15, 1993.

The objectives of the organisation are to represent the general interests of its member companies in the development of the insurance sector as well as in the social and economic environments.

Non-life insurance companies:

- ERGO Kindlustuse AS
- AS Inges Kindlustus
- QBE Kindlustuse Eesti AS
- Salva Kindlustuse AS
- AS If Eesti Kindlustus
- Seesam Rahvusvaheline Kindlustuse AS
- Eesti Liikluskindlustuse Fond
- Hansa Varakindlustus AS

Estonian Insurance Association is member of Comité Européen des Assurances (CEA) and member of Estonian Employers' Confederation.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

– **Investment Fund**

An investment fund means a pool of assets established for collective investment or a public limited company founded for collective investment, which is or the assets whereof are managed, accordingly, on the principle of risk-spreading by a management company. A respective activity license is required for management of investment funds. The activity license is issued and revoked by a decision of the Supervisory Authority.

The following types of investment funds can be founded in Estonia:

- a contractual investment fund;
- an investment fund founded as a public limited company;
- a mandatory pension fund;
- a voluntary pension fund.

– **Risk and Accident Insurance**

If a company operates in a field where the likelihood of death or injury of employees due to an accident is relatively high (e.g. construction, fishing, forestry), the company should conclude a risk life insurance contract. On the one hand, this insurance policy helps to compensate for possible claims brought against the company (civil law action in case of an occupational accident) and on the other hand, it provides the family of employees with a feeling of security.

– **Time Deposits**

For companies, investment of money in an ordinary term deposit is the simplest solution. For a period of three months, you can deposit a minimum of EEK 3,000, for one month, a minimum of EEK 30,000 and for two days, a minimum of EEK 100,000.

A **savings deposit**, where you can deposit money on a regular basis or make one-time payments, according to the dynamics of the cash flow of your company, is good for saving starting capital for a major investment or project. Moreover, upon incurring unexpected expenses you can use the deposited funds to the extent of 90% on a short-term basis without terminating the deposit. To open a savings deposit you need no more than EEK 100. You can open a savings deposit for 6, 9 or 12 months.

You can open a term deposit in Estonian kroons as well as foreign currencies. In addition to Estonian kroons, the savings deposit can be opened in euros or US dollars.

Interest on an ordinary term deposit is paid on a monthly basis or upon expiry of the deposit term, depending on the customer's preference. Interest is paid on the savings deposit on a monthly basis and clients can have the interest transferred to their current account or added to the deposit.

Companies can earn more on their available assets compared to current accounts. While upon investing in funds it is impossible to precisely forecast the income earned, both term and savings deposit offer a guaranteed rate of return.

– **Bonds**

Bonds and commercial papers are suitable for investors interested in liquidity. Compared to deposits, where the funds are not available for a certain period, commercial papers and bonds are usually in high demand on the market and can be sold before maturity at the time suitable for investors. In general, bonds provide higher yield than deposits of the same period. Estonia has the most liquid short-term bond market in the Baltics. If companies are not interested in taking risks in the local market or if their revenues are mostly in euros or US dollars, they can purchase bonds traded in international markets.

– **Issues of Securities**

Offering of securities is any offer for acquisition of securities, including an invitation to make a bid, issue and offering of securities, under the terms whereof the offered securities are issued or conveyed to the investor by a third person.

Every offering of securities is public, except if the securities are offered only:

1. to professional investors or
2. to not more than 50 persons who have been identified by names in advance or
3. at the total price of up to 40,000 Euros per one offering as of the day of passing the decision on the issue or offering of securities or
4. for acquisition of single securities or a set of securities for at least 40,000 Euros per each investor as of the day of passing the decision on the issue or offering of securities.

An issue of securities is a set of securities issued on the basis of a single decision of an issuer. Securities issued in a series are deemed to constitute one issue.

The person organising the offering of the issuer's securities (underwriter) shall publicise a respective prospectus in relation to a public offering of securities in Estonia (hereinafter: the prospectus), which shall be registered with the Financial Supervisory Authority (hereinafter: the Supervisory Authority) before publication and announcement of the offering.

A foreign investor can conduct his business operations in Estonia through a branch or a subsidiary. Because a branch is not considered to be a legal person, a foreign company is liable for the obligations of its branch.

The following types of business entities can be formed under the national law of Estonia:

1. a sole proprietor,
2. a general partnership,
3. a limited partnership,
4. a private limited company,
5. a public limited company,
6. a commercial association.

The most popular forms of companies in Estonia are the private limited company and the private limited company.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

There is a Trust Law adopted on 14 April 2004.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

There are no stamp or transfer taxes imposed on purchase/sale of real property in Estonia.

Further instructions have been drafted in order to explain taxation of gains derived from transfer of properties of non-residents in Estonia with income tax.

Non-residents (natural and legal persons) are taxed on Estonian-source income only.

Pursuant to § 29(4) of the Estonian Income Tax Act, income tax is charged on gains derived by a non-resident from transfer of property if:

- the sold or exchanged immovable is located in Estonia;
- the transferred real right or the right of claim is related to an immovable or a structure as a movable, which is located in Estonia;
- the transferred holding is a holding of a person who at the time of transfer owned at least 10 per cent in a company, investment fund or pool of assets of whose property, at the time of transfer or during certain period within two years immediately preceding the transfer, more than 50 per cent was directly or indirectly made up of immovables or structures as movables, which are located in Estonia.

The gains or loss derived from the sale of property is the difference between the acquisition cost and the selling price of the sold property.

Land Tax is levied on the taxable value of all land (other than that, which is specifically exempt) based on an official valuation. The owners of the land are liable to land tax. The annual land tax rate varies between 0.1% and 2.5% of the assessed value of the land. The council of the local authority is authorized to establish the rate of land tax. Land tax is paid to the local government in increments of at least one thirds of the total sum thrice a year: by April 15th, June 15th October 15th.

Value added tax shall generally not be imposed on the supply of immovables.

Tax exemption is not applied:

- to an immovable if an essential part thereof is a construction works or a part of a construction works which is to be transferred prior to the commencement of use of the construction works;
- to an immovable if an essential part thereof is a construction works which has been significantly improved, or a part of such construction works which is to be transferred prior to the post-improvement resumption of use of the construction works or the part thereof,
- to a lot within the meaning of the Planning Act if the lot does not contain any construction works.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

There are no stamp or transfer taxes imposed on purchase/sale of real property in Estonia.

See prior answer for additional information.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

In Estonia political subdivision makes no difference in case of taxation because local authorities are not in charge of imposing aforementioned taxes.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

Yes.

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Issues In Ownership Of Real Estate

Finland

Prepared by Lex Mundi Roschier Attorneys Ltd.

1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Yes, perpetual fee simple property ownership is permitted in Finland.

In addition, a significant part of real estates are owned / possessed through (i) real estate companies ("REC") and (ii) mutual real estate companies ("MREC")

REC is a limited liability holding company, the assets of which comprise mainly (i) freehold or leasehold of land plot and (ii) one or several buildings located on the land plot. The respective rental income shall be paid to the REC in its capacity as a landlord.

MREC is also a limited liability company, the assets of which comprise mainly of (i) freehold or leasehold of land plot and (ii) one or several buildings located on the land plot. A noteworthy detail is that, despite the fact that MREC owns the building(s), MREC's shareholders have a direct control of the building(s); MREC's shares entitle the respective shareholder to possess a *specific* part of the building(s), as set forth in the MREC's articles of association. Accordingly, the shareholders are entitled to lease the premises controlled by them and consequently, the respective rental income shall be paid directly to the shareholders in their capacity as landlords. The said does not, however, prevent MRECs from also having direct control over some specific premises, e.g. hallways and other premises generally designated for common use.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

A sale of fee simple ownership of a real property has to be concluded in accordance with mandatory provisions set forth in the Finnish Code of Real Estate (the "Code"), i.e. the transfer deed shall be made in writing, it shall indicate the intent to convey, the real estate to be conveyed, the seller and the buyer and the transfer price and/or other consideration. Finally, the deed must be notarized.

Transfer of ownership of a register unit of land, a share of a register unit or a parcel thereof obliges the new owner to register its ownership with the Land Register. According to the Code, a registration of title shall be applied for within six months of the drawing up of the deed of conveyance.

Conveyance of ownership of shares in an REC/MREC is primarily regulated by the Sale of Goods Act and is further not subject to said mandatory transfer deed provisions. Save for the notarization, the transfer deed, nevertheless, generally follows the same substance format as with conveyance of fee simple ownership. When shares in REC or MREC are conveyed, no registration of title of real estate needs to be done because the REC or the MREC remains as the owner of the real estate.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

The ownership of real property is recorded through a registration of title with the Finnish Land Register. Also certain leaseholds are registered. The District Court in whose jurisdiction the real estate is located is the competent register authority. The Land Register is public and anyone can

have access to it and perform a search. The search can be done either with the respective District Court or by using an online database.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

An extract from the Land Register indicating the holder of the title can be obtained from the District Court or online for a minor fee.

The Land Register and *i.a.* the extracts of title obtained therefrom are subject to “public reliability”. Consequently, individuals who have suffered a loss of a right in reliance upon information contained in the Land Register may, under certain circumstances, have a right to compensation from the state (in its capacity of the administration of the Land Register), regardless of whether the state has acted negligently or not. The state is also strictly liable for damages caused by erroneous register entries.

No title insurances are generally used in Finland.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

A majority of real estate investment is carried out through REC/MREC structures. A commonly used investment structure includes one-two REC/MREC holding structures ultimately owned by an entity domiciled in a tax favorable jurisdiction, e.g. Luxembourg.

Another, yet rather scarcely used structure is a limited partnership in connection with real estate investments.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

A motion is pending in the parliament regarding real estate investment trusts (REITs). Thus it is premature to predict the outcome and the effects of the prospective legislation.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

A transfer tax of 4 % of the purchase price is levied on the transferee.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

A transfer tax of 1.6 % of the purchase price (not the aggregate transaction value) is imposed on a transfer of shares in a REC/MREC.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Not significant. The legislation regulating real estates is nationwide and there is a nationwide tax rate for capital gains and rental incomes. However, property tax rates vary in different municipalities between 0.5% and 1.0 % of the tax value of a real estate.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No, but the share and shareholder's register of a REC/MREC is in principle public and attainable from the respective REC/MREC.

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Issues In Ownership Of Real Estate

Greece

Prepared by Lex Mundi member firm Zepos & Yannopoulos

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Although the notion of fee simple ownership does not exist in Greek law, since it is a common law concept, a similar type of property, i.e. full ownership, exists in Greek jurisdiction.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Ownership confers to the beneficiary the absolute right to dispose the asset at will provided that he/she does not infringe the law or the rights of third parties or thereby exclude any action by another. Ownership may be acquired in a variety of ways. In practice, though, it is usually acquired by inheritance or a transfer from a previous owner, which necessitates the conclusion of a transfer of ownership Notarial Deed. The agreement to transfer may result from either a sale of the property or by virtue of a donation, parental gift or other means of transfer and is vested with the form of a Notarial Deed. It must be noted that a prerequisite for the conclusion of a sale and purchase agreement is the payment of the relevant tax by the buyer prior to the execution of the notarial deed.

It should be noted that real estate assets may also be acquired by other means, mainly by “adversary possession”. In particular, a person may become owner of a real estate asset provided that: (i) he/she has in his/her possession said property for a time period of ten (10) years in good faith, by virtue of a lawful title and by acting as lawful owner (ordinary adversary possession), or (ii) he/she has in his/her possession said real estate assets for a time period of twenty (20) years.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

According to the Greek Civil Code, any instrument evidencing the transfer/acquisition of ownership must be registered with the competent Land Registry or Cadastre Office (in case a Cadastre has been fully implemented at the territory where the asset is located), in order to become valid, otherwise it is deemed as non-effective. Registration consists of the filing of a summary of such instrument with the Land Registry/Cadastre. Such registration entails payment of the relevant fees, which are calculated on the basis of the price on the Notarial Deed.

Before acquiring land, the prospective purchaser must conduct a search at the Land Registry and/or the Cadastre Office of the place where the asset is located in order to ascertain whether the titles are in good order and whether there exist or not any encumbrances over such property. Review of the relevant books on ownership, easements, mortgages, etc., may be conducted either by the interested party together with a lawyer or by a lawyer alone. The review usually of the titles in Greece expands for a time period of at least 20 years. Following filing of a relevant application, the Land Registry/Cadastre issue property certificates evidencing the ownership status of specified real estate assets.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

The assurances of purchasers are the title certificates from the Land Registry/Cadastre combined with title reports from the lawyers that performed the search, if requested. There is no specific cost. Titles insurance does not exist as such in Greece but is now under development.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

A Greek limited by shares company (*Anonimi Eteria*) or Greek limited liability company (*Eteria Periorismenis Eythinis*) are the most common forms of entities used.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Greece adopted in 1999 legislation permitting the creation of Real Estate Investment Companies (REICs) and Real Estate Mutual Funds.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

VAT at 19% in case of acquisition of buildings (and of the part of land on which they are erected) that have been erected on a basis of building permit that was issued following January 1st, 2006 and have never been occupied or used in the past (first occupation concept). VAT burdens the purchaser.

Real estate transfer tax (varying from 7% to 11%) in case of any acquisition of real estate property that is not subject to VAT, such as acquisition of (i) land, or (ii) buildings, whose building permit has been issued prior to January 1st, 2006. The real estate transfer tax is imposed on the objective value of the real estate property (i.e. a value computed on a basis of a specific formula issued by the Ministry of Finance) or the transfer value agreed, whichever is higher, and it burdens the purchaser.

Real estate transaction duty in case of any subsequent sale of real estate property that has been purchased following January 1st, 2006. The real estate transaction duty is imposed at the rate of 1% on the real estate's objective value or the transfer value agreed, whichever is higher, and it burdens the purchaser.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

The transfer of interests in a company owning immovable property is subject to income taxation rather than transfer, stamp tax or other similar tax.

More specifically, the transfer of shares not listed in a Stock Exchange is subject to a 5% transfer tax (which is deemed to constitute an income tax even though the justifying reason of imposing such tax is the transfer as such, irrespective of the realization of a capital gain). Such tax is computed on the higher between a minimum transfer value designated on the basis of a specific formula set forth in the Greek Income Tax Code and the transfer value agreed. The 5% tax exhausts the tax liability of non-Greek tax resident sellers, whereas it is offset against the income tax liability of Greek tax residents corporate sellers. The transfer of parts in Greek limited liability company is subject to a 20% tax on the gain realized from such sale. As discussed above, the payment of such tax exhausts the tax liability of non-Greek tax resident sellers, whereas it is offset against the income tax liability of Greek tax residents corporate sellers. Both taxes mentioned above are borne by the seller and are paid to the Greek State prior to the execution of the share/parts purchase agreement.

Foreign sellers residents of countries that have signed a treaty with Greece for the avoidance of double taxation may be exempt from the above mentioned taxes on the basis of the provisions of the respective treaties.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among of this jurisdiction?

There are neither political subdivisions in Greece nor special tax regulations governing different areas.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No. However for tax purposes, companies owning Greek real estate may opt to disclose their ultimate beneficial owners for the purpose of being exempt from the 3% special real estate tax.

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Issues In Ownership Of Real Estate

Iceland

Prepared by Lex Mundi member firm LOGOS Legal Services

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple or absolute property ownership is permitted and is the principal form of ownership in Iceland.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A purchaser under a real estate purchase agreement which has been duly filed in the Real Estate Register has the formal title of the real estate according to Act no 39/1978 on Official Registration. However, he does not have absolute property ownership until a deed has been issued by the seller. When the purchaser has fulfilled his duties pursuant to the purchase agreement the seller is obliged to deliver the deed to the purchaser.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Every District Commissioner in Iceland maintains a Real Estate Register where information about the real estate and its current owner is registered as well as information about mortgages etc. This information is regularly sent to the Land Register, a centralized, state-owned database. For a relatively small amount of money, detailed information about the property, its registered owner, mortgages etc. is accessible either directly from the District Commissioner or from the Land Register.

The Land Register is fully computerised, and most attorneys and real estate agents are able to obtain online information from the register.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

In Iceland, there are no forms of assurances of ownership to purchasers of real property. However, the District Commissioners and the Real Estate Register serve an important function in terms of securing the purchaser's title to the real property. Once the formal transfer document has been registered for the real property, third parties - both other purchasers and creditors of the seller - will have to respect the purchaser's title to the real property. The District Commissioners offices issue at request title and mortgage certificates to any interested party. No other title or lien search is necessary or available to ascertain the title and status of liens and mortgages over a registered real estate. If anyone suffers a loss or damage that can be traced to the District Commissioner's fault relating to the registration, the District Commissioner is liable for the claimant's damages with certain limitations stipulated in Act no 39/1978 on Official Registration.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

The most common forms of investment vehicles in Iceland are direct investment, ownership by a public or private limited liability company (18% general tax rate on net profit). Structures may vary for different projects.

For smaller investments a direct investment by individuals would be most efficient (10% tax rate on net profit for qualifying individuals).

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

No, there is no specific REIT statute in Iceland and we are not aware of any discussion on a legislation permitting the creation of REITs.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

A stamp duty of 0.4% of the total real-estate valuation is levied at the filing of the purchase agreement. If for any reason the purchase agreement is not filed, the stamp duty would be levied at the filing of the bill of sale. This stamp duty is usually borne by the buyer. Official registration fees apply on purchase agreements, bills of sale, mortgage deeds etc. The amount of the fee on each registered document is 1.350 ISK (1 ISK = 0.01496 USD as of January 23, 2008).

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

No such taxes are levied on sellers or buyers upon the transfer of interests in entities which own real estate in Iceland.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Real estate owners have to pay real property tax annually to local authorities based on the real estate valuation. Depending on the local authorities, the tax rate is up to 0,5% on residential buildings etc. and up to 1.32% on other buildings for industrial- clerical- and commercial purposes etc.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

Ireland

Prepared by Lex Mundi member firm Arthur Cox

1. **Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, it is permitted.

2. **What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Conveyances and assignments for property registered under the Registry of Deeds system. Transfers for properties registered under the Land Registry system.

3. **How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Two systems of records: Registry of Deeds and Land Registry. Professional firms of law searchers can carry out searches, although the registers are publicly accessible.

4. **What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance can be obtained; costs vary and are a matter of negotiation with the relevant insurer. However, this facility is not widely utilised in this jurisdiction.

5. **What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

Tax efficient ownership depends on individual circumstances. Corporates, partnership, co-ownership syndicates are all utilized depending on circumstances.

6. **Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Nothing pending.

7. **What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

Stamp duty, value added tax, capital gains tax and capital acquisitions tax. Depending on circumstances, some or all of the foregoing taxes will apply.

8. **What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?**

Stamp duty, value added tax, capital gains tax and capital acquisitions tax. Depending on circumstances, some or all of the foregoing taxes will apply.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Taxation of real estate is a major source of State income. There is no variation of real estate law among political subdivisions in this jurisdiction.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

Registration in Land Registry is obligatory in some circumstances. Registration in the Registry of Deeds is a matter of choice. There is no strict obligation to disclose the ultimate beneficial owner. Use of trust arrangements is not uncommon.

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Issues In Ownership Of Real Estate

Jamaica

Prepared by Lex Mundi member firm Myers Fletcher & Gordon

1. **Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted and indeed is the main form of property ownership in Jamaica. Two different systems of land ownership and conveyancing are used in Jamaica – the common law system and the State Registration of Titles system.

2. **What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Under the registration of titles system an Instrument of Transfer is used to convey ownership of real estate under the Registration of Titles Act. Under the common law system, a Deed of Conveyance is used to convey ownership to a purchaser and what is conveyed is an equitable interest in land.

3. **How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

The Common Law System

This system is governed by the Record Office Act, the Record of Deeds, Wills and Letter Patent Act and the Conveyancing Act. A Deed of Conveyance is recorded at the Island's Record Office, and must be so recorded within three months of its execution, otherwise it will be void and of no effect against all other bonafide purchasers for valuable consideration who shall duly prove and record their deeds within the time prescribed by the Act from the dates of their respective deeds. The Deed of Conveyance must also be signed sealed and delivered. If this is not done it will not pass title to a purchaser.

All persons interested in making searches in the Record Office can and shall be at liberty to search and examine the Public Records, and the registers and the indices in the office, and to take abstracts or other short notes of any matters in them, and to inspect in the presence of some person belonging to the office any original registered deed or writing to which reference is obtained in such searches. However a prudent purchaser must satisfy himself by an exhaustive scrutiny of all deeds wills and other documents by which the property has been devised or mortgaged over a lengthy period of time. It is therefore advised that this search be conducted by an attorney-at-law.

The State Registration of Titles System

The system of registered conveyancing is used to record ownership of registered land in Jamaica. No transaction is effective until it has been entered on the official record kept by the Registrar of Titles. The essential feature of this system is that in the absence of fraud, no person contracting or dealing with any registered land shall be bound to enquire into the circumstances in which the proprietor or any previous owner was registered. Nor is such person to be affected by notice, actual or implied, except where a caveat is lodged.

The purpose of the registration of titles system is to allow for registration of legal interests only. Equitable interests cannot be registered, but they may be protected by lodging a caveat.

Three principles exist under the system of land registration:

1. The Mirror Principle – which involves the proposition that the register book of titles is a mirror that reflects accurately and completely and beyond all arguments the current facts peculiar to a persons proprietorship.
2. The Curtain Principle – which involves the proposition that the register is the sole source of information regarding proprietorship trusts and equities and anyone searching the title need not concern themselves with interests that lie behind this curtain.
3. The Insurance Principle – If, through human error, anyone suffers consequential loss, he must be put in the same position as far as money can do it as he would have been had the reflection been a true one.

The most common method of searching ownership of real property under this system is to conduct a title search. Persons dealing with an owner of registered title should conduct a title search at the Land Titles Division of the National Land Agency to verify the ownership of the title and any encumbrances and as such protects against improper dealing before completion of any sale or loan.

A title search may be conducted by anyone but is normally conducted by an attorney or the attorney's titles office clerk.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

The State guarantees title under the Registration of Titles Act. This is not so when dealing with the common law system of recording as this system merely records an instrument for what it is worth.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

The most common forms of entities used are local limited liability companies incorporated under the Companies Act 2004 and overseas companies registered under the Companies Act.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

There is no specific REIT statute in Jamaica although it is possible to have a private REIT, (i.e. shares not offered publicly, with fewer than 20 members etc.) but that would not really achieve the purpose of REITs, and you still would have the tax hurdles as there are no special tax exemptions available to REITs and no such legislation has been proposed.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

In Jamaica the Stamp Duty Act and the Transfer Tax Act deal with duties levied on sellers and buyers upon direct transfer of real estate.

The Stamp Duty Act provides for the imposition of an ad valorem charge on documents including agreements for sale of land and instruments transferring rights over land. It also contains provisions dealing with exemptions from paying this duty. Stamp duty is payable on the consideration expressed in the agreement or instrument.

Stamp Duty ranges from nominal fixed fees on simple agreements to a maximum of 5.5% of the stated consideration for conveyances of real property. It is common practice for this amount to be agreed to be split between the purchaser and the vendor of real estate.

Transfer Tax is a capital gains tax. Transfer Tax is payable on the market value of the property by the Vendor or Transferor and applies to transfers by way of sale, gifts, exchange, surrender, lease, release, order of the court , and compulsory acquisitions. The transfer Tax Act also contains

provisions dealing with exemptions, reliefs, and refunds. Transfer tax of 7.5% is payable by the vendor/transferor on the fair market value of all land and beneficial interests in property transferred in Jamaica.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Stamp Duty of 1% and Transfer tax of 7.5% is payable on all transfers of shares in local companies, except listed companies. Stamp Duty is paid on the consideration paid for the shares and is usually shared by vendor and purchaser. Transfer tax is paid on the market value (regardless of stated consideration) and is to be paid by the vendor. The market value of the shares depends on the value of the company, which in turn is affected by the real estate that it may own. These taxes apply even where the company that owns the real estate is not a Jamaican company.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

There are no "local" regulations or taxes all are national. There are no political subdivisions in this jurisdiction and therefore no variations of real estate law.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

Kuwait

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

1. Is perpetual free simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

The right of perpetual free simple ownership of real property is confined to Kuwaitis. Arab and foreign countries are permitted to possess 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 in this regard. Further, any Arab citizen, holding the nationality of an Arab state, may acquire the ownership of only one estate in Kuwait 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.

Commercial companies wherein non-Kuwaiti partners participate are prohibited from acquisition of estates. However, the joint stock companies wherein non-Kuwaiti partners participate, and are not involved in the real estate investment, may acquire the estate required for the management thereof or for the achievement of its purposes, if a decree is issued, granting such right and provided certain conditions stipulated by the law shall be observed.

2. What instruments are used to convey free simple ownership, or other principal form of ownership, of real estate?

An Official Instrument is used to convey ownership of the real estate. The parties are required to execute the official instrument for transfer of ownership before a Notary Public at the Ministry of Justice.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

The seller and buyer or the authorized representatives of the buyer/seller may apply to the Ministry of Justice in the prescribed form in order to conduct a title search and the Ministry will issue an official report of the details of the real property within three to four working days from the date of the application.

In order to register the real estate, an application has to be presented to the real estate registration office, in the area where the estate is located. The application must be attached with the supporting documents thereto, including the title deed, a copy of the agreement between the buyer and seller as entered in the records of the intermediary (broker's book) or the affidavit signed by the buyer and the seller according to the form prepared by the Ministry of Justice if the deal is completed without an intermediary.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

The official instrument executed and authenticated before the Ministry of Justice is the official record proving the buyers right of ownership of the real estate. Any transactions including mortgage/pledge associated with the real property shall be recorded in the official instrument. Please refer to point 7 below for the details of the registration fees to be paid for obtaining the official instrument.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

There is no income tax or real estate tax for Kuwaiti companies or individuals in Kuwait. The most common forms of real estate investment vehicles are Limited Liability Companies and Shareholding Companies.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

There are many charitable trusts and Public Authorities that own and invest in real estate such as the Public Institution for Social Security formed by the Amiri Decree under Law No.61 of 1976, the Social Security Law.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Registration fees as prescribed under the law shall be imposed by the Real Estate Registration Department upon the buyer of the real estate. In case of sale of property together with all rights associated therein, the registration fee prescribed is ½% of the estate value. In case of sale of property without the usufructuary right in the property, the registration fee prescribed is ¼% of the estate value. In case of the sale of usufructuary right in the property, the registration fee prescribed is ¼% of the estate value. Certain exceptions are provided under the law with regard to registration of real estate held by charitable trusts.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

No taxes or charges are levied upon the seller or buyer upon the transfer of interests in entities which own real estate.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

There is no real estate taxation in Kuwait. Further, there are no political subdivisions in terms of real estate law in Kuwait.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

Latvia

Prepared by Lex Mundi member firm LAWIN

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Latvian law permits ownership of real property as the full rights of control over the property for indefinite duration.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Ownership is most often transferred on the basis of agreement. Any transfer of title shall be registered in the public Land Register. Until registration in the Land Register, the acquirer of real property does not have any rights against third parties. However, they have the right, not only to request compensation for all acts done in bad faith by the earlier owner pertaining to the real property, but also to request that the latter take all the appropriate steps to register transfer of the real property in the Land Register.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Ownership of real property is recorded in the Land Register, as only such persons shall be recognized to be the owners of real property, as are registered in the Land Register as such owners. The ownership search is generally conducted by an attorney or notary; however, as the electronic data base of Land Registry is publicly available, generally any person may conduct a search of owner of the property by property address, cadastral number or number of the folio of the Land Register in which the property is registered.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is generally not available in Latvia. Lawyer's opinion on title related issues may be obtained and the rates depend on the rates of the law office used.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

A special purpose vehicle in the form of Latvian limited liability company is the most common form of entities used. Direct ownership of real estate by individuals is also used.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Latvia has adopted legislation relating to investment management companies, according to which resources of a closed investment fund held by investment management company may be invested in real estate or rights relating to the use of the real estate.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

A company is subject to tax on the gains from the sale of real estate. Capital gains are treated the same as ordinary income and are taxed at the corporate tax rate of 15%. Gains are calculated as the difference between acquisition cost and sale value. In the case real estate is sold by a non-resident to a resident company, the sale proceeds are subject to withholding tax of 2%. Individuals are subject to personal income tax at a rate of 25% on the gains from the sale of real estate. Individuals carrying on business activity will be taxed at a rate of 15% from 2008 and gains from the sale of real estate will be taxed at this rate provided the sale of the real estate is the individuals business activity. Individuals are exempt from the gains from the sale of real estate in case the person has owned the real estate for more than five years and the real estate has been the individual's declared residence for at least a 12 month period prior to the sale. In addition to income tax, in order to register the change of title to real estate in the state Land Book registry as a result of a sale, a state fee is payable of up to 2% of the value of the transaction capped at LVL 30,000 (subject to certain exceptions.)

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

A company is subject to tax on the gains from the sale of shares. Capital gains are treated the same as ordinary income and are taxed at the corporate tax rate of 15%. Gains are calculated as the difference between acquisition cost and sale value. In the case when shares of a company which has more than 50% of assets consisting of real estate are sold by a non-resident to a resident company, the sale proceeds are subject to 2% withholding tax. Individuals are generally exempt from tax on the gains from the sale of shares provided the sale of shares is not their business activity. An exception is in case an individual sells shares in a company which has assets of more than 50% consisting of real estate in which case the gain from the sale of shares would be subject to personal income tax of 25% (from 2008 a 15% personal income tax rate may apply if the sale of the shares qualifies as the business activity of the individual.)

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

As a general rule there are no local/municipal taxes payable with respect to the sale of real estate. Real estate is subject to real estate tax in accordance with the requirements of national legislation but the administration and collection is carried out by the municipalities where the real estate is located.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

Beneficial owners of a limited liability company owning real estate shall be disclosed as a matter of public record. Information on beneficial owners of joint stock companies owning real property may remain with the respective joint stock company.

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Issues In Ownership Of Real Estate

Lebanon

Prepared by Lex Mundi member firm Moghaizel Law Offices

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, absolute property ownership is permitted in Lebanon.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed is used to convey ownership of real estate. A deed will be construed as conveying the entire estate or interest that the grantor owns unless a limitation is clearly expressed.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

The real property ownership is recorded at the Real Estate Register. If a private party wishes to make a search about another party's real estate ownership, it has to submit a search request to the above register.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

No need for assurances. The owner of a real property holds a Property Title Deed and has register his ownership recorded at the Real Estate Register.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

A Lebanese Joint Stock Company, a Lebanese Limited Liability Company or a Lebanese Holding Company are the most common forms of entities used for such purpose.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

N/A

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

There is a Lebanese Conveyance Transfer Tax statute. Any document that transfers an interest in real estate is subject, upon being recorded, to a tax on the value of the property in question. A document is any deed, instrument or writing whereby any real estate within Lebanon or any interest therein, shall be quitclaimed, granted, bargained, sold or otherwise conveyed to a grantee.

Conveyance costs are paid by the purchaser as follows:

- a. Formal real estate sale agreement's costs:

- Proportional notarization costs: 1‰ (one per thousand) of the purchase price as well as, other notarization lump fees that should not exceed US\$ 300.
- Proportional Bar fees: 1‰ (one per thousand) of the purchase price.
- Proportional stamp duty fees: 3‰ (three per thousand) of the purchase price.
- b. Real Estate conveyance fees: 5% of the purchase price.
- c. Municipal proportional fees: 5% of the Real Estate conveyance fees mentioned above in point b.
- d. Lump sum costs, sundries and expenses to obtain the Property Title Deed from the Real Estate Register that should not exceed US\$ 300.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

See our reply to question 7 above.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Property tax is governed by the Law of September 17, 1962. Such tax is called built property tax; it applies to all buildings and their supplements such as the land, gardens, other spaces forming part of the plot provided they do not exceed 2,000 square meters, as well as the roof and façade of the building if used for commercial, industrial or advertisement purposes, pipes, central equipment and installations permanently fixed to the buildings, elevators, heating and air-conditioning installations etc. Vehicles and ships set on a fixed location and used for residential, commercial or industrial purposes are also deemed as a built property

In general, if the building is not generating any return because it is vacant and provided a relevant application is filed to the Ministry of Finance in this regard, no built property tax shall apply. Also, new buildings that have been completely finalized and have not been leased or occupied yet, are deemed vacant and accordingly no built property tax applies thereon, provided the owner files an application in this regard to the Ministry of Finance within one month as of completion of the building.

No municipal tax or other financial taxes apply over a vacant and unbuilt land which is not used.

Rate of the Build Property Tax:

Rate	Taxable Portion
4%	Over the portion of revenues not exceeding LL 20,000,000 ² .
6%	Over the portion of revenues ranging between LL 20,000,000 and LL 40,000,000.
8%	Over the portion of revenues ranging between LL 40,000,000 and LL 60,000,000.
11%	Over the portion of revenues ranging between LL 60,000,000 and LL 100,000,000.
14%	Over the portion of revenues exceeding LL 100,000,000.

The Real Estate Laws do not vary in Lebanon.

² 1 USD = 1,500 L.L.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

Lithuania

Prepared by Lex Mundi member firm LAWIN

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Lithuanian law recognizes absolute ownership of real estate as well as any other types of property. This is an everlasting right, which can be restricted only upon the will of the owner, by virtue of law or based on the decision of a competent court.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

The most common instruments used to convey the ownership of real estate in Lithuania is a sale and purchase agreement. Other less usual ways/ instruments used for transfer of the title to real estate are: exchange agreement, donation agreement, transfer of real estate as a non-pecuniary contribution into the share capital of a company, etc. The title to real estate passes over as of the moment of its transfer, which has to be documented by a transfer-acceptance deed to be executed by the parties in addition to the main agreement (sale and purchase, exchange agreement, etc.). Upon agreement of the parties the agreement itself may serve as a transfer-acceptance deed (in the latter case no separate transfer-acceptance deed has to be executed).

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

With certain minor exceptions, any types of real estate, the ownership of real estate, rights *in rem*, such as mortgage, servitude, usufruct, etc., as well as legal facts, e.g. attachments, lawsuits, transactions related to real estate or restriction of rights thereto, are registered with the Real Estate Register (a public register administered by the State Enterprise Centre of Registers under the auspices of the Ministry of Justice). Only legally registered real estate may be sold or otherwise disposed of.

Apart from certain limitations, all data of the Real Estate Register are available to the public. Any person, upon payment of a set fee, may obtain information on the legal status (including present and former owners, registered tenants and encumbrances, etc.) of any real estate registered with the Real Estate Register.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

A special form of a transaction certificate issued by the Centre of Registers is deemed the main assurance of ownership to a purchaser of real property. Such certificate is issued only at request of a notary public and is produced in his offices. This results from the fact that any transaction concerning the transfer of the ownership or other rights *in rem* to real property, also transactions related to restriction of rights *in rem* to real property (e.g. mortgage, usufruct, etc.) should be certified by a notary public (otherwise it will be void).

The certificate in question reflects the factual data on the owner(s) of real property that is subject to transaction, and thus serves as the assurance to the purchaser or other party to the transaction

involving real property that, at the moment of transaction, a person indicated in the certificate is a true owner of the property to be acquired or otherwise disposed of. The real estate transaction for the purpose whereof the certificate was issued can be certified only by the notary (notaries) public in whose office the certificate was produced. The certificate is valid for 30 calendar days.

The fees for obtaining the transaction certificate are minor. They are determined by the Centre of Registers in association with the Chamber of Notaries.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

The most preferable forms of entities are – in the most frequent cases – a private company (in Lithuanian *uždaroji akcinė bendrovė* or *UAB*), or – in more rare cases – a public company (in Lithuanian *akcinė bendrovė* or *AB*) as they provide investors with the largest range of advantages (including taxation aspects), if compared to other types of business entities. An absolute majority of real estate investors choose a private company (*UAB*) for their business purposes in Lithuania.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Lithuanian legislation does not permit creation of real estate investment trusts or similar entities.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Depending on the case a real estate transaction may involve the following taxes:

- 1) Corporate or personal income tax is imposed on the capital gains from the sale of real estate or interests in entities that own real estate. Its standard rate is 15%, however, the 13% rate of the corporate income tax or 27% personal income tax, as well as full exemption from these taxes may also be applied in particular cases. Capital gains of a foreign entity from sale of real estate are subject to a withholding tax at a rate of 10%.
- 2) Value added tax (VAT) of 18% is applied only to sale of new buildings (built not later than 24 months ago) and land plots together with new buildings, or land plots developed for construction of new buildings.
- 3) Notary fee charged for certification of a real estate sale and purchase agreement. It amounts to 0.45% or 0.5% of the value of the transaction, i.e. the price of the real estate agreed by the parties to the agreement. However, in all case the established ceiling of this fee cannot be exceeded irrespective of the type and value of a transaction.
- 4) Registration fee is applied for legal registration of the ownership of real estate with the Real Estate Register. It mainly depends on the type and average market value of real estate purchased. The average market value of real estate used for calculation of the fee in question is established by a competent authority and it is usually considerably lower than the actual market value determined by independent property valuers.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Capital gains received by a foreign entity (otherwise than through its Lithuanian permanent establishment) or a non-tax resident of Lithuania from sale of securities is not subject to taxation in Lithuania. For taxation of Lithuanian entities and tax residents please see the preceding answer.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

All taxes pertaining to possession and use of real estate – real estate tax, land tax and the State-owned land lease tax – are paid to the budgets of local municipalities where the property is located.

The annual rate of the real estate tax is set every year by the local municipalities in the range of 0.3%-1% of the taxable value of the real estate.

The annual rate of the land tax is 1.5% of the taxable value of the land, while the annual rate of the State-owned land lease tax varies from 1.5% to 4%. The particular rate of the latter is established by the municipalities where the land plot is located.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

The ultimate owner of entities which owns real estate is disclosed as a matter of public record in the Register of Legal Persons only when such entities are owned by a sole shareholder.

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Issues In Ownership Of Real Estate

Malaysia

Prepared by Lex Mundi member firm Skrine

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Land ownership in West Malaysia may be in perpetuity (i.e. freehold) or for a term of years not exceeding ninety-nine (99) years (i.e. leasehold). This depends on the tenure as stated in the document of title to the Land.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

In West Malaysia, the usual instruments include:-1. Memorandum of Transfer of the real estate in Form 14A pursuant to the National Land Code 1965 (where there is an individual title issued to the real estate).
2. Deed of Assignment (where there is no individual title issued yet to the real estate).

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

In West Malaysia, in respect of every piece of land alienated by the State, there will be two documents prepared, namely, the register document of title and the issue document of title. The latter will be issued to the registered proprietor meanwhile the former will be retained at the land registries (for titles evidenced by Grant or State Lease) or land offices (for titles evidenced by Mukim Grant or Mukim Lease), where it is bound in a register book and made available for inspection by the general public subject to payment of the prescribed fee for such searches to be conducted.

Where the register document of title is computerised pursuant to National Land Code 1965, a private search can be obtained immediately upon application and payment of the prescribed fee.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

In West Malaysia, the State does not guarantee title nor does it indemnify nor compensate any person for having a defeasible title due to no fault of their own. There is also no provision under the National Land Code 1965 for an assurance fund relating to title insurance. Title insurance is rarely obtained in Malaysia.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

The most common forms of investment vehicles include companies, foreign companies, joint ventures and partnerships. There is no one vehicle which is most tax efficient.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Yes. Real Estate Investment Trusts (REITs) in Malaysia come under the purview of the Securities Commission (SC) which has issued guidelines on REITs.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

- a. 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.
- b. Registration Fees – The 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.
- c. 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%.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

- a. Stamp Duty – In general, 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).
- b. Real Property Gains Tax - As stated above, 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%.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Dealings in real estate in Malaysia are highly regulated.

There are two (2) land administration systems within Malaysia : (i) Torrens System in West Malaysia under the National Land Code 1965 and Sarawak under the Sarawak Land Code (Cap 81); and (ii) Non-Torrens System in Sabah under the Sabah Land Ordinance (Cap 68). Each State has its own land rules and the quit rents, fees, registration fees in respect of dealings of real estate may vary from State to State.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

Only the registered proprietor is required to be registered on the title. Trust Deeds can also be filed at the Land Office but it is not compulsory.

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Issues In Ownership Of Real Estate

New Zealand

Prepared by Lex Mundi member firm Simpson Grierson

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple property ownership is permitted in New Zealand.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A memorandum of transfer. However, as the land titles system is now fully electronically recorded (and transferred) unless the transfer records unusual or complex covenants the transfer is created in e-space and "released" once the lawyers on each side have checked it and the settlement moneys have changed hands.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

New Zealand uses a Torrens based title register. Over the last few years it has been completely converted into an electronic register. It is fully searchable on-line in real time by registered users (such as pre-approved New Zealand lawyers).

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is not common in New Zealand. The title system is Government guaranteed and it is possible to obtain a guaranteed search showing title interests that the Government will guarantee is able to be relied upon (it expires after 14 days). It is customary to obtain such a guaranteed search immediately before settlement of any transfer or mortgage. The cost of such searches is minimal.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

There is no simple answer to this. Companies, individuals and trusts are the most common means of holding property depending on the individual circumstances of the client.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Real estate investment trusts (some of which are listed on the New Zealand Stock Exchange) are permitted under New Zealand law.

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

There is no stamp duty or transfer tax payable in New Zealand on the transfer of real estate.

However, depending on the circumstances of the individual landowner, income tax (in the form of capital gains tax for land owners engaged in the business of property development or speculation) may be payable.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

There is no stamp duty or transfer tax payable on the transfer of interests in entities which own real estate.

However, depending on the circumstances of the individual landowning entity or its "shareholders", income tax (in the form of capital gains tax for entities/people engaged in the business of share trading or speculation) may be payable.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Local authorities and regional councils set municipal rates that are payable by property owners (for both residential and commercial properties). The rates vary from council to council.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

Norway

Prepared by Lex Mundi member firm Advokatfirmaet Thommessen AS

1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Perpetual fee simple ownership (freehold) is the most common way of owning Norwegian real estate. An owner (or several co-owners (No: "sameie")) has, in principle, complete legal and actual beneficial right over the property and can use it himself, let it out, sell it and/or mortgage it.

Most freehold properties are independent buildings. However, the building may be organized as condominiums (No: "eierseksjoner"). Condominiums are used where two or more co-owners have divided the use of a larger property with more than one unit in such a way that they have a permanent sole right to use specific parts of it. When the right of occupancy is organised in this fashion, property owners have a right of ownership to the unit itself practically in the same way as a detached freehold building.

In a number of cases you can own the building itself while leasing the ground it is built on for an annual fee. This type of land lease is known as ground leasehold (No: "tomtefeste") and is regulated by the Ground Leasehold Act no. 106, 1996.

Another way of owning real estate in Norway is a housing cooperative. Characteristic of a housing cooperative is the combination of a form of right of use and a right of ownership: You can either own the right of occupancy combined with an ownership position in a housing cooperative which owns the property (No: "borettslag"), or you can rent the property in combination with owning shares in the residential limited company which holds the formal position of property owner and lessor (No: "aksjeleilighet").

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

The legal title to freehold property is conveyed through registering a title deed in the land register.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

All Norwegian properties are registered in the land register, owned by the Norwegian state and administered by the Cadastre and Land Register Division of the Norwegian Mapping and Cadastre Authority (NMCA).

Each property has an assigned land register number according to the following system: Land number, title number and possibly a unit number if the property is sectioned – in addition to the municipal number. Each independent piece of property, i.e. both detached freehold properties and freehold units (condominiums), constitutes a register unit in which ownership, mortgage rights etc. can be registered.

If the property is subject to a ground leasehold the registered right of ownership will contain information about both the title to the land and the ground leasehold title. The leasehold is registered

as an encumbrance on the land, but is regarded as a “separate property” in the land register which is subject to transfer and mortgaging.

Ownership interests in housing cooperatives are entered in their own register under the land register known as the “Register of ownership interests” (No: “borettsregisteret”) and these ownership interests can, in the same way as independent properties, be encumbered with rights and obligations. Rights in shares in residential limited companies are not subject to the same registration system and therefore, in principle, lack the publicity and notoriety that rights in the other forms of ownership have.

In general, professional participants in the real estate market, such as banks, estate agents and lawyers, subscribe to the online land register. However, the information may also be obtained orally through the land register telephone of the Norwegian Mapping and Cadastre Authority.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

The Cadastre and Land Registry Division of the Norwegian Mapping and Cadastre Authority issues and authorizes Land Registry Certificates containing information about titles, encumbrances and easements as guarantee of ownership against a fee (at present NOK 172). Thus, title opinions are in most cases superfluous.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

The most common forms of investment vehicles are various segments of business properties, such as offices, shopping malls etc., but also larger development projects related to both business and housing purposes. Normally the investments will take place through purchase of shares in companies owning the property in question.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Yes – Norway has adopted legislation permitting the creation of real estate investment trusts or similar entities.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Registering a title deed to a property is - under the prevailing regulation - subject to a stamp duty of 2.5% of the property's market value.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

The transfer of interests in entities which own real estate is under the prevailing regulation not subject to transfer, stamp or similar taxes.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

The significance of local regulation and taxation of real estate may vary. Municipal zoning plans are significant in case of development properties, less significant in case of developed properties. Furthermore, property value taxation is subject to decisions by local authorities and may thus be imposed, if required, by the local municipal board.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

Ultimate beneficial owners of entities which own real estate are under the prevailing regulation normally not subject to direct disclosure as a matter of public record.

However, please be advised that ownership of Norwegian (public) limited liability companies is disclosed, either through the register of shareholders or the Norwegian Electronic Securities Register (No: "Verdipapirsentralen"). Thus, anyone may seek information about the shareholders of companies owning real estate.

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Issues In Ownership Of Real Estate

Pakistan

Prepared by Lex Mundi member firm RIAALAW

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple ownership of real property is permitted in Pakistan.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A conveyance deed or a sale deed is used to convey ownership of real estate.

Transfer of ownership of immovable Property of value of Rs. 100 or more can be made only by a registered instrument.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Real property is recorded in different kinds of land registration records, depending upon the area in which it is situated. Search is undertaken by the address of the property. Search is usually undertaken by lawyers or para-legal staff

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title opinions are available as assurances of ownership available to purchasers of real property. Such title opinions are based on verification of title deeds from the registry. The cost of obtaining such assurances varies from US\$1,000 to US\$20,000 depending upon the value of the property and the complexity of ascertaining the title

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

Most common forms of investment vehicles in Pakistan are companies, funds, trusts, *modarabas* (Islamic partnerships) and partnerships.

Most common vehicle is companies and most tax efficient is *modarbas*.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Although there are no specific laws in force yet, however the draft Real Estate Investments Trusts (REIT) regulations in Pakistan are under discussion and the Securities and Exchange Commission of Pakistan (SECP) are having consultative sessions to promulgate the draft of REIT regulations.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

The stamp duty on conveyance differs from province to province but is generally between 3% and 8% of the value of the property being transferred. Registration Fee is 1%.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Shares in corporate vehicles owning real property are transferable on payment of 1.5% stamp duty and if they are dematerialised, the stamp duty is 0.15%

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Currently the local regulation and taxation of real estate is in its nascent phase. There are significant variations between rural and urban areas and between provinces. There are several kinds of interests in real property, depending upon the purpose for which it is to be used and its location. Both regulations and taxations differ substantially in each category of such interests.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

Peru

Prepared by Lex Mundi member firm Estudio Olaechea

1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Perpetual fee simple ownership of real property is permitted. Anyone who acquires real property in our country acquires an absolute right as well as a perpetual one over the real estate.

Our Civil Code establishes two cases where the owner could lose the perpetual right as an exception.

One is the case where the owner abandons the real estate for more than twenty years, after this time, the real estate is transferred to the Government, this is regulated in Article 968° of the mentioned Code.

The other case is related to acquisitive prescription, regulated by our Civil Code on Article 950°. In this case, a possessor of a real estate (not the owner) could acquire the real estate for possessing the real estate in a continual, pacific and public manner. In case there is good faith from the possessor, the time needed to acquire the ownership is of five years, if there is not a good faith scenario; the time needed is of ten years.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

According to Article 949 of the Civil Code, with the sole obligation of transferring the real estate the ownership of the real estate is acquired by the purchaser. In consequence, from the time the debtor is obliged to deliver the estate, the purchaser is owner of the same.

However, only when the purchase is registered in the Real Estate Public Registry, the owner's right becomes opposable to everyone.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

Only if the real estate is recorded in the Real Estate Public Registry and if the owner registers his acquisition it is possible to know who is the owner of some real estate. The search can be done from the Public Registry under the request of any individual.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

The Real Estate Public Registry shows the actual condition of a real estate in a given time. When the person contacts a seller who appears at the Registry Office as the owner of a property, this person could have transferred before the same real estate to other persons without registering this transfer.

Thus, a 100% of security is presented when the buyer requests to block the Registry Entry in order to proceed afterwards with the payment and register himself as the new owner of the property.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

The most common form of investment vehicle is the Peruvian Standard Corporation (Sociedad Anónima). The principal characteristic of this form of this investment vehicle is the limited responsibility of the shareholders, its liability is limited to the amount of their contributions; the capital is represented by nominative shares and it must be incorporated by at least two shareholders. The management of this type of corporation is under the control of the Board of Directors and one or more languages.

From a tax viewpoint, off-shore holding companies established in low tax jurisdictions are commonly employed to own investment real estate since the transfer of interests issued by non-resident holding companies are not subject to Peruvian income tax.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Regarding the creation of real estate investment trusts or similar entities, our jurisdiction has indeed adopted legislation permitting the creation of real estate investment trusts. Article 27° of the Investment Trusts and their Administrator Entities Law (Legislative Decree 862) states that the trust's investment can be done through real estate located in Peru.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Capital gains derived from the direct transfer of real estate are subject to income tax. This tax is applied on a national basis.

On the other hand, the direct transfer of real estate is also subject to the Property Transfer Tax which is a local tax. Buyers are deemed taxpayers in this case. The tax rate applicable on the agreed price minus 10 Tax Units is 3% (Currently, one Tax Unit is about US\$ 1,150.00).

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

As a general rule, capital gains derived from the transfer of interests in entities which own real estate property are subject to income tax. Nonresident entities will be subject to income taxation if they transfer interests issued by resident entities. Exceptionally, if interests are negotiated in the stock market, the corresponding capital gain will be exempt from income tax.

On the other hand, capital gains obtained by individuals from the transfer of interests are exempt from income tax.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

The Real Estate Property Tax is a local tax applicable nation-wide. The tax base is determined on the value of the real estate property declared by the owner and the tax is applied on an annual basis according to a cumulative progressive scale with rates not higher than 1%.

On the other hand, since the tax law is applicable nation-wide there is no significant variation among political subdivisions, save from certain specific exemptions granted by the Government (e.g. rainforest areas, frontier zones, among others).

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

The Real Property Public Registry only informs about who is the owner of the real estate. In this sense, if the owner is an entity, the Real Property Public Registry will only have information about the name of the entity and not about the owners of the entity.

However, if the Entity is registered and incorporated in Peru, the individual who wants to know who is behind the entity can access the Juridical Person Public Registry to investigate who are the founder owners of the entity.

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Issues In Ownership Of Real Estate

Philippines

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

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in the Philippines.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed is used to convey ownership of real estate. In addition, if the land is registered, the vendor's certificate of title must be cancelled and a new one registered in favor of the buyer.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Real property is recorded by the Register of Deeds who has geographical jurisdiction over the property. Only the Register of Deed may perform a search.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is not available in the Philippines.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

In the Philippines, corporations are the most common form of entities used for investment. However, to hold real property, at least 60% of such corporation's capital stock must be owned by Filipino persons.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

There is no specific legislation governing real estate investment trusts.

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

Capital gains, transfer and documentary stamp taxes are levied on transfers of real estate.

- 8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?**

Capital gains taxes apply in the case of sale of stock of a corporation that owns real estate.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Transfer taxes range from $\frac{1}{2}$ to $\frac{3}{4}$ of 1% of the zonal, market or actual selling price of the property (whichever is highest) with higher rates usually applying for properties inside chartered cities. A documentary stamp of 1.5% is also levied, in addition to a capital gains tax of 6%.

The Register of Deeds also collects a Registration Fee, computed as follows: PHP20,000.00 for the first PHP2,000,000.00 of the property value, plus PHP90.00 for every PHP20,000.00 thereafter.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

Poland

Prepared by Lex Mundi member firm Wardyński & Partners

1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Two main proprietary rights exist: legal ownership and perpetual usufruct. Ownership is the widest right to real estate. The owner has the exclusive right to use a thing, collect income from it and dispose of it.

The perpetual usufruct right is a narrower right, which may be established by a strictly defined circle of owners (State Treasury or local authority units) in favour of another legal entity by concluding a contract to let on perpetual usufruct. For the perpetual usufruct right to arise an entry must be made in the land and mortgage register. The rights of the perpetual usufructuary are the same as those of an owner, although they last for the term specified in the contract. The perpetual usufructuary must use the land in accordance with the purpose indicated in the contract.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

Transfer of ownership or establishment and transfer of the perpetual usufruct of real estate require the conclusion of a contract in the form of a notary deed, which on principle is implemented upon its conclusion. Such contract has an obligatory and dispositive character.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

The legal status of real estate is reflected in registers called land and mortgage registers, administered by chosen courts. The court keeps a separate land and mortgage register for each real estate.

It is accepted that the legal status of real estate is as disclosed in the land and mortgage register. Denial of the existence of the rights disclosed in the land and mortgage register requires court proceedings. This is the presumption of veracity of the land and mortgage register, which is strictly linked with the principle of public guarantee of land and mortgage registers.

All land, buildings and premises are also contained in the land and buildings description records kept by county administrators. The records contain the following data:

- (1) for land – their location, frontiers, area, type of land and designation in the land and mortgage register.
- (2) for buildings – their location, permitted use, functional utility and general technical details,
- (3) for premises – their location, functional utility and usable space.

The records also contain other information, including in particular the owner in relation to state and local authority land – other individuals or legal entities, who hold the land and buildings or part thereof. Currently binding provisions envisage the transformation of records into a cadastre which apart from the above mentioned data includes the value of the real estate. The value of the real estate will be the basis for calculating the amount of property tax. It cannot be stated when these changes will come into force.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

There is the general assurance of the indefeasibility of registration of title in the land and mortgage register. Prospective purchaser is secured by a public guarantee of the land and mortgage register which protects a purchaser who acquired the right from a person entered in the register. The guarantee also protects the safety of legal trade. A person entered in the land and mortgage register, entitled in respect of a specific right e.g. ownership, who may in reality not be authorised to dispose of this right, may effectively transfer it to a purchaser who acts in good faith. The guarantee does not protect transactions at no consideration e.g. donations. The purchaser must act in good faith in order to rely on the guarantee. A person who knows that the content of the land and mortgage register is inconsistent with the actual status thereof, or anyone who could easily have discovered this acts in bad faith. Land and mortgage registers are publicly available and anyone can familiarise themselves with their content at court under the supervision of a court official. The public guarantee of land and mortgage registers excludes notes entered in relevant parts of the register which constitute information warning a potential purchaser about pending proceedings which may change the content of the land and mortgage register.

The cost of the extract from one land and mortgage register is insignificant and such title searches are the rule.

The institution of an insurance of title is not popular in Poland, especially, because of the public guarantee of the land and mortgage registers. However, if prospective purchaser is to buy shares in the company which owns the real estate then, such security becomes reasonable, but relatively expensive.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

There are two methods of purchasing real estate: purchasing a company that owns real estate and the direct purchase of real estate.

The sale of real estate is taxed under the Civil Law Activities Tax (CLAT - 2% rate), or Value Added Tax (VAT). In general, VAT applies when the real estate is sold by an active VAT payer within the framework of economic activity. If a transaction is exempt from VAT, CLAT applies.

A 22% VAT rate applicable to the buildings also applies to the land on which such buildings are located.

The biggest advantage of the purchase of a company that holds real estate, rather than the real estate itself, is that CLAT of only 1% applies. Another is that there is no VAT on such a purchase. A limited liability company is the most common entity which investors involve to purchase a real estate.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

There is no concept of trust in Poland. However, Polish law permits for creating investment funds which are allowed to purchase real estate.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

The sale of real estate is taxed by either the Civil Law Transactions Tax (CLAT) – at 2%, or by VAT – at a variable rate

VAT applies, in general, when the real estate is sold within a business by a VAT payer. If VAT does not apply, CLAT applies.

VAT on premises applies to the land on which such buildings are located.

The VAT standard rate is 22%, reduced to 7% VAT for:

- until 31 December 2007 - the acquisition of residential buildings that are to be occupied for the first time
- sale of perpetual usufruct of land for tenancy of buildings, or structures permanently on land, or parts of such buildings, or structures, if they are taxed at the rate of 7%.

If VAT applies a seller is liable. If CLAT applies, a purchaser is liable, but a notary public is the tax remitter.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

The sale of shares is subject to CLAT at the rate of 1% of the market value of the shares. According to the Civil Law Activities Act amended as of 1 January 2007, CLAT on the sale of shares is paid by the purchaser.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Local authorities may, or may not, have a zoning plan. If so, investment is relatively routine and can start after a building permit is obtained. If not, investment is more difficult and a decision on terms of construction and land development would have to be obtained, before a building permit.

In general, holding of real estate is subject to real estate tax and it is irrelevant from a real estate tax perspective whether the holder is resident or non-resident. Maximum rates for this tax are set by law, but municipalities can apply lower rates. Individuals are required to inform the tax office with jurisdiction for the real estate within 14 days after its purchase. Real estate tax is payable in quarterly instalments, but is payable only from the date of receipt of the tax authority's decision on the amount of the tax liability.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

There is no such obligation relating to the records held for the real estate.

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Issues In Ownership Of Real Estate

Portugal

Prepared by Lex Mundi member firm **Morais Leitão, Galvão Teles, Soares da Silva & Associados**

1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Yes, fee simple ownership of real property is permitted under Portuguese law.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

In general, fee simple ownership is transferred by public deed signed before a notary, and subsequently registered at the property registry office. The main and most common form to transfer real estate is purchase and sale.

Fee simple ownership may also be transferred by other forms, such as donation or inheritance.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

The ownership of real estate is recorded at (i) the Property Registry Office, (ii) the tax authorities and (iii) the Municipality, concerning urban properties.

Property Registry Certificates provide evidence of the description and location of the property, as well as confirmation of title, charges, easements, encumbrances and any other rights or responsibilities over the property. Considering that the property registry files are public, any person is entitled to request a Property Registry Certificate at the Property Registry Office.

Tax registry certificates provide confirmation of the registration of the owner of the property with the tax authorities, and also provide the tax value of the property, which is important for determination of tax implications on real estate transactions, such as property transfer taxes or municipal taxes, which in some cases may be levied over the tax value of the property. The tax registry certificates are not of public consultation. Therefore, only the registered owner of the property may obtain a certificate from the tax authorities or any person with a power of attorney for such purpose.

Finally, concerning urban constructions, the construction of properties must, in general, be approved by the municipality where the real estate is located and recorded therein. The license of use, issued by the relevant municipality, confirms that the property has been built in accordance with the applicable construction and planning law, and with the approved construction projects. Similarly to tax certificates, municipality files are not public. Therefore, in general, only the owner of the property may obtain certificates concerning the envisaged property.

Usually, real estate searches are conducted by lawyers or by real estate appraisers or consultants.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

The only available assurances to purchasers of property result from the documents referred in number 3 above. There is a legal presumption that the rights definitively registered in the Property Registry are correct, updated and true, as these are public records.

Title opinions may be issued by lawyers (legal opinions) or by real estate consultants, based on the documents mentioned in number 3 above.

The concept of title insurance is not available in Portugal.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

The most common forms of investment vehicles are public limited companies (designated in Portugal as "*sociedades anónimas*" or "S.A" companies), limited liability companies (designated in Portugal as "*Sociedades por quotas*" or "Lda") or real estate investment funds. Property may also be purchased by foreign companies or branches of such companies incorporated in Portugal.

The use of each type of vehicle structure will depend on the type of operation at hand. However, property companies when the property is to be resold and real estate investment funds are the most common vehicles used to own investment real estate in a tax efficient manner. These vehicles have certain tax benefits, such as full or partial exemption of property transfer tax upon acquisition, as well as exemptions of municipal property tax under certain conditions and for certain periods, as the case may be.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

This jurisdiction has not adopted and it is not envisaged that it will adopt in the near future legislation permitting the creation of real estate trusts. However, as we have referred in number 4 above, the use of real estate investment funds is common in Portugal.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real state?

The direct transfer of real estate is, in general, and unless there is an exemption, subject to the following taxes on the purchaser:

- a) Property Transfer Tax - The tax rates are: 5% for rural properties; for urban residential properties the rate is variable from 0% (or 1% if the purpose of acquisition is other than own permanent residence) for taxable amounts under 85.000 euros, to 6% for taxable amounts exceeding 511.000 euros (or 532.700 euros if the purpose of acquisition is other than own permanent residence); 6.5% for all urban non-residential premises; and 8% if the purchaser is a tax haven based company. Property Transfer Tax is charged on the basis of the highest of either the purchase price, or the tax value of the property as set by the Tax Authorities
 - b) Stamp duty, at rate of 0.8% over the transfer price or over the tax value, whichever is higher;
 - c) Notary fees and registration costs, which in general, do not exceed 1.000 Euros.
- Sellers are only subject to capital gains tax, when applicable, upon the sale of property.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

The transfer of interest in limited liability companies is, in general, subject to capital gains tax, at the rate of 10% for individuals and 25%, accrued of a municipal surcharge that can go up to 1.5%, depending on each municipality. If 75% or more of the share capital of limited liability companies

which own real estate is transferred to the same entity, the buyer shall pay IMT over the value of such properties.

The transfer of shares by individuals in SA companies which assets are composed in more than 50% by real estate is subject to capital gains tax at the rate of 10% in case of individuals. Companies that sell shares in other companies which own real estate are also subject, in general, to capital gains tax at the rate of 25%, accrued of a municipal surcharge that can go up to 1.5%, depending on each municipality.

Apart from the case mentioned in the previous paragraph the, the transfer of interests in entities which own real estate is not subject to other taxes.

9. How significant is local regulation and taxation of real state? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Real estate law is applicable to the whole of the Portuguese territory and only suffers specific variations concerning certain issues such as regulation concerning zoning and planning established in local zoning plans, which depend on the area of the country that they created for. The autonomous regions of Madeira and Azores also have specific applicable legal provisions concerning tax rates. Taxation of real estate also varies concerning tax rates fixed by local authorities, such as municipal surcharges on corporate income tax, which may range between 0% and 1.5% and municipal property taxes, ranging between 0.2% and 0.8% on the value of the real estate.

10. Must ultimate beneficial owner of entities which own real estate be disclosed as a matter of public deed?

The property registry certificate and the tax certificate contain the identification of the registered owner. In case of the owner being a company, the only information which must be disclosed as public record in the property registry certificate is the identification of the company, but not the name of its shareholders.

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Issues In Ownership Of Real Estate

Russia

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

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Fee simple ownership is permitted in Russia. There are public (state and municipal) and private ownership. The general principle is that all the land not in the private or municipal ownership is in the state ownership.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Sale and purchase contract is the general instrument for acquiring real estate. There are some regulations regarding the privatization, in particular, acquiring private ownership to real estate from state or municipal ownership that is carried out through special procedures.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

The right of ownership to real property and its transfer are registered in the Unified State Register of Rights to Real Estate and Transactions Therewith. There are no special title search procedures in Russia.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

There is no traditionally understood title insurance in Russia. Title opinions nowadays are primarily of informational significance and give no strict guarantee for the buyer.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

The most common form of investment vehicle is a limited liability company. Since there are no significant preferences for any legal entities holding real estate, the choice of a corporate form is usually made taking into account corporate consideration.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

There is the Investment Funds Act of 2001 setting forth rules for a legal entity resembling to trusts.

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

Sellers of real estate are levied with the corporate profit tax of 20 % (for legal entities), the income tax of 13 % (for individuals, with several exceptions regarding residents selling residential premises, 30 % for non-residents), value added tax (except sales of land plots) of 18 %. Buyers do not pay any tax except value added tax within the price of the real estate.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

The transfer of interests is not levied with value added tax, but is levied with the income tax (for individuals) and corporate profit tax.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

The Federal Government and Regional Governments of constituent subdivisions have joint competence over Land law. So, there are special local regulations regarding the order of granting land plots for construction. But general rules provided by the Civil Code and the Land Code are equal for the whole Russian Federation.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

There are no such requirements. The ultimate beneficial owner may be traced through the Unified State Register of Rights to Real Estate and Transaction Therewith and Register of Legal Entities in respect to some types of legal entities as a result of special investigation.

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Issues In Ownership Of Real Estate

Romania

Prepared by Lex Mundi member firm Nestor Nestor Diculescu Kingston Petersen

1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Romania is a civil law country and does not recognize the common law concept of “perpetual fee simple ownership” as such. The civil law concept of private ownership is however very similar to the “perpetual fee simple ownership”.

Dismemberments of the ownership right are also acknowledged under Romanian law, as follows:

- a) the usufruct right, under which the beneficiary can exercise most rights vested in the owner (i.e. usage and exploitation of the property) but does not have the right to transfer the real property;
- b) the right of use, under which the beneficiary has a real right to use the property, as opposed to a personal right of use obtained under a lease agreement; and
- c) the right of habitation - the beneficiary of this right can use the property as dwelling only personally or together with his/her family.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

Ownership over land is transferred under authentic notarial deeds. Ownership over buildings may be transferred under private signature deed, but in practice authentic notarial deeds are used for buildings, too. Real property is also freely transferable by inheritance and transfer may further be achieved as result of corporate restructuring (e.g. merger, spin-off).

In some parts of the country, a former land book system is still in place (the “Old Land Book System”) based on Decree no. 115/1938. Under the Old Land Book System the land book registration is a supplementary condition for the transfer of the ownership right. This system will be replaced by the general Land Book System once the cadastral works are finalized for each of the relevant counties (please see Question 3 below).

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

Under the general Land Book System enacted under Law no. 7/1996, ownership and other rights or encumbrances concerning a real property are recorded with the land books for serving notice to third parties (i.e. land book registration does not in itself represent title to the real property). There are a few counties though where the Old Land Book System is still applicable.

Land Books may be freely accessed by the public. Although the general Land Book System was designed to be a simple system, in practice it is difficult to track the owner of a real estate property in case one doesn't already have the land book number (i.e. solely based on the postal address of the real estate property).

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

Title insurance can be procured in Romania. There are no statutory rates established for title insurance.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

Limited liability companies are the most common investment vehicles.

Tax planning is usually made following the analysis of a complex set of factors, only one of which is the legal form of the investment vehicle.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Romanian law does not recognize the common law concept of trust. In practice joint ventures are established as co-shareholding in the investment vehicle.

Investors also have the possibility to participate in a joint venture agreement ("*Asociere in participatiune*") which does not create a new legal entity. Under this type of agreements, several parties contribute to a project and agree that one party will hold ownership of and operate the property for the benefit of all participants to the joint venture.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

In case the seller is a legal entity, the general corporate income tax (16%) will be applicable to a real estate transaction. Value added tax (VAT) is also generally applicable to sale of buildings and buildable land, with certain exceptions, but is not applicable to sale of agricultural land.

In case the seller is a natural person, the income tax will be applicable. To the extent that such natural person does not perform sales of real estate properties for the purpose of obtaining taxable incomes on a continuous basis and thus, falling within the economic activities area, the income tax is calculated as follows:

- if the seller acquired the property within the 3 years prior to the re-sale, the income tax is 3% of the transaction value if such value does not exceed 200,000 RON (approximately 54,000 EUR). In case the transaction value is higher, the tax is calculated as the fixed amount of 6,000 RON plus 2% of the amount exceeding RON 200,000;
- if the seller acquired the property with more than 3 years prior to the re-sale, the income tax is 2% of the transaction value if such value does not exceed 200,000 RON. In case the transaction value is higher, the tax is calculated as the fixed amount of 4,000 RON plus 1% of the amount exceeding RON 200,000.

Notarial taxes and land book registration taxes are also levied upon direct transfer. Notarial taxes are calculated on a scale depending on the transaction value – the quota varies from 0.5% to 2.5%. Land book registration taxes are currently set at 0.5% of the transaction value for legal entities and 0.15% of the transaction value for natural persons. The level of notarial and land book taxes may change periodically.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

The general 16% corporate income tax is payable by the sellers, legal entities deriving gains from the sale of shares held in Romanian companies. The natural persons obtaining capital gains in relation to

shares held in Romanian companies are liable to pay 16% income tax, except for the capital gains derived from the sale of shares held in listed companies which are subject to income at the rate of 1% if the shares were held for a period exceeding 365 days.

However, in certain circumstances, the domestic tax rate may be eliminated by claiming the provisions of the relevant Treaty for the avoidance of double taxation concluded between Romania and the seller's residence country.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

The administrative units in Romania do not have legislative power and the law (including the real estate law) does not vary locally. There is just one exception - the historical difference in the land book systems in some parts of the country, which will be eliminated – please see Question 2 above.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

There are no general disclosure requirements in this respect. Information may be requested by certain authorities on a case-by-case basis (e.g. competition investigations, if the case).

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Issues In Ownership Of Real Estate

Scotland

Prepared by Lex Mundi member firm Maclay Murray & Spens LLP

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, it is permitted, and is usually referred to as “outright ownership”.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Where real estate is conveyed from one party to the other, whether in exchange for a sum of money or for no consideration, the instrument of transfer is known as a “disposition”. If two pieces of real estate are exchanged, the parties can affect the exchange in a single document called a “Contract of Excambion”, although this is rarely encountered in practice, as the parties to such a deal often prefer to grant two separate dispositions.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Ownership of real property is registered in one of two property registers kept by the Keeper of the Registers of Scotland.

The older of the two registers is known as the Register of Sasines. This has been in existence since the early 17th century. This register is gradually being phased out of existence by the Land Register (see below) but currently contains the titles to around 60% of Scotland's real estate. The Register of Sasines is a register of deeds, and doesn't guarantee validity of title in any way.

The Land Register of Scotland, which has been introduced in phases starting in 1979, is a map-based computerized register of title. Titles to real estate which are registered in the Land Register “without exclusion of indemnity” carry a State backed guarantee of validity. Any transfer of title to real estate for value must now be registered in the Land Register.

Both property registers are generally searched by either the staff of the Keeper of the Registers of Scotland, or by professional searching companies, usually on the instructions of sellers of real estate.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

If title to property has been registered in the Land Register of Scotland without exclusion of indemnity it carries a State backed guarantee of validity. For titles in relation to which problems have been identified or doubts have arisen, it is possible to obtain title insurance from specialised insurance companies. The premium payable will depend on the value of the property and the risk assessment undertaken by the insurance company, and can range from a few hundred to thousands of pounds.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

The most common investment vehicles used are companies and partnerships (general, limited and limited liability). The individual circumstances of the investors will dictate the most appropriate vehicle to maximise tax efficiency.

Where investors are resident outside the UK, the property investment vehicle will normally also be based offshore. This means that any gains realised on disposal of the investments are not liable to UK tax. The net income arising from properties in the UK will remain liable to UK income tax.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Yes, a Real Estate Investment Trust regime was established in 2006.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Stamp Duty Land Tax ("SDLT") may be payable by the purchaser on the acquisition of property where the consideration exceeds a certain threshold. At time of writing, the threshold is currently £175,000 for residential properties and £150,000 for non-residential properties.

The purchaser may also have to pay VAT on the consideration.

Sellers of property may be liable to capital gains tax or corporation tax on capital gains realised on disposal.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

It depends on the type of entity but generally speaking stamp duty at 0.5% on shares in entities which own real estate.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Generally speaking, a uniform tax system applies across the 3 jurisdictions (i.e. Scotland, England and Wales, and Northern Ireland) within the United Kingdom. Any local regulation and taxation of real estate is relatively insignificant. Real estate law in Scotland is separate and distinct from the rest of the United Kingdom. While this, in certain circumstances, may result in different tax implications, the differences are generally not significant.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

Although it is possible for the beneficial owners of real estate to be registered on the title deeds (and therefore identified from a search of the property register) there is no legal requirement for such information to be disclosed.

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Issues In Ownership Of Real Estate

Slovak Republic

Prepared by Lex Mundi member firm Čechová & Partners

1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Perpetual fee ownership of real property is permitted and guaranteed by the Constitution No. 460/1992 Coll. of the Slovak Republic (hereinafter as the “**Constitution**”) as the only permitted form of ownership title of natural persons and legal entities to real property. Article 20 of the Constitution stipulates that anyone has the right to own property (including real property), ownership right of all owners has the same legal content and protection. The only limitations of ownership right to real estate are stipulated in Section 19a of the Act No. 202/1995 Coll. on Foreign Exchange (hereinafter as the “**Foreign Exchange Act**”), which determines that a foreigner may not acquire ownership right to:

(i) land, with status of agricultural land or forest outside the built-up area of municipality. This limitation does not apply in case of inheriting such land and in case of foreigners who are:

1. citizens of the Slovak Republic, or
2. citizens of Member State of the EU, with temporary residence permit in the Slovak Republic in case of acquisition of ownership right to agricultural land if such citizen has farmed on such land for at least three (3) years after accession of the Slovak Republic to EU, and

(ii) real estate whose acquisition is restricted by special regulation (such as mineral resources, caves, underground waters, water-courses, natural mineral waters, mineral health resources, highways, motorways).

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

Fee simple ownership to real estate may only be conveyed by written agreement pursuant to Section 46 of the Act No. 40/1964 Coll., the Civil Code (hereinafter as the “**Civil Code**”). In case of real property conveyance, demonstration of will to convey real property of both the transferor and the transferee must be on the same document. The ownership title to real estate shall be transferred upon its registration (intabulation) by the respective Real Estate Cadastre Administration, after respective application has been submitted to the Real Estate Cadastre. The registration process should be completed within 30 days in standard proceedings (with administrative flat fee of SKK 2,000 – approx. EUR 60). In case of accelerated proceedings (for the additional administrative flat fee of SKK 6,000 – approx. EUR 182), the registration should not exceed 15 days (this period is usually observed). The administrative fee is flat and it does not anyhow depend on the value of transferred real property. Notarial verification of transferor’s signature is required (for approx. EUR 2.5). It is not required to submit together with the application for registration of ownership title also expert’s appraisal of the real property value, since the real estate transfer tax has been abolished with effect to transfers following 1 January 2005.

The Real Estate Cadastre Administration has the duty to inspect whether the consent of the seller and purchaser with the transfer is reliable, sufficiently certain and understandable as well as the unlimited authorisation of the seller to dispose with the real property.

Ownership title is acquired upon the day of effective decision of the respective Real Estate Cadastre Administration on intabulation of the ownership title to real property in favour of the purchaser.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

Pursuant to Act No. 162/1995 Coll. on Real Estate Cadastre and on Registration of Ownership Rights and other Rights to Real Estates (hereinafter as the “**Cadastral Act**”), registration of ownership rights is performed by Real Estate Cadastre Administration.

Limitations relate to the Collection of Deeds of the Real Estate Cadastre containing originals of purchase agreements and other related documents used by the Real Estate Cadastre at any entry made with respect to particular real property. Collection of Deeds is accessible only for owners or other entitled persons (such as authorised land surveyors).

Pursuant to Section 70 of the Cadastral Act, information registered by Real Estate Cadastre Administration in the Real Estate Register is deemed reliable and binding unless the contrary is proved. It is evidenced on respective ownership certificate.

Extract from ownership certificate consists from the following parts: Part A) contains information on given real property, part B) contains information on the owners of real property and their co-ownership shares and part C) states information on encumbrances, pledges, easements and other rights of third persons to the given real property. Such extract from ownership certificate may be obtained by everyone against payment of an administrative fee in the amount of SKK 250 (approx. EUR 8).

Extract from the ownership certificate in Real Estate Cadastre may be obtained by everyone on the website www.katasterportal.sk Extract from the ownership certificate created through www.katasterportal.sk may however not be used for legal acts. This on-line register is updated on weekly basis.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

Title insurance as protection against defects in ownership title chain to particular real property that might have occurred in the past is available for purchasers of real property in Slovak Republic. As a new product on Slovak insurance market it is not yet provided by established insurance companies providing commercial insurance products. It is offered by few multinational companies (insurance brokers), which provide title insurance worldwide. Price for such insurance depends on particular case, however it usually ranges around 2,5-3,5 % from the market value of real property, if it exceeds EUR 3,000,000. If the market value of real estate is below EUR 3,000,000, flat fee (in the amount of approx. EUR 9,000-12,000) is individually applied.

Title opinions are usually provided in the form of a legal due diligence concerning a given land (site) while legal fees are individually agreed between a purchaser (investor) and particular law firm, in most cases as a combination of hourly rates with agreed cap.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

Limited liability company (LLC) and joint-stock company (JSC) as the basic legal forms of business companies in the Slovak Republic are most frequently used entities for real estate investments.

Limited liability company is a business company with registered capital of at least SKK 200,000 or EUR 5,000. Registered capital is composed of shareholders' monetary and/or non-monetary contributions. Such contribution is called business interest and it reflects the share of a shareholder

on the LLC. Amount of business interest (expressed in percentage) is determined according to the ratio of shareholder's contribution to LLC to the amount of LLC's registered capital, unless otherwise agreed in the LLC's memorandum of association. Every shareholder of LLC may hold only one business interest in the LLC. Should a shareholder further increase its contribution to the LLC's registered capital, his business interest will be increased by a ratio corresponding to the amount of such increased contribution to registered capital (e.g. the shareholder shall always have only one business interest, just its percentage may vary). Shareholders' liability for obligations of limited liability company is limited to their unpaid contributions to the LLC's registered capital. Registration fee for incorporation of LLC into Commercial Register is SKK 10,000 (approx. EUR 300).

Joint-stock company is a business company with registered capital of at least SKK 1,000,000 or EUR 25,000, divided into certain number of shares with specific nominal value. Joint-stock company is liable to all of its creditors by all of its assets. Shareholders of joint-stock company are not liable for its obligations. Registration fee for incorporation of JSC into Commercial Register is SKK 25,000 (approx. EUR 755).

Main differences between LLC and JSC are as follows: lower costs for incorporation of LLC, simpler and not so formal regulation under Slovak law and simpler procedure of incorporation and management of LLC. LLC also creates less bodies and its financial statements must be audited only in case at least 2 from the below 3 conditions are fulfilled in the year preceding the year when financial statements are audited:

1. gross amount of assets exceeds SKK 20,000,000 (approx. EUR 606,000),
2. net turnover exceeds SKK 40,000,000 (approx. EUR 1,212,000), and
3. average calculated number of employees in a given financial year exceeds 20.

All legal entities have the same tax duties and there exists no special form of a business company that would provide for investing into real property in a more tax efficient manner.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Legislation in the Slovak Republic enables creation of special mutual funds investing solely into real estate managed by so called "managing company" pursuant to Act No. 594/2003 Coll. on Collective Investment (hereinafter as the "**Collective Investment Act**"). Managing company is a joint-stock company with its registered seat in the Slovak Republic whose scope of business consists in creation and management of mutual funds. Respective license is issued by the National Bank of Slovakia. Managing company may issue only book-entered au nome ordinary shares. Managing company may not change its legal form, business scope, be divided or merged with other entity.

Special mutual fund investing solely into real estates may be created as open mutual fund or closed mutual fund. Main difference is that owners of participation certificate in open mutual funds have the right for repayment of their share corresponding to their participation certificate at any time while owners of participation certificates in closed mutual fund do not. Participation certificate is a security to which is attached the participant's (investor's) right for corresponding share on the assets of an investment fund (including special mutual funds investing solely into real estates) as well as the right to participate on the yields generated by such assets.

Property in special mutual fund of real estates must be invested especially into:

- real estate including appurtenances for the purposes of facility management and sale,
- capital participation in real estate agencies,
- other assets economically connected to real estate market, and
- transferable securities and instruments of financial market, adopted for dealing on regulated market stated in list of regulated markets issued by the Member States and published by European Commission according to EU legislation regulating investments services – purpose and target of investment strategy in special mutual fund of real estates must not be changed.

Managing companies and also special mutual funds of real estates are not subject to any special tax treatment. In Slovak Republic, flat rate 19% income tax is applied with no particular modifications for entities investing into real estates.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Income tax with flat rate of 19% is levied on sellers of real estate, unless exemption is applied. As regards exemptions, generally a natural person selling real estate which he/she has owned for more than 5 years or in which he/she has had his/her registered permanent residence for more than 2 years is exempted from income tax.

The transfer of ownership title (the supply) of buildings or part(s) thereof including the supply of a construction land is exempted from VAT in case that the time period of more than five years has elapsed from the date of effectiveness of occupancy permit under which such building was duly authorised for use. The VAT taxpayer may however decide that the supply of such "older" building will not be exempted from VAT. Generally, the supply of land is exempted from VAT while the construction land always follows the tax regime applicable to the building erected thereon.

Since the real estate transfer tax has been abolished with effect to transfers following 1 January 2005 there is only registration fee relating to transfer of ownership title to real estate to Real Estate Cadastre Administration in the amount of SKK 2,000 (EUR 60) for standard proceedings and additional fee of SKK 6,000 (EUR 182) for accelerated proceedings (registration should not exceed 15 days). Also notarial verification of transferor's signature is required (for approx. EUR 2.5).

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Transfer of interest in entities which own real estate is not subject to any specific transfer, stamp or similar taxes (whether in case of LLC or JSC). There are only general taxes (income tax with flat rate of 19 %) levied to any transferor of interests in legal entities (whether shares in JSC or business interest in LLC), which are subject to income tax pursuant to Act No. 595/2003 Coll. On Income Tax.

Acquisition of share in a business company (except the shares in a JSC having a different regime) is not a tax deductible expense in the year of its acquisition, but only in the year of its sale, and this only up to the amount of the income received from such sale.

Transfer of interest in entities which own real estate (whether in case of LLC or JSC) is not subject to VAT.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Each owner of real estate located in the Slovak Republic is obliged to pay annually a real estate tax, which is under applicable regulation distinguished as:

- (i) Land Tax, with a base tax rate in the amount of 0.25% of value of the land, while factors such as location of the land or number of inhabitants of the municipality in which the land is located are decisive for determination of the value;
- (ii) Building Tax, with a base tax rate in the amount of SKK 1 for each square meter of ground space, while additional surcharge may apply in case of buildings having more than 1 floor (see below); and
- (iii) Apartment Tax, with a base tax rate in the amount of SKK 1 for each square meter.

Please note that above mentioned taxes form part of municipal taxes system and their actual amounts of tax rate are determined on the basis of the location and type of real estate by the local municipalities within the limits set forth by the law (actual rate may not exceed 20 times a minimum

rate in case of lands and 40 times in case of other real property). As a consequence, specific tax rates may vary depending on location of the real estate property.

Real estate tax is paid by the owners of buildings, land, flats (apartments) and non-residential premises and by tenants of land registered in the Real Estate Cadastre.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

Legal entities in the Slovak Republic are registered with competent Commercial Register. Commercial Register is a public register; everyone may obtain extract from Commercial Register after paying the administrative fee of SKK 200 (approx. EUR 6). Extract from the Commercial Register shows the following data with respect to a business company: business name; registered seat; day of incorporation; legal form; scope of business activities; shareholders (in case of JSC, only if it has a sole shareholder); shareholders' contributions (not in case of JSC); members of statutory body and manner of their acting; amount of registered capital.

With respect to JSC the identification of shareholders is available in excerpts from the Central Depository of Securities only to the respective JSC or the respective shareholder(s) and it is not publicly available.

As mentioned in the Section 3 hereof, ownership rights to real property are registered in ownership certificates maintained by the Real Estate Cadastre while excerpt from such ownership certificate may be obtained by everyone.

Beneficial owners of entities which own real estate are not disclosed as a matter of public record of real estates, but are available through publicly available sources of the Commercial Register. Through the evidence of the Real Estate Cadastre it is possible to identify the owner of the respective real property and if such owner is a legal entity (whether LLC or JSC having only one shareholder) it is subsequently possible to identify its shareholder(s) through the evidence of a given Commercial Register.

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Issues In Ownership Of Real Estate

South Africa

Prepared by Lex Mundi member firm Bowman Gilfillan

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, it is permitted and is the normal form of ownership of real estate in most of South Africa. In South Africa it is called freehold title. In some rural areas communal land is administered by traditional chiefs but this is still largely outside of the Deeds Registries System and consequently not commercially important.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Deeds of Transfer are normally used to convey ownership, but there are situations where a change in ownership is recorded by an application to endorse the title deed.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Ownership of real property is recorded in Deeds Registries which are Government run offices in most provinces. The full names, identity number and marital status of natural persons, the full names and registered numbers of companies, close corporations and trusts have to be disclosed for all parties to a real estate transaction. All properties are identified on cadastral diagrams, general plans or sectional plans prepared by land surveyors and approved by Surveyor General Offices run by the Government. All properties have their own number and their exact location in relation to survey beacons is described. Ownership records are public information and anyone may approach the Deeds Registries for information about ownership, mortgagees and servitudes. Most law firms and real estate agents have online access to search the records of the Deeds Registries.

- 4. What assurances of ownership are available to purchasers of real property (eg., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Although the South African system of Deeds Registration is a negative system with no state guarantee of title, the system is very efficient and accurate and in the great majority of cases the records reflect the correct ownership. Title insurance is unheard of as it is unnecessary. Title opinions are seldom necessary. A certificate by a Conveyancer is usually all that is required. Cases where the records do not reflect the correct owner are where the State has expropriated real property but the title has not been endorsed regarding the change in ownership, where someone has acquired ownership by acquisitive prescription but has not yet had the change in ownership registered and where an owner has married in community of property and not yet had the title endorsed to reflect the spouse's share in the ownership of the property.

- 5. What are the most common form of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

The most common forms of investment vehicles are limited liability companies (including close corporations), trusts and partnerships. The taxation rates of trusts have been increasing over the last number of years and trusts are becoming less popular.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

The Department of Finance is considering bringing in regulations to govern REITs to enable the current South African Property Loan Stock Companies and Collective Property Investment Trusts to become REITs similar to REITs in the rest of the world. Both forms of underlying entity will be taxed in the same way. The aim is to attract more foreign investments into this form of investment in commercial real property.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

The transfer of ownership in real property attracts transfer duty in terms of the Transfer Duty Act No.40 of 1949 or Value Added Tax in terms of the Value Added Tax Act No.89 of 1991. Where the real property is part of the Seller's business enterprise, the transaction is normally subject to VAT at 14% of the purchase price, which the Seller has to account for in his VAT returns. However, if real property is part of a business that is sold as a going concern to someone who is also registered as a VAT payer, the transaction is zero rated for VAT purposes. If the transaction is not subject to VAT, it is subject to transfer duty which is payable by the purchaser. A company or trust pays transfer duty at 8% of the purchase price. A natural person is exempt from transfer duty if the price is less than R500 000,00, subject to transfer duty at 5% up to a price of R1 million and subject to transfer duty at 8% above a price of R1 million.

A dealer in real property would have to pay income tax on the profits of a real estate transaction. Where the property is a capital asset, the Seller would have to pay Capital Gains Tax on the capital gain. Non-resident sellers are subject to a withholding tax for capital gains for sales with purchase prices over R2 million.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Stamp duty is payable on the transfer of shares in a company that owns real estate. If the real estate is "residential" as defined in the Transfer Duty Act, transfer duty is payable on the purchase price even though there is no transfer of ownership registered in the Deeds Registry.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

The taxation of real estate transactions is governed by national statutes and not by provincial or municipal statutes.

Municipal rates are levied on all real properties annually by municipalities in terms of the Municipal Property Rates Act No.6 of 2004. The municipal valuation of each property determines on what value the rates are calculated. Each municipality determines how much is payable on the valuation of each property.

Zoning, town planning and building regulations are set by local municipalities and varies significantly depending on the relevant municipality.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No, disclosure of beneficial owners is not required.

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Issues In Ownership Of Real Estate

Spain

Prepared by Lex Mundi member firm Uría Menéndez

1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Forms of holding title to real property in Spain are similar to those of other continental systems based upon traditional Roman law and the Civil Code, i.e. they are based on the concept of dominium as opposed to the English approach of “estates”. The most common type of ownership that investors are likely to come across is *propiedad de pleno dominio* or full ownership, which is similar to the French *propriété*, the English freehold or the German *Eigentum*, and includes a generally unlimited right to transfer and encumber the real property.

There are other property estates or rights over real property with common characteristics that are often used in the retail and office property market:

- (a) Surface right (*derecho de superficie*), which is a kind of ground lease similar to the German *Erbaurecht*. It grants a party an in rem right to build and own a specific construction on a plot of land for a limited period of time, after which ownership of the building reverts to the land owner; and
- (b) Administrative concessions. These “estates” are particularly relevant in areas of public domain which cannot be owned by individuals, such as seaside areas, harbours, etc. An administrative concession is also an in rem right granted by an authority to a private individual or company that allows the latter to use, develop and operate a specific property for a certain period of time. The holder of the concession does not become the owner, but rather the beneficiary of certain rights, which usually include the right to mortgage and to transfer such rights (subject to the fulfilment of certain requirements).

Co-ownership of property rights is allowed but, as opposed to joint ownership, each co-owner holds an undivided interest, which in turn may also be transferred or encumbered. Finally, a common institution in the Spanish real estate market is the so-called condominium (*propiedad horizontal*), similar to the English “commonhold” or to the German institution known as *Wohnungseigentumgesetz*. This form of property allows for separate ownership of certain areas of a building or complex, while the common areas of the building or complex are co-owned by the owners of the private areas.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

The transfer of full ownership (*propiedad de pleno dominio*) of real property merely requires a valid contract and the delivery of possession of the property. In terms of the contract, theoretically the principle of freedom of form applies to real estate transfers, and these only require a written contract.

However, in practice, due to the additional protection granted by the Land Registry, the transfer of property is always carried out in the form of a notarial public deed. Spanish notaries have a key role in real estate transactions. The main drawback of notarial formalisation is cost, as notaries’ fees are based on percentages of the value of the deal. For deals in excess of EUR 6 million, notarial fees can be freely negotiated and agreed beforehand.

This notwithstanding, private agreements are commonly used for conditional or forward purchases without an actual transfer of title to the property.

In practice, all the main types of international contractual structures are used in the Spanish market. Although traditionally contracts for the transfer of title to real estate property tended to not be very sophisticated, for high value properties it is more and more common to see quite detailed (and long) contracts, in line with Anglo-Saxon standards. Forward purchase agreements are often encountered in current Spanish practice. Forward funding agreements, although not unknown in Spanish practice, are still relatively new.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

Real estate ownership and real estate property rights can be recorded with the Land Registry (*Registro de la Propiedad*).

The Spanish Land Registry system combines elements which are similar to the German and French systems. Although recording with the Land Registry is not compulsory (except for mortgages and “surface rights”, where registration is a requirement for their validity), recording has very positive implications.

The main consequence of recording a right with the Land Registry is that it grants protection to good faith third party purchasers who acquire a right from its registered holder. This means that the right acquired cannot be successfully challenged by anyone holding a right which had not been recorded in the Land Registry, even if the title of the registered transferor is later deemed void for reasons which do not appear in the Land Registry. This principle is subject to certain exceptions for encumbrances whose registration is not compulsory, and is also subject to Spanish insolvency laws.

Generally, registration with the Land Registry requires that the relevant contract is contained in a deed witnessed by a notary. Notaries check the status of title and encumbrances of real property when witnessing the relevant contracts. Consequently, notaries play an important role in the process of ensuring good title to real estate.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

The level of protection granted to a purchaser by registration of the seller’s title of ownership with the Land Registry has made the use of title insurance in Spain unnecessary. Land Registrars charge fees for recording rights with the Land Registry (based on a percentage of the value, up to a circa EUR 2,200 cap per plot and transaction), which are not negotiable.

Lawyers usually issue due diligence reports on title, encumbrances and other aspects related to real property (e.g. planning and zoning, licences, tax or environmental aspects), and sometimes issue title opinions according to Anglo-Saxon standards when dealing with foreign investments. Legal fees are usually based on the time devoted by lawyers to carrying out searches and drafting reports and opinions, although fee estimates can be obtained beforehand.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

Besides regulated real estate funds, the most common investment vehicle for Spanish real estate, including non-regulated real estate funds, are Spanish companies, such as a *Sociedad Anónima* and a *Sociedad de Responsabilidad Limitada*.

Nevertheless, direct investment by a non-resident is also common, depending on the circumstances of the investment.

There is no specific entity that can be deemed to be most efficient from a tax point of view. The tax efficiency of the investment structure will depend on the specifics of the investment (type of asset, activity to be carried out in Spain, etc), the type of investor (individual, company, fund, joint venture investment, tax transparent foreign vehicle, etc) and its place of tax residence (EU investor, non-EU investor, tax haven, etc.). In any case, the most common form of investment in Spanish real estate is through a Spanish company that directly owns the real estate.

In addition, the Spanish Corporate Income Tax Act sets out special tax rules for companies leasing residential properties. Such regime consist of a Corporate Tax allowance of 85% to 90% subject to certain restrictive requirements based on the number of properties leased, the surface area of the leased properties, the period of time for which the properties are leased, the portion of the company's income that corresponds to leasing activities and the type of lease contracts agreed.

These rules do not require that a specific investment vehicle be used, provided that it is a vehicle subject to Corporate Income Tax and the decision to apply these rules is notified to the Spanish Tax Authorities.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Spain has not adopted legislation permitting the creation of real estate investment trusts. Although certain interesting initiatives that have been proposed by legal scholars are being considered by the authorities, they have not yet been embodied in legislation.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

7.1. Direct taxes

- Transfer by individuals resident in Spain for tax purposes: The capital gain deriving from the transfer of real estate, calculated as the difference between the transfer price (plus expenses and taxes inherent to the sale) and the acquisition price (plus expenses and taxes inherent to the acquisition), is subject to Spanish Personal Income Tax at 18%³.
- Transfer by individuals not resident in Spain for tax purposes: The capital gain deriving from the transfer of real estate, calculated as the difference between the transfer price (plus expenses and taxes inherent to the sale) and the acquisition price (plus expenses and taxes inherent to the acquisition), is subject to Spanish Non Resident Income Tax at 18%, unless otherwise provided by a Tax Treaty entered into by Spain and the country of residence of the seller⁴.
- Transfer by companies resident in Spain for tax purposes: The capital gain deriving from the transfer of real estate, equal to the difference between the transfer price and the net book value of the property, is subject to Spanish Corporate Income Tax at 30%.

If the property qualifies as a fixed asset, has been used for a business activity for at least one year prior to the transfer, and the proceeds from the sale are reinvested in the terms provided by the Corporate Income Tax Act, a tax allowance is available which, in practice, would reduce the tax rate applicable to the transaction to 18%⁵. However, such benefit would be applicable in the same tax year in which the reinvestment is carried out and in the same proportion as the reinvestment represents of the proceeds received.

³ Some reductions are applicable to the taxable base for real estate held prior to 1995.

⁴ Some reductions are applicable to the taxable base for real estate held prior to 1995.

⁵ The reinvestment must be made in tangible or intangible fixed assets or a shareholding in a company amounting to at least 5% of its share capital and within a year prior to and the three years following the sale. This notwithstanding, certain limits may exist if the share transfer is made to a related company or if the reinvestment is carried out through the acquisition of assets from related entities. The analysis of the application of such limits should be made on a case-by-case basis.

- Transfer by companies not resident in Spain for tax purposes: The capital gain deriving from the transfer of real estate, calculated as the difference between the transfer price and the acquisition price, will be subject to Spanish Non Resident Income Tax at 18%, unless otherwise provided by a Tax Treaty entered into by Spain and the country of residence of the seller.

Each year in the General Budget Act, a series of coefficients are approved that are applied in order to correct the effects of inflation during the period in which the real estate has been owned.

In addition, a person acquiring real estate from individuals or companies not resident in Spain, whether or not he is a resident, must withhold and deposit with the Spanish Tax Authorities an amount equal to 3% of the acquisition price. For the seller, this withholding acts as a payment on account of Capital Gains Tax arising from the transaction (see above). If the amounts withheld are higher than the Capital Gains Tax liability, the seller is entitled to a refund of the difference.

7.2. Indirect taxes

As a general rule, the transfer of real estate property by legal entities or individuals in the course of a business activity will be subject to Value Added Tax (“**VAT**”) at 16% (7% for residential property). In all other cases, the transfer is subject to Transfer Tax (“**TRT**”) at a rate of 6%-7% (depending on the Autonomous Community where the property is located)⁶. Note that when an transaction is subject to VAT, no TRT may be levied (and vice versa)⁷.

Whether the transaction is subject to VAT or TRT is important, given that VAT may, generally speaking, be recovered by the acquirer.

Finally, public deeds formalizing the transfer of real estate property subject and not exempt from VAT are subject to Stamp Duty, which is payable by the acquirer.

- VAT and TRT: Second and subsequent deliveries of buildings and the transfer of rural land in the course of a business activity are subject to but exempt from VAT. Consequently, those second and subsequent transfers will be taxed under Transfer Tax at a rate of 6% to 7%.

However, that exemption from VAT may be waived by the seller when the transferor and the acquirer are taxable persons for VAT purposes and, under the VAT Law, the acquirer is entitled to a 100% VAT credit allowance. Should this waiver be applicable (depending on the VAT status of the purchaser), the transfer of the building will be subject to and not exempt from VAT at 16% (7% for residential property), and Stamp Duty would be payable if the transfer is documented in a public notary deed.

As already stated, should the transfer of the real estate be subject to VAT (i.e. as a result of the waiver of the exemption for second or subsequent deliveries), no TRT will be levied.

- Stamp Duty: The notarial deed formalising the transfer is levied with Stamp Duty if the transfer is subject to and not exempt of VAT.

Stamp Duty is payable by the acquirer at the following tax rates:

⁶ Lower rates are applicable to special properties (public residential properties, etc.) and in certain territories such as Ceuta and Melilla.

⁷ The Canary Islands are not part of EU territory for the purposes of VAT. Therefore, the harmonised rules on VAT do not apply to the Canary Islands.

Instead of VAT there is a local tax known as the *Impuesto General Indirecto Canario* (Canaries General Indirect Tax) applied at several different rates. The application of this tax to real estate is, in general terms, similar to that of VAT.

- (i) if the transfer is subject to, and not exempt from VAT, Stamp Duty is levied at between 0.5% and 1% depending on the Autonomous Community where the real estate is located (generally 1%).
- (ii) if the transfer is subject to, but exempt from VAT and the VAT exemption is waived, Stamp Duty is levied at between 0.5% and 2% depending on the Autonomous Community where the real estate is located (generally 1.5%⁸).

7.3. Local taxes

Although generally having a lesser impact than the abovementioned taxes, the transfer of urban properties is also subject to a local Tax on the Increase in the Value of Urban Land. The taxable base and the tax rate are determined by the respective municipalities within the limits established by the law.

The Tax on the Increase in the Value of Urban Land is paid by the seller unless the transfer is carried out for no consideration. The amount to be paid depends on (i) the number of years that have passed between the acquisition and the sale of the land, (ii) the rates and coefficients that the relevant municipality applies, and (iii) the *cadastral* value of the land.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

8.1. Direct taxes

- Transfer by individuals resident in Spain for tax purposes: The capital gains deriving from the transfer of interests in entities which own real estate, calculated as the difference between the transfer price (plus expenses and taxes inherent to the sale) and the acquisition price (plus expenses and taxes inherent to the acquisition), are subject to Spanish Personal Income Tax at 18%⁹.
- Transfer by individuals not resident in Spain for tax purposes: The capital gains deriving from the transfer of real estate, calculated as the difference between the transfer price (plus expenses and taxes inherent to the sale) and the acquisition price (plus expenses and taxes inherent to the acquisition), are subject to Spanish Non Resident Income Tax at 18%, unless provided otherwise by a Tax Treaty entered into by Spain and the country of residence of the seller¹⁰.
- Transfer by entities resident in Spain for tax purposes: The transferor of the shares of an entity that owns real estate obtains a capital gain or loss for the difference between the transfer price and the book value of the shares. Capital gains are taxed at the standard rate of 30%, although double taxation relief and a credit for the reinvestment of the proceeds obtained is available.

As regards double taxation relief, the transferor will benefit from a tax credit amounting to 30% of the increase in the retained earnings of the transferred company generated during the shareholding period, provided that at least 5% of the company's share capital has been owned and that this has been held for at least one year prior to the sale. The application of this provision will result in the capital gains corresponding to profits obtained by the transferred entity not being taxed; embedded gains are fully taxable.

The portion of the capital gain not eligible for double taxation relief could benefit from a reinvestment credit. If the interest transferred is of at least 5% of the company's share capital, has been owned for at least one year prior to the transfer, and the proceeds from the sale are

⁸ See chart in Section 9 below.

⁹ Some reductions are applicable to the taxable base for shares held prior to 1995.

¹⁰ The taxable base may be reduced if shares have been held since before 1995.

reinvested in the terms provided by the Corporate Income Tax Act, a tax allowance would be applicable which, in practice, would reduce the tax rate applicable to the transaction to 18%¹¹. However, such benefit would be applicable in the same tax year in which the reinvestment is carried out and in the same proportion that the reinvestment represents of the proceeds received.

- Transfer by entities not resident in Spain for tax purposes: The capital gains deriving from the transfer of interests in entities that own real estate, calculated as the difference between the transfer price and the acquisition price, are subject to Spanish Non Resident Income Tax at 18%, unless provided otherwise by a Tax Treaty entered into by Spain and the country of residence of the seller.

8.2. Indirect taxes

In general terms, the purchase of shares is exempt from VAT, TRT and Stamp Duty. However, TRT at a standard rate of 6%-7% (depending on the Autonomous Community legislation applicable), is applicable to the acquisition of shares when the following two conditions are met:

- ***at least 50% of the assets of the company are real estate located in Spain¹², or if the company holds shares that allow to control another company in which at least 50% of its assets consist of real estate located in Spain; and***
- ***the acquirer, as a result of the acquisition of the shares, (i) takes control of the entity (i.e. acquires the majority of the voting rights of the company), or (ii) if it already has control of the target company, it increases its interest in such company¹³.***

The taxable base is the percentage of the value of the real estate located in Spain equivalent to the percentage interest acquired in the share capital.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

The basic civil, commercial, tax and corporate regulations, as well as monetary policy, are decided and implemented by the central government. However, there are several areas concerning the real estate sector, including planning, retail sales, tourism and certain taxes, that are decided by the regional authorities.

In particular, planning is a matter over which the regions (known as autonomous communities) have exclusive powers (save for some very basic aspects that the central government controls). In terms of planning, Spain has 20 different jurisdictions, and, as a consequence of their needs in terms of territorial structuring, some regions take a very restrictive approach to new developments, while others have a more liberal one. While the regulatory power lies with the regions, the implementation of the regulations is handed over to local authorities, which have the last word in most planning aspects (although the most important points are again subject to some control by the regions).

¹¹ The reinvestment must be made in tangible or intangible fixed assets or a minimum 5% shareholding in a company, and within a year prior to and the three years following the sale. This notwithstanding, certain limits may apply if the transfer of the shares is made to a related company or if the reinvestment is carried out through the acquisition of assets from such related entities. The analysis of the application of such limits should be made on a case-by-case basis.

¹² For the purposes of calculating the 50%, the market value of all the assets should be taken into account. Loans granted by third parties with a term of less than 12 months are not considered for the calculation.

¹³ Notwithstanding the above, it should be pointed out that in principle, it was not the purpose of the legislator to tax as immovable property the transfer of shares of a company running a business activity with the suitable machinery or equipment, but to establish an anti-abuse rule to avoid the transfer of real estate through the sale of shares in companies whose main or sole assets are land or constructions.

However, according to the interpretation of the Tax Authorities and the courts, the literal wording of the applicable provisions, which only refers to the broad concept of immovable property established by the Civil Code, would permit the Tax Authorities to tax the transfer of the shares in the Spanish subsidiaries if the requirement of transfer of control appears to be met.

Regarding tax, the autonomous communities have the power to modify certain aspects of TRT and Stamp Duty applicable to operations concerning real estate located within their territory.

The following chart sets out the applicable TRT and Stamp Duty rates for each autonomous community in Spain:

Autonomus Community	TRT		Stamp Duty	
	General Tax Rate	If VAT exemption is not waived	General Tax Rate	If VAT exemption is waived
Andalusia	7%	7%	1%	2%
Aragon	7%	2%	1%	1.5%
Asturias	7%	2%	1%	1.5%
Balearic Islands	7%	3%	1%	1.5%
Canary Islands	6.5%	6.5%	0.75%	0.75%
Cantabria	7%	4%	1%	1.5%
Castilla-León	7%	7%	1%	1.5%
Castilla-La Mancha	7%	7%	1%	1%
Catalonia	7%	7%	1%	1.5%
Ceuta and Melilla	3%	3%	0.25%	0.25%
Extremadura	7%	3%	1%	2%
Galicia	7%	7%	1%	2%
Madrid	7%	7%	1%	1.5%
Murcia	7%	3%	1%	1.5%
Navarra	6%	6%	0.5%	0.5%
La Rioja	7%	2%	1%	1.5%
Valencia	7%	7%	1%	2%
Basque Country	6%	6%	0.5%	0.5%

Municipalities are also entitled to establish, within the limits established by the Spanish national legislation, their own taxable base and tax rate for the Local Property Tax (which taxes the holding of real estate) and the Tax on the Increase in the Value of Urban Land.

Those taxes generally have a lower impact than the others previously mentioned.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

There is no obligation to disclose the ultimate beneficial owners of entities owning real estate in Spain. However, as a matter of practice, exchange control reporting obligations, which are intended to monitor foreign investment for administrative, economic and statistical purposes, require that the identity of the entities directly and indirectly contributing funds to Spanish companies through share capital are disclosed.

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Issues In Ownership Of Real Estate

Sri Lanka

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

1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

The only two forms of ownership known to our law are freehold and leasehold.

In freehold, the owner owns the property absolutely, and his title to the property is paramount. There is no other or further supreme or paramount owner to whose rights his rights of ownership are subservient.

In leasehold, the lessor holds the absolute title to the property. The lessee holds the leasehold title to the property. The terms on which the lessee holds the property on lease are specified in the lease. The respective rights and duties of the lessor and the lessee are detailed in the lease, and they are strictly bound by those. A lease creates real rights (jus in re) binding on the property.

The “perpetual fee simple ownership” of real property as known to English law is not known to our law.

Successive and reversionary interests in land were abolished by the Abolition of Fideicommissa and Entails Act No.20 of 1972.

By way of a minor distinction, we have in our law “the legal ownership” of the trustee and “the beneficial ownership” of the beneficiary. Our law of trusts is codified (the Trusts Ordinance), and it follows the principles of Equity of English law.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

Free hold title is conveyed by deeds of transfer, deeds of gift, deeds of exchange, deeds of partition, State Grants, Instruments of Disposition (e.g. by the Commissioner of National Housing), Fiscal's Conveyances, Certificates of Sale executed by a ‘bank’ as defined in the Recovery of Loans by Banks (Special Provisions) Act No.4 of 1990 and decrees of court eg. a decree in a partition action. (This list is not meant to be exhaustive)

Leasehold title is created by a Lease Agreement or an Indenture of Lease. There may also be State Leases, State Permits, plantation agreements, mining rights agreements etc.

Any conveyance or agreement relating to real estate including deeds of transfer and indentures of lease must be by way of a notarially attested document in terms of our Prevention of Frauds Ordinance, Notaries Ordinance and the Registration of Documents Ordinance.

There are requirements for stamping and registration for conveyances, leases and other agreements relating to real estate.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

Instruments in respect of immovable property need to be registered, so as to ensure priority to such Instruments although, in strict law, such registration is not essential for the validity of the Instrument. But, for the conferment of priority, registration is essential. If an instrument is not registered, it can be defeated by a subsequent instrument which is 'duly' registered.

Registration is effected by tendering the Instruments for registration to the registering authority ie. the Land Registry within the area of which the land is situated. There is no period of time specified for such registration in respect of immovable property.

The registration records (the Registers) at the Land Registry are searched by the lawyer acting for the purchasers, donees, lessees or the grantees of immovable property. It is the lawyer for "the acquiring party", who searches the Registers.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

Examination of title to immovable property is carried out by the lawyer acting for the purchaser, lessee or the grantees, and, in the event the acceptance of title to the property is recommended by the lawyer, it is not required to obtain title insurance. The lawyer recommends acceptance of title because the title comes up to the expected standard. There must generally be 30 to 35 years clear and unbroken chain of title up to the present owner.

In the event the lawyer considers that the title does not come up to the expected standard, he will consider whether it is a proper case in which to recommend acceptance of title on the strength of a Policy of Title Insurance.

A title insurance policy usually insures the assured, (subject to any exclusions from coverage or exceptions, conditions and stipulations contained in the policy) against loss or damage, not exceeding the amount of the insurance stated in the policy and costs, lawyers' fees and expenses, which the insurer is obliged to pay under the policy, sustained or incurred by the insured, by reason of :

1. the title to the property described in the policy being vested otherwise than as stated in the policy;
2. any defect in or lien or encumbrance on such title,
3. unmarketability attributable on a balance of probability to a defect in title, and
4. lack of a right of access to and from the land described in the policy

The obtaining of title insurance does not remedy the defects or deficiencies in the title to the property. The benefit it affords is the payment of compensation in the event of loss.

The cost of obtaining the advice of a lawyer, will vary from transaction to transaction, depending on the aspects of the transaction, the complexity of the matter, the skill and specialised knowledge required, the time taken, the amount of work done and the value of the transaction.

Generally, the premium payable to obtain title insurance will be 0.5% to 0.75% of the insured amount. In addition to the premium, the assured is also required to bear the cost of investigating title to the property and all incidental expenses incurred by the insurer. These costs are inconsequential.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

A very common practice is to form companies to own land. There is a ceiling of 50 acres on the ownership of agricultural land. This is the maximum extent that can be held by an individual or a company.

The Board of Investment of Sri Lanka ("BOI") is set up by the Government of Sri Lanka, under the Board of Investment of Sri Lanka Law No.4 of 1978, as amended. It is a body corporate and vested with powers, such as power to enter into agreements with any enterprise and to grant exemptions from any law, referred to in such law, or to modify or vary the application of such laws, to such enterprises in accordance with such regulations as may be made by the relevant Minister.

Some of such powers are to grant exemptions from or to modify or vary the application to enterprises, approved by BOI, of the laws governing Revenue, Customs and Exchange Control. With these powers, the BOI gives various fiscal incentives and concessions including exemptions from income tax, import and export duties and exchange control to enterprises approved by the BOI according to BOI's assessment of the ability of an enterprise to satisfy certain specified criteria.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

No. There are no indications of any intention to introduce such legislation.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Transfer of property in Sri Lanka is liable for the payment of stamp duty at the rate of Sri Lanka Rupees Four (LKR 4/-) per LKR 100/-. This is payable by the buyer and payable to the Provincial Council of the relevant Province, where the property is situate.

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 of Sri Lanka.

By Order made by the Minister of Finance and Planning published in Gazette Extraordinary 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. For example, any land, the ownership of which is transferred to an enterprise, to which the BOI has granted authorization in writing to set up on such land, a project for the construction of not less than hundred residential housing units, each constructed on land not exceeding ten perches, inclusive of appurtenant land, or a condominium property within the meaning of the Apartment Ownership Law No.11 of 1973 comprising not less than hundred units for residential or non-residential accommodation, provided that the total value of the land is met by inward remittances of foreign currency, is exempt from the 100% tax.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

In the event of a transfer of shares held/owned in a company incorporated in Sri Lanka, which owns real estate, such transfer of shares is liable for the payment of stamp duty at the rate of LKR 5/- per

LKR 1,000/-. This is payable by the tanferee of such shares and payable to the Central Government of Sri Lanka.

By the Order made by the Minister of Finance and Planning published in Gazette Extraordinary No.1465/20 dated 5th October 2006, transfer of shares of certain class or description specified in the Order has been exempted from the payment of stamp duty.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Stamp duty payable on transfers of property and the 100% tax is uniform in Sri Lanka. It does not vary from Provincial Council to Provincial Council. Taxation too is uniform. There are no local variations or local regulation on these aspects.

While there are personal and local laws in Sri Lanka such as the Kandyan law applicable to the Kandyans, the Thesawalamai applicable to the Tamils who are governed by the Thesawalamai and the Muslim law applicable to the Muslims, and there are variations of the real estate law amongst these different systems of law, such laws and such variations have no bearing on the very general questions you have asked in your questionnaire headed "Issues In Ownership of Real Estate".

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

We have mentioned under Question 1 above that successive and reversionary interests in land were abolished by the Abolition of Fideicommissa and Entails Act No.20 of 1972. Consequent to this abolition, the existence in Sri Lanka of the fact-situation envisaged in this Question 10 is minimal.

There may be trusts in which the Trustee holds property for the benefit of certain beneficial owner/s. The legal ownership to the property vests in the Trustee, and the beneficial ownership in the beneficiaries. Similarly, there can be a Last Will providing for the same fact-situation.

In situations such as these, there is no specific law in Sri Lanka which makes it necessary to disclose as a matter of public record the ultimate beneficial owners of entities which own real estate, whether such entities be companies or otherwise.

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Issues In Ownership Of Real Estate

Thailand

Prepared by Lex Mundi member firm Tilleke & Gibbins

1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Freehold perpetual ownership of real property is permitted.

However, it must be noted that in general, foreigners cannot own land in Thailand. Under Thai law a “foreigner” is defined as:

- A natural person who is not of Thai nationality.
- A juristic entity that is not registered in Thailand.
- A juristic entity incorporated in Thailand with foreign ownership accounting for one-half or more of the total number of shares and/or registered capital.
- A limited partnership or ordinary registered partnership whose managing partner or manager is a foreigner.

Buildings and any other structure on the land may be owned, and separate title registrations over such buildings are possible. Thai law also allows foreigners (individual or corporate) to directly own up to 49% of the aggregate unit space of a condominium building. In addition, foreign majority-owned companies located in an industrial estate and/or that have received investment promotion from the Board of Investment may be allowed to own land for their business.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

Real estate conveyance is made through execution of a land sale and purchase agreement registered with the relevant Land Office and the registration of title transfer in said Land Office.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

Ownership of real property is recorded at the local Land Office which has jurisdiction over the real property. Searches may be made at said Land Office by any interested party.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

Title insurance is relatively new practice in Thailand and is usually offered by foreign insurance carriers. Title opinions may be sought from a law firm or a real estate valuation company. Cost varies considerably among service providers.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

Most common forms of investment vehicles are private limited companies. Corporate income tax is assessed at the flat rate of 30% on the net profits. Reduced rates of 15% to 25% are granted to small and medium-sized enterprises (SMEs) as follows:

- (a) 15% for the first Baht 1 million of profits.
- (b) 25% for profit between Baht 1 million and Baht 3 million.
- (c) 30% for net profits over Baht 3 million.

These reduced rates are applied to a company with a paid-up capital not exceeding Baht 5 million as at the end of an accounting period (SME).

Property funds registered with the Securities and Exchange of Thailand are tax efficient but are relatively difficult to set up, and are subject to various regulations. Property funds are exempted from corporate income tax, land registration expenses, i.e. seller's income tax, special business tax and duty stamp.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Yes, in the form of property funds. This is a popular vehicle for foreigners to invest in property in Thailand as there is no nationality restriction in this regard. Several types of property funds were established in the recent past, namely, Types I, II, III, IV and V, principally to resolve the financial problems brought on by the financial crisis of 1997. Currently, only the PROPERTY FUND FOR PUBLIC OFFERING or Type I fund is available.

Type I fund is similar to the Real Estate Investment Trust (REIT) in other countries in that it also has various tax incentives. Like its earlier predecessors, a Type I property fund is publicly listed in the Stock Exchange of Thailand (SET). The "units" are traded just like the shares in a company. It is established for the purpose of raising funds from the public to invest in income-producing real estate property such as office building, service apartment, industrial factories, etc.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

- (a) Transfer fee: at the rate of 2% of the price of the land as appraised by the relevant Land Office;
- (b) Income tax: generally, property must be transferred at a price not lower than their market value (i.e., the price as appraised by the Land Department). Capital gain, if any, derived from the transfer of assets is subject to corporate income tax. Corporate income tax is generally imposed at the rate of 30% of net profits. Reduced rates of 15%-25% are granted to small and medium enterprises (companies with paid-up capital not exceeding Baht 5 million).
- (c) Withholding tax: a withholding income tax of 1% of the selling price or the price as appraised by the Land Department, whichever is greater, is imposed on the transfer of immovable assets. The transferee is obligated to withhold this tax and remit the same to the competent official at the time of registration of rights and juristic acts. This 1% withholding tax is regarded as an advance tax payment which can subsequently be used by the transferor as a credit against the corporate income tax payable.
- (d) Specific business tax ("SBT"): the transfer of immovable property is subject to SBT imposed at the rate of 3.3% (this rate includes municipal tax) of the selling price or the price as appraised by the Land Department, whichever is greater.
- (e) Stamp duty: the transfer of immovable property is subject to stamp duty of Baht 1 per Baht 500 (0.5%) of the selling price or the price as appraised by the Land Department, whichever is greater. If SBT has already been paid for the transfer, such transfer will be exempted from stamp duty.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Transfer of entities would generally be deemed as transfer of stock of the entity owning real estate. Share transfer document is subject to a stamp duty at the rate of Baht 1 per Baht 1,000 (0.1%) of the selling price or of the paid-up value of shares, whichever is greater. Income tax is imposed in the form of a withholding tax at the rate of 15% on capital gain (if any) derived from the sale of shares. This 15% withholding tax is deemed as the final tax payment and there will be no further Thai income tax imposed on such capital gain. The payer of income (the purchaser) holds a duty to withhold income tax and remit the tax to the local district office no later than the seventh day of the month following the month of payment.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Real estate law is uniformly applied throughout Thailand. There is no variation in state law.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

The shareholders of entities owning real estate are deemed as the ultimate beneficial owners. Thai law prohibits nominee arrangement with respect to land owning entities especially if such nominee arrangements are being effected to contravene the law against foreign ownership of real estate.

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Issues In Ownership Of Real Estate

Turkey

Prepared by Lex Mundi member firm Pekin & Pekin

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes. Perpetual fee simple ownership of real property is permitted. Furthermore ownership of usufruct right is also permitted.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Under Turkish Law ownership of real property may only be transferred with a sale and purchase agreement to be executed at the Relevant Title Deed Registry Directorate. All other transfer instruments in relation to a real property ownership are null and void including the transfer of the respective title deed certificate.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Ownership of real property is recorded at the relevant title deed registries. Title deed registry records are open to public and may be reviewed by all related parties. Generally an attorney or real estate experts conduct such search, as encumbrances and other liabilities attached on the property may also be reviewed from such records.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

As title deed registry records are final and all bona fide purchasers relying on such records are protected by Turkish Laws, purchasing real property in Turkey is a pretty safe transaction. Title insurance is not being offered by Turkish insurance companies yet however we have heard or respective feasibility works are carried out.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

Generally a Limited Company (*limited şirket*) or Joint Stock Company (*anonim şirket*) are used as an investment vehicle as both are limited liability companies.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Trust concept is not recognized by Turkish Law; however Real Estate Investment Companies are regulated and active in Turkey.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

3% title deed duty to be calculated over the sale price (1,5% to be collected from the Seller and 1,5% to be collected from the purchaser) and a fixed circulating capital duty (around USD 200) are levied on direct transfer of real property. If the seller is a legal entity, then 18% of VAT may be levied subject to certain circumstances.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Taxes in relation to transfer of interest in entities may vary regarding the citizenship of the owner, what interests are transferred and when etc., however there are no special regulation for the entities which own real property..

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Real estate tax rate varies for residence, work place and land, however the average annual rate is around 1 to 6 per mill of the property value.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

There is no such procedure. Only the owner of the real estate is disclosed in the Land Registry Records. However the names of the shareholders of the owner legal entity may be investigated from the respective Trade Registry records.

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Issues In Ownership Of Real Estate

Turks & Caicos Islands

Prepared by Lex Mundi member firm Misick & Stanbrook

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in the Turks and Caicos Islands (TCI).

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed in the form RL1 prescribed under the Registered Land Ordinance (CAP 72) is used to convey ownership of real estate.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Each parcel of real property in the TCI is recorded at the Land Registry. There is a separate register for each parcel. Each parcel is identified in the register by reference to a parcel number, the island on which it is located and the section of that island. A title search may be conducted by any member of the public. However, normally searches are carried out by law firms or their agent. A search can be carried out by applying for a copy of the actual register or by a visual inspection of the register at the Land Registry.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

It is possible but highly unusual to obtain title insurance. This is because under the Registered Land Ordinance title to property is guaranteed by the Crown.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

A TCI limited liability company is the most common form of entity used to own investment real estate. As there is no locally imposed tax on real estate other than stamp duty at the time of purchase, tax efficiency is not a consideration from a local point of view.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Not that we are aware of at this time.

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

Under the Stamp Duty Ordinance (CAP 157) Stamp duty tax is payable on any document that transfers interests in real estate. The rate of tax depends on the location of the land and its value. Transfers of land valued under \$25,000.00 are exempt from duty. Transfers of land valued above \$25,000.00 but below \$75,000.00 are charged with duty of 5% or 6.5% depending on the location of

the land and transfers above \$75,000.00 are charged with duty of 5% or 9.75% depending on the location of the land. Under the Ordinance both seller and buyer are legally responsible for payment of the stamp tax. However as a matter of custom the Purchaser normally assumes responsibility for the stamp tax under the terms of the purchase and sale contract. The Ordinance contains a number of exemptions to stamp duty liability which generally involves transfers between closely related parties.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Under the Land Holding Companies (Transfer Duty) Ordinance (CAP 158) the transfer of shares of a company which is the registered owner of land (or the transfer of any beneficial interest in the shares of that company) is dutiable at the rate of 8% of the value of the land held by the company multiplied by the proportion of the shares of the company changing hands. The definition of a dutiable transfer is drafted widely and encompasses the shares of holding companies or interests in any other entity further up the chain of ownership. Liability for the duty remains vested in the landholding company itself.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Taxation of real estate in the shape of stamp duty is a major source of revenue for the local Government and is therefore extremely significant. Regulation is accordingly strict and the penalties for evasion harsh. There is no variation of real estate law other than the stamp duty rates among the Islands. The amount of stamp duty payable depends on the island on which the property is located. There is no stamp duty for transfers where the land value does not exceed \$25,000. The dutiable rate on the islands of Grand Turk, South Caicos, Middle Caicos, North Caicos and Salt Cay is 5% of the value of the land. For all other islands where the land value exceeds \$25,000 but is does not exceed \$75,000 the dutiable rate is 6.5%, and 9.75% where the land value is more than \$75,000.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

United Arab Emirates

Prepared by Lex Mundi member firm Afridi & Angell

1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Yes. Ownership of land in Fee Simple Absolute is permitted in Dubai by virtue, *inter alia*, of Article 4 (Chapter Two) of **Law No.7/2006 Concerning Land Registration in the Emirate of Dubai** (the "Governing Law"), "Foreign Persons may, subject to the approval of the Ruler, be granted in certain areas the following rights:

(a) The right to acquire absolute ownership of Land without restrictions as to time."

The caveat to the above is that such form of ownership by foreign persons is restricted to certain areas as per Regulation number 3 of 2006 on Determination of the Real Property Areas Designated for Ownership by non-GCC nationals in the Emirate of Dubai. The regulation cites 23 "designated areas" and 45 plots where non-nationals are permitted to hold an interest over land. Foreign-owned entities may also acquire freehold interests in real estate in the various Free Zone areas.

Subject to Article 4(b) of the governing law, foreign persons may also acquire leasehold land for a period not exceeding 99 years.

On a wider spectrum, the right to own land in Dubai (freehold and in any area) is allowed for citizens of the United Arab Emirates, citizens of the Cooperation Council for the Arab States of the Gulf, the companies totally owned by any of the foregoing, and public joint stock companies (in accordance with Article 4 (Chapter Two) of the governing law).

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

Transfer deed.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

In accordance with Article 7 (Chapter 5) of the governing law a Land Register shall be maintained in the Land Department to record all rights over land and any changes that might take place in respect of them. This Register shall be conclusive evidence against all and everyone unless it is proved to be the result of fraud or forgery.

In accordance with Article 22 (Chapter 10) of the governing law, ownership documents shall be issued by the Land Department on the basis of the actual records of the Land Register. Pursuant to Article 24 (Chapter Ten) of the governing law, these documents are conclusive evidence of the rights over land contained therein and may come in the form of a hard copy written original or an electronic record. Note that electronic records shall have the same weight of evidence as that of their hard copy written originals (Article 8 (Chapter 10) of the governing law).

Crucially, pursuant to Article 24(2) of the Dubai Property Law any third party interests, conditions, undertakings, encumbrances, or any other liabilities must be registered against the property.

In order to provide assurances to a potential purchaser of real property in Dubai it should be stated that, by virtue of Article 5 (Chapter 3) of the governing law, interested parties, judicial authorities or experts appointed by them, as well as competent committees may have access to such original documents pertaining to ownership of land and obtain a certified copy thereof. This would enable title searches to be carried out in order to determine the ownership of real property.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

The DIFC (Dubai International Financial Centre) has taken the lead in the UAE in terms of developing the promotion of Real Estate Investment Trusts ("REITS") by the passage of its Investment Trust Law and its Collective Investment Law No.1 of 2006. These laws and related regulations promulgated by the DIFC and the DFSA (Dubai Financial Services Authority) prescribe the formation and operation of REITs and the qualification criteria, as well as the rights and obligations of REIT operators and trustees.

The DIFC expects to be the domicile for REITs managing in excess of \$10 billion in assets by 2011. REITs are quickly becoming a favorite method for attracting public ownership in real property investments in the UAE.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

A 2% transfer fee is payable (1% by the buyer and 1% by the seller) on the transfer of property.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Same response as to question 7.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Both are significant. The last few years have seen the introduction of a number of significant laws which regulate property ownership from what was once a relatively unregulated jurisdiction in this regard. This has led to an increased demand from foreign investors and expatriate residents for property ownership in Dubai. As regards taxation, Dubai has become synonymous with providing a tax respite for foreigners and locals alike. Having maintained a no tax policy since its independence, freedom from paying taxes has been one of the most attractive features of property investment. From a corporate perspective, different economic zones have been set up that are entirely tax free for corporations operating within its borders.

The UAE consists of 7 Emirates. The Constitution governing the Federation of the UAE provides that real estate comes under the banner of federal jurisdiction, but where the Federation does not legislate in this area, the individual Emirates may do so. On that basis, laws relating to ownership of real property in Dubai have developed rapidly.

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Issues In Ownership Of Real Estate

Uruguay

Prepared by Lex Mundi member firm Guyer & Regules

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, perpetual fee ownership of real property is the only established form of full ownership consecrated by Uruguayan law.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

According to the Civil Code, it is mandatory for the transfer of fee simple ownership of real estate to execute a public deed before a Notary Public. Further, to complete the transfer of the realty, the possession of the real estate must be delivered to the acquiring party (tradición). Any other manner of transfer is considered null and void and produces no effect.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

In order to become effective before third parties, a purchase and sale agreement of real estate property, duly executed before a notary public, must be filed before the Real Estate Registry of the Department where the real estate is located. Prior to the execution of the purchase and sale agreement the acting notary public shall perform a due diligence search of the title deed of the seller. This search shall go back in time for a period of at least 30 years due to statute of limitation provisions in Uruguay, in order to verify the goodness and perfection of the title of the seller and the absence of restrictions to transfer ownership or the existence of debts, liens, encumbrances and other contingencies that may affected the property.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Uruguay has an excellent real estate legislation akin to the Torrens System, under which title to real estate and all rights pertaining to real estate, in order to be valid before third parties, must be registered before the pertinent public registry. The chronological order in which such rights are registered give precedence to the various rights registered with respect of a property. The system is so safe that title insurance is unheard of in the country.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

Real Estate are usually held by individuals or companies whether corporations or limited liability companies. There is no limitation for foreign entities to hold land in Uruguay and from a tax perspective there is no difference whether the company is Uruguayan or foreign.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Yes, since year 2003, the Uruguayan legislation contemplates the existence of real estate investment trusts.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Both sellers and buyers are subject to the payment of the real estate transfer tax (Impuesto a las Transmisiones Patrimoniales) at a rate equivalent to 2% of the cadastral value of the real property. The sellers, being individuals, shall also be subject to the payment of Income Tax (Impuesto a la Renta) at a rate of 12% of the fiscally adjusted difference between purchase and sale price. Should the seller is a corporation; the sale of the real estate is taxed with Income Tax at a rate of 25%. The buyers have to pay the notary's fees (3% of the purchase price plus VAT at a rate of 22%).

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

In case of a stock purchase agreement of a company that owns real estate, if the shares in question are registered shares, the sellers are taxed with Income Tax at a rate of 2,4% of the purchase price. If the said company has bearer shares, the operation in question is tax exempt.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

In principal, real estate matters are basically governed by the Uruguayan Civil Code and other laws of national jurisdiction.

Regarding local regulations, all the matters related to construction permits, restrictions of construction, characterizing of the soils in rural, urban or sub-urban zones, etc, are the resort of municipal governments. Further municipal taxes also collect the property tax on the real estate "Contribucion Inmobiliaria".

Notwithstanding the above and due to a law passed by the Parliament last May (the territorial planification law) the national Government has a variety of attributions to regulate real estate matters previously of municipal resort. Said law is pending of regulation.

Environmental issues are also regulated by national law.

Regarding taxes on real estate, the same are taxed with Net Worth Tax, which is a national tax at a rate of 1.5% of the value (in case the owners are legal entities) and at lower rates (in case the owners are individuals).

Finally, real estate is subject to a national tax whose beneficiary is the public education system (impuesto de enseñanza primaria) calculated on the fiscal value of the property in question.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

It is no necessary to disclose the beneficial owners of legal entities who own real estate. However, regarding rural land, according to law 18.092 and its modifications and regulations, in the case that rural property is held by legal entities, such entities must have registered shares or quotas the owners of which must be individuals. Otherwise, an authorization from the Executive Branch must be obtained. Said restriction will not apply in the case of rural land not designated to agriculture activities.

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Issues In Ownership Of Real Estate

USA, Alabama

Prepared by Lex Mundi member firm Maynard, Cooper & Gale, P.C.

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in Alabama.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Real property is conveyed in Alabama pursuant to one of three types of deeds: general warranty deed, statutory warranty deed or quitclaim deed. The general warranty deed provides for a transfer of property with a broad warranty of title by the seller. The statutory warranty deed is utilized pursuant to Alabama Code § 35-4-271 to convey real property with a limited warranty of title. The quitclaim deed is used to convey real property without any warranties of title.

Alabama law (including specifically Alabama Code § 35-4-20) requires that instruments conveying real estate adhere to certain formalities. The instrument must (i) contain the name and address of the individual preparer (not just the name of the law firm) of the instrument pursuant to Alabama Code § 35-4-110 (though failure to include this information does not affect the instrument's validity pursuant to the cited code section); (ii) be executed and witnessed or notarized as set out below; (iii) be delivered to the grantee (with evidence of grantor's present intent to divest title that is reputably presumed upon physical delivery); (iv) contain an adequate legal description of the land; and (v) identify the grantee with certainty. The state and county in which the subject real estate is located should be stated in the upper left hand corner of the instrument, while the state and county of execution must be stated above the notary acknowledgment. Any conveyance of land or interest therein by an individual grantor must contain a recitation of the grantor's marital status. The spouse of an individual grantor must sign the instrument of conveyance only if the property is the grantor's homestead. If not, the preparer should add a recital that the property is not the homestead of the grantor. If part of the consideration for the conveyance is paid out of the proceeds of a mortgage loan closed simultaneously, a statement to that effect should be included in the deed in order to procure the appropriate deed tax credit described in question 7 below.

In addition, certain Alabama Acts not yet codified (such as Alabama Act Nos. 80-450 and 80-610) have required (and subsequently made it common practice) to include the name and address of the grantee for purposes of receiving the property's ad valorem tax bill.

One witness is required for any conveyance, unless the grantor cannot write, in which case two witnesses are required. A notary acknowledgment serves as a witness and also makes the document self-proving when recorded. Purported execution in the name of a corporation by certain officers, including the president, vice-president or secretary, constitutes prima facie evidence of due authorization. No corporate seal is required, but the use of a corporate seal dispenses with the need for proof of due authorization, subject to rebuttal.

An Alabama statutory acknowledgment form should be used if the instrument of conveyance is notarized. If the instrument is to be acknowledged outside of Alabama, the words "and official seal" should be inserted after the word "hand" in the last line and the notary should affix his or her seal in order for such acknowledgment to be self-proving. All deeds should be recorded in the county in

which the real property is situated and should include the appropriate address for tax notices and the name and address of the person to whom the deed should be returned after recording.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

Real property title searches in Alabama are typically conducted by means of a grantor/grantee search. A title search is generally conducted by an abstractor, either working for a lawyer or a title insurance company. The customary time period of ownership that is searched in Alabama is 60 years.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

Title insurance is available in Alabama. A title insurance policy on real estate in Alabama must be issued by a person or agent who is domiciled in, or is otherwise a bona fide resident of and resides in Alabama, or is a partnership, association, corporation or other legal entity properly organized or existing under the laws of Alabama, and individual attorneys may act as title insurance agents in Alabama. Title companies are required to file their rates for title insurance premiums and endorsements with the commissioner of insurance. Premium rates charged by title insurance companies are regulated by the commissioner of insurance. Extended coverage endorsements to title insurance policies issued in Alabama are typically available from Alabama title insurers. Most of the standard title policy endorsements are available in Alabama.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

Alabama limited liability companies, Alabama corporations and Alabama limited partnerships are the most common forms of entities employed to own investment real estate. Foreign entities may also be used subject to qualification and registration to do business in Alabama prior to contracting for and receipt of conveyance.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Yes, Alabama has adopted the Alabama Real Estate Investment Trust Act, codified as Sections 10-13-1 et seq. of the Alabama Code. The Alabama Real Estate Investment Trust Act sets forth the requirements for forming and operating a real estate investment trust under Alabama law. Under Section 10-13-2, a real estate investment trust is:

an unincorporated trust or association in which property is acquired, held, managed, administered, controlled, invested, or disposed of for the benefit and profit of any person who may become shareholder or an entity that otherwise complies with the provisions of 26 U.S.C. Sections 856 to 858, inclusive, of the U.S Internal Revenue Code, and the rulings and regulations adopted thereunder.

A real estate investment trust may not do business in the state until it complies with the Alabama Real Estate Investment Trust Act.

In addition, a foreign real estate investment trust must qualify to do business in Alabama prior to transacting business in Alabama by complying with the Alabama Real Estate Investment Trust Act and Sections 10-2B-15 et seq. of the Alabama Code. The failure to qualify could prevent a foreign real estate investment trust from maintaining any legal proceeding in the courts of Alabama, as all agreements entered into by a foreign real estate investment trust are void when sued upon by the foreign real estate investment trust or anyone claiming through it. Furthermore, such foreign real

estate investment trust may not cure the failure to qualify and then enforce agreements entered into prior to qualifying.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

A deed tax is due upon the recording of a deed in the amount of fifty cents (\$0.50) per five hundred dollars (\$500) or a fraction thereof, based on the value of the property conveyed. A mortgage tax is due upon the recording of a mortgage in the amount of fifteen cents (\$0.15) per one hundred dollars (\$100) or a fraction thereof. Where a deed and mortgage are recorded simultaneously, there is a credit against the deed tax for the amount on which the mortgage tax is paid. Appropriate recitals should be included in the deed to take advantage of the credit. For example, a deed should recite “\$_____ of the purchase price of the above-described property was financed with the proceeds of a mortgage loan closed simultaneously herewith.” The deed tax is also applicable to leases and is computed based on the future rentals discounted to present value in accordance with a schedule kept by the probate judge. The tax is payable on lease assignments.

Additional per page recording fees are due upon recording, and rates are set by the Office of the Judge of Probate in which the real property is situated.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

None as of this date.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

All real and personal property located in Alabama is subject to property taxes, unless specifically exempted. The state millage rate on both real and personal property is limited by the Alabama Constitution to 6.5 mills or \$6.50 per \$1,000 of assessed value. Counties, cities and school districts may also impose property taxes and these local rates vary. The average combined state and local millage rate is 43 mills.

The owner of real property and tangible personal property with situs in Alabama on October 1 of each year is assessed property taxes. Between October 1 and December 31, all taxable property must be assessed by the tax assessor of the county in which the property is located. Utility property, however, is assessed by the Alabama Department of Revenue. "Utility property" is generally considered to be property of a taxpayer that has the essential characteristics of a utility, including the power of eminent domain and federal and state regulation of rates or tariffs. Alabama arrives at an assessed value for property based upon four different classifications: (1) utility property is assessed at 30% of its appraised value; (2) business property is assessed at 20% of its appraised value; (3) agricultural, forest and residential property and historic buildings are assessed at 10% of appraised value; and (4) private passenger autos and trucks are assessed at 15% of appraised value.

Major property tax exemptions include the following:

- Inventory – inventories of goods, wares and merchandise for sale are not subject to property tax. Inventories of raw materials for use as an ingredient or component part of a manufactured or compounded product are also exempt.
- Pollution Control Equipment – all equipment and materials purchased primarily for the control, reduction or elimination of air or water pollution are exempt.
- Property used for “purposes purely charitable” is exempt from Alabama property taxation. Note that even though an entity may be a 501(c)(3) exempt organization for federal taxation purposes, use of property in conformity with its 501(c)(3) purposes will not

automatically qualify such entity for the “purposes purely charitable” exemption under Alabama state law.¹⁴

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No, except that the Alabama LLC statute requires initial members to be included in the articles of organization.

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Issues In Ownership Of Real Estate

USA, Arizona

Prepared by Lex Mundi member firm Snell & Wilmer L.L.P.

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes. Fee simple ownership is permitted for both domestic and foreign owners and investors.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

The three main instruments used to convey fee simple ownership are the warranty deed, the quit claim deed, and the special warranty deed.

A warranty deed includes guarantees from the grantor to the grantee using operative language such as, “conveys and warrants.” For example, a grantor may warrant that s/he is the lawful owner of the property and has the right to convey the property and that the property is free from encumbrances or liens.

A quitclaim deed conveys to the grantee and its heirs and assigns in fee simple all of the legal or equitable rights the grantor has in the property using operative language such as, “conveys and quitclaims.” A quitclaim deed contains no warranties of title.

A special warranty deed differs from a general warranty deed, in that it limits the grantor’s liability to the warranties explicitly stated using operative language such as, “conveys and specially warrants.” For example, the grantor may warrant that s/he did nothing to impair title.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Documents conveying ownership of real property are recorded in the county in which the property is located. Ownership may be searched online through the local county recorder’s office.

Buyers typically engage a title company to search the title and provide a more detailed report that identifies the current owner of record and vesting information, describes the estate or interest of the owner, provides the legal description of the real estate, and reveals prior liens or other encumbrances on the property.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance and endorsements. The cost varies depending upon the amount of coverage and what types of endorsements are required. The initial title report serves as a preliminary commitment of coverage by the title insurance company. In addition to title information, the title report explicitly defines the proposed scope of coverage, including a list of coverage limits and a list of exceptions.

The buyer and its legal counsel typically review the title report to assess the risk of loss to the property and to determine whether the exceptions interfere with the intended use of the property. Exceptions are not covered by the final policy unless the buyer and its legal counsel can negotiate endorsements from the title company, usually for an additional cost.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

The most common forms of investment vehicles are the limited liability corporation (L.L.C.) and the limited partnership. L.L.C.'s are the most common entity employed to own investment real estate in a tax efficient manner.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

No. Arizona has neither adopted nor considered this kind of legislation.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

There are no generally applicable real estate transfer taxes in Arizona. However, cities and towns impose a speculative builder tax that is essentially a disguised transfer tax that applies in limited circumstances. The city speculative builder tax, administered through the state's Model City Tax Code, applies in many situations where the owner of real estate has improved it and then transferred it to a third party.

Any transferee (including lenders or lenders' special purpose entities) of improved real property, the transfer of which would otherwise be subject to the speculative builder tax, could be liable as a successor for any tax due on the transfer that the transferor has not paid (e.g., transfer pursuant to a deed of trust).

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Some cities take the position that the transfer of an ownership interest in an entity that owns improved real property, the direct transfer of which would trigger the speculative builder tax discussed in Question 7 above, would likewise be subject to the speculative builder tax. Arguments against such an interpretation exist, and we are not aware of any binding legal precedent on this issue.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

The *ad valorem* property tax regime is administered pursuant to state laws. Nevertheless, applicable tax rates for a particular property will depend upon the financial needs of the various taxing jurisdictions in which the property is located and the total assessed valuation of all properties in such jurisdictions.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No. However, beneficiaries of a trust must be disclosed.

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Issues In Ownership Of Real Estate

USA, Arkansas

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

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in Arkansas.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed is used to convey ownership of real estate. Ark. Code Ann. § 18-12-102. All deeds are construed to convey a complete estate of inheritance in fee simple unless expressly limited by appropriate words in the deed. Ark. Code Ann. § 18-12-105.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Ownership of real property is recorded by filing the deed with the circuit clerk of the county in which the property is located. The circuit clerk maintains a grantor/grantee deed index, which is the most common method of searching title. While a title search may be conducted by an attorney, a title search generally is conducted by a title examiner working for a title company.

Act 648 of the 2007 Arkansas General Assembly, which is effective January 1, 2008, transferred regulation of title insurance to the State Insurance Department. This Act established the Arkansas Title Insurance Act (codified at Ark. Code Ann. § 23-103-401), which among other things, requires a title search to review all matters affecting title to the property to be insured for a continuous period of not less than thirty years.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is available in Arkansas. Title insurance rates are not regulated in Arkansas, and the premiums for purchasing title insurance vary.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

An Arkansas limited liability company, an Arkansas limited partnership, an Arkansas limited liability partnership, and Arkansas limited liability limited partnership are the most common forms of entities used to own real property.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

There is no Arkansas statute relating to real estate investment trusts or similar entities.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

There is an Arkansas real property transfer tax on each deed, instrument, or writing by which any lands, tenements, or other realty sold are granted, assigned, transferred, or otherwise conveyed to, or vested in, a purchaser, or any other person by the purchaser's direction, when the consideration for the interest or property conveyed exceeds one hundred dollars (\$100). The tax is three dollars and thirty cents (\$3.30) for each one thousand dollars (\$1,000) or fractional part thereof, of value of the real estate. The statute contains a number of exemptions to transfer tax liability. The payment of the transfer tax is evidenced by affixing documentary stamps to the face of the instrument. In addition, the instrument must contain a notation on its face that the Real Property Transfer Tax Affidavit of Compliance Form was completed, or in the alternative, the instrument must have stamped thereon the following statement: "I certify under penalty of false swearing that the legally correct amount of documentary stamps have been placed on this instrument." Ark. Code Ann. § 26-60-101 *et seq.*

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

The Arkansas real property transfer tax statute does not expressly apply to sellers and buyers upon the transfer of interests in entities which own real estate. See prior answer for additional information.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

As set forth above, the Arkansas real property transfer tax statute levies a tax of \$3.30 per \$1,000 of the value of the property. This amount is split between the buyer and seller of real estate, unless the parties agree otherwise. There is no separate real estate transfer tax at the county or city level, but there are nominal recording fees (as of 2007, \$15 for the first page and \$5 for succeeding pages). Another county issue of which to be aware is that some Arkansas counties have two courthouses, so care must be exercised to both check for that issue and file the instrument in the proper place.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

USA, Colorado

Prepared by Lex Mundi member firm Davis Graham & Stubbs LLP

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, an estate in land granted, conveyed or devised in Colorado is deemed a fee simple estate unless expressly limited by the parties or by operation of law. C.R.S. § 38-30-107.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Fee simple ownership is conveyed by deed. C.R.S. §§38-30-13, et. seq.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Deeds and other instruments affecting title to real property are recorded in the office of the county clerk and recorder in which the real property is situated. C.R.S. § 38-34-101. Each county clerk and recorder is required to maintain a grantor/grantee index. C.R.S. § 30-10-408.

Title searches are typically performed by a title company or abstractor.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is the typical form of assurance obtained by purchasers of real property in Colorado. Title companies are regulated by the Colorado Division of Insurance. C.R.S. §§ 10-11-101 et. seq. Rates are set by the insurance companies, subject to regulation, with title insurance premiums typically between 0.3% - 0.4% of the total price of the real property.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

Domestic or foreign corporations, partnerships and limited liability companies are the most common forms of investment vehicles.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Colorado law does not currently permit the formation of domestic real estate investment trusts.

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

Real property conveyances in Colorado are subject to a state documentary fee calculated at 1 cent per \$100 of purchase price, customarily paid by the buyer. C.R.S. §§ 39-13-101 et seq. In addition to the state documentary fee, a small number of local jurisdictions charge a transfer tax of anywhere from 0.5% to 4% of the purchase price.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

State and local transfer, stamp or similar taxes are generally not imposed upon the transfer of interests in an entity which owns real estate, although a handful of local jurisdictions with separate transfer taxes extent such taxes to the transfer of interests in the entities which own real estate.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Real property in Colorado is subject to annual property tax assessment based on the value of the property, which value must be reappraised by the local assessor every two years. The ability of local jurisdictions to increase property taxes has been limited by Constitutional amendment, subject to certain exemptions. Local governing authorities may not raise taxation rates without prior voter approval. In addition, the Colorado State Constitution limits increases in the amount of revenue a local governing authority may collect through property tax assessments. Col. Constitution Art. X, Sec. 20.

Although laws and regulations of local political subdivisions vary as to taxation rates and zoning, planning and growth measures, there is no significant variation on the basic principles of real estate law among political subdivisions in Colorado.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

USA, Connecticut

Prepared by Lex Mundi member firm Murtha Cullina LLP

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in Connecticut.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed is used to convey ownership of real estate. The three forms of deeds most frequently used are: 1) warranty deed; 2) limited warranty deed; and 3) quitclaim deed. Other statutory forms include various deeds by fiduciaries which are in essence limited warranty deeds. See C.G.S. Sections 47-36 et. seq.

In any conveyance of real property all rights, privileges and appurtenances belonging or appertaining to the granted or released estate are included in the conveyance, unless expressly stated otherwise in the conveyance and it is unnecessary to enumerate or mention them either generally or specifically but it is better practice to do so. C.G.S. Section 47-36l.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Connecticut has 169 towns, each of which maintains separate land records. All land records are indexed by a grantor/grantee index. A title search may be conducted by an attorney; however, a title search is generally conducted by an abstractor or a searcher, either working for a lawyer or a title company. Under Connecticut's marketable records statute, title should be searched for at least 40 years or to the root of title if earlier. See C.G.S. Section 47-33(c).

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is available in Connecticut. Sections 38a-400 through 425 of the Connecticut General Statutes are known as the Connecticut Title Insurance Act. The purpose of the act is to provide the state of Connecticut with a comprehensive body of law for the effective regulation and supervision of title insurance. Connecticut is a fixed rate state. See C.G.S. §38a-420. Proposed rates are filed with the Insurance Commissioner, who must approve or disapprove them within 30 days. In the case of inaction by the Commissioner, proposed rates automatically become effective upon the expiration of the 30-day period. Certificates of title are sometimes accepted, but are less frequently used or relied upon.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

Real estate interests may be held in a variety of ways in Connecticut, including ownership in the name of individuals, limited liability companies, limited liability partnerships, general partnerships, limited partnerships, corporations, and business trusts, whether organized under the laws of Connecticut or other states. Certain registration or qualification requirements may apply to corporations and other entities organized outside Connecticut, depending on the nature and extent of

the entity's real estate and other business activity in Connecticut. Title may also be held by agents, trustees or other fiduciaries, although there are certain constraints on the parties eligible to act as trustees or other fiduciaries under Connecticut law. Aliens, whether or not resident in the United States, may hold, acquire, lease, inherit and transfer real estate in Connecticut in as full a manner as a native-born citizen.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

There is no specific REIT statute in Connecticut.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Two conveyance taxes are payable on every transfer of real estate in Connecticut, both of which are payable by the seller and both of which are computed based on the purchase price or value received, directly or indirectly, by the seller. One tax is payable to the State's Department of Revenue Services when the conveyance equals or exceeds two thousand dollars. See C.G.S. Section 12-494. This tax ranges from 0.5% to 1.0% depending on the nature of the property. The second tax is payable to the town where the property is located and is currently calculated at the rate of 0.25% of the purchase price or other value received for 151 towns. The current rate is 0.5% in 17 towns and in Stamford it is currently 0.35%. See C.G.S. Section 12-494 and Public Act 07-1. Special rates (declining from 10% to zero over time) can be applicable as to certain classified farm land, forest land or open space land. There are several statutory exemptions from these conveyance taxes and the Department of Revenue Services has regulations explaining some of the exemptions. Failure to pay conveyance taxes when due will not negate the transfer of an interest in real estate, but the seller will be subject to interest and penalties.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

A controlling interest transfer tax is imposed on the transfer for consideration of a controlling interest in an entity, whether it be a corporation, partnership, association, trust, limited liability company or other organization, where the entity owns, directly or indirectly, an interest in Connecticut real property. See C.G.S. Section 12-638b. The tax applies only if the present true and actual value of an entity's interest in Connecticut real property owned, directly or indirectly, by the entity equals or exceeds \$2,000. The tax is payable by the person selling or transferring such controlling interest, at the rate of one and eleven one-hundredths of one per cent of the present true and actual value of the interest in real property possessed, directly or indirectly, by such entity. Form AU-330 must be filed by the transferor on or before the last day of the month following the month during which a controlling interest in an entity was transferred.

As described above, special rates can be applicable on farm land, forest land or open space.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Each of the 169 towns in the State of Connecticut is empowered to assess and collect property taxes. The powers of the towns are defined and limited by State statutes, specifically, Sections 12-40 through 12-195h of the Connecticut General Statutes. Pursuant to the provisions of Section 12-122 of the Connecticut General Statutes, a town must levy such property taxes as are needed to pay all of the current expenses of the town after taking into account all other revenue sources. The calculation of taxes depends on assessments (based on a percentage of assessed value) and mill rates. Each town sets its own assessments, mill rate and schedule of payments. State statutes require reassessment of real estate every 10 years and establish mechanisms for appeal of tax assessments, but otherwise these taxes are governed largely by each town's local ordinances and can vary significantly from town to town.

Zoning (C.G.S. Section 8-2), planning (C.G.S. Section 8-23), subdivision (C.G.S. Section 8-25) and inland wetlands (C.G.S. Section 22a-36) regulations are predominantly subject to municipal ordinance or regulations within each town. The State of Connecticut also regulates, through the State Traffic Commission, parking areas above a certain size and access to public highways. Land use involving environmentally sensitive matters is generally regulated by the Connecticut Department of Environmental Protection and, in some cases, by municipal “conservation” or similar regulatory agents.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

USA, Delaware

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

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in Delaware.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed is used to convey ownership of real estate. 25 Del. C. § 101. A deed will be construed as conveying the entire estate or interest that the grantor owns unless a limitation is clearly expressed. Forwood v. Delmarva Power & Light Co., 1998 WL 136572 *6 (Del. Ch.).

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

The most common method is to conduct a title search by means of a grantor/grantee search. A title search may be conducted by an attorney; however, a title search is generally conducted by an abstractor or a searcher, either working for a lawyer or a title company. The customary time period of ownership that is searched in Delaware is 60 years.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is available in Delaware. Title insurance is regulated by the Delaware Title Insurance Rating Bureau, and rates are set by that body.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

A Delaware limited liability company, a Delaware limited partnership, or a Delaware corporation are the most common forms of entities used.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Although there is no specific REIT statute in Delaware, several Delaware entities may be used to form a REIT, such as a Delaware statutory trust, a Delaware limited liability company, a Delaware corporation or a Delaware limited partnership.

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

There is a Delaware Realty Transfer Tax statute. Any document that transfers an interest in real estate is subject, upon being recorded, to a tax on the value of the property represented by such document. A document is any deed, instrument or writing whereby any real estate within Delaware or any interest therein, shall be quitclaimed, granted, bargained, sold or otherwise conveyed to a

grantee. The Delaware Realty Transfer Tax statute contains a number of exemptions to transfer tax liability. An exemption is availed of by presenting a transfer tax affidavit to the Recorder of Deed's Office prior to the recording of a deed.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

The Delaware Realty Transfer Tax statute may apply to certain transfers of an interest in real estate. See prior answer for additional information.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

The Delaware Realty Transfer Tax statute levies a tax of two (2) percent of the value of the property unless the municipality or county where the property is located has enacted the full one and one half (1½) percent realty transfer tax, in which case the tax is 1½ percent to the municipality or county and 1½ percent to the State. Many Delaware municipalities and counties have enacted the 1½ percent tax, so generally the Delaware transfer tax is a total of 3% (1½ percent to the State and 1½ percent to the county or municipality). This amount is split between the buyer and seller of real estate, unless the parties agree otherwise.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

USA, Florida

Prepared by Lex Mundi member firm Akerman Senterfitt

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, the State of Florida permits fee simple absolute ownership of property.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed is used to convey ownership of real estate. A form of warranty deed is provided in Florida Statute 689.02 (2007). Florida's Statute of Frauds, Florida Statute 689.01(2007), prescribes formal requirements.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Title documents are recorded in the public records of the Florida county in which the real property is located. Florida's recording act is a "notice" statute. Searches of the public records are typically conducted by title companies, and may be performed by an attorney. The Marketable Record Title Act, Chapter 712 of the Florida Statutes, establishes, in sum, that a root of title is created by the first deed that includes warranties recorded at least thirty years prior to the subject title search. A "root of title" may also be established by a Murphy Act Deed or court proceeding.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is widely available. Minimum promulgated rates are established by Florida Administrative Code 69O-186.003 and Section 627.7825 of the Florida Statutes. A discounted rate (reissue rate) is available if a prior owner's title policy is provided. Florida Statute 627.782(2007), which codifies the decision of the Florida Supreme Court in *Chicago Title v. Clark Butler*, permits the insured to negotiate the amount of the promulgated minimum premium to be retained by the title insurer, which may not be less than 30%. Title insurance is regulated by the Florida Department of Financial Services.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

Entities commonly include limited liability companies, limited liability partnerships, and corporations, whether Florida or Delaware entities or entities formed under the laws of other jurisdictions.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Real estate investment trusts are recognized by Florida law, but no specific form of entity is required.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Florida Statute 201.02 requires the payment of documentary stamp taxes on conveyances or real property. In addition, a surtax may be due on the conveyance of unimproved land and commercial real estate if levied by the county in which the real estate is located.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

The 2008 Florida legislature created a requirement that the local property appraiser's office be notified whenever commercial real property is transferred in Florida or whenever an entity that owns commercial real property has a change of control or a change in ownership exceeding 50%. There is no tax, however, on a change in control. Further, only an assignment of a beneficial interest in a land trust is taxable.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Local regulation and taxation is significant, including land use regulation. Land use is regulated at the state, regional, and local levels with considerable variation at the local levels. General real estate law is governed by state statutes and English common law principles with little or no variation among the judicial circuits.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

The disclosure of the ultimate beneficial owner is required in connection with certain land use actions. In addition, certain federal laws, such as the International Investment and Trade in Services Act and the Agricultural Foreign Investment Disclosure Act of 1978 require such disclosure. Additional disclosure may require in some circumstances. For example, Florida Statute 689.071(2007) provides that a conveyance of real estate in which the grantee is named as "trustee" or "as trustee" of an identified trust will require certain information regarding the trust unless the deed conveying the property to the trustee confers the powers set forth in Section 689.071.

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Issues In Ownership Of Real Estate

USA, Hawaii

Prepared by Lex Mundi member firm Case Lombardi & Pettit

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, perpetual fee simple property ownership is permitted in Hawaii.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed is used to convey legal title to fee simple property.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Hawaii has a single statewide recording office in Honolulu, the Bureau of Conveyances, where all documents are recorded regardless of which island or county in which the property is located. There are two types of land registration, as Hawaii has both the Land Court (Torrens) system for recording registered land and the "Regular System" for recording unregistered land. Requirements for recording in the Regular System are generally less stringent than in the Land Court system.

Land Court property is registered pursuant to HRS Chapter 501 and always is described by reference to lot and map number filed with a specific (numbered) a Land Court Application. Regular System property may be described in a number of ways, e.g., by reference to a file plan or recorded map, or a metes and bounds description.

The distinctive feature of Land Court property is that title is evidenced by a certificate of title, and encumbrances are not effective against the property, until such encumbrances are noted on the certificate of title for the property. When the fee interest is conveyed, a new transfer certificate of title ("TCT") is issued to the new owner. Thereafter, the title of each new fee owner is evidenced by a new TCT.

Title searches are conducted by title companies. While the Bureau of Conveyances keeps a grantor/grantee index, title companies generally search electronic title systems, using property descriptions. As a practical matter, title searchers generally rely on a prior search for the first known source of title. The original source of title may date back to a land patent or award of title at the time of the first division of lands in Hawaii which occurred in 1848.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is available in Hawaii. The cost of premiums and chares is set by the individual title company in a published and posted schedule. The schedule may be changed or amended at any time. HRS §431:20-120.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

A Hawaii limited liability company or a Hawaii corporation are the most common forms of entities used.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Hawaii does not have a specific REIT statute.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

A conveyance document will not be accepted for recordation unless it is accompanied by either (a) a conveyance tax certificate and the tax, if any, has been paid, or (b) an exemption to conveyance tax certificate if the conveyance is specifically exempt from tax pursuant to HRS §247-6. Depending on the type and value of the property being conveyed, the conveyance tax ranges from ten cents (\$0.10) to thirty-five cents (\$0.35) on each one hundred dollars (\$100) of actual and full consideration.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Hawaii Real Property Tax Act (HARPTA), HRS §235-68, is Hawaii's counterpart to the Foreign Investment in Real Property Act of 1980 (FIRPTA). HARPTA provides for the withholding of income tax equal to five percent (5%) of the amount realized on the disposition of Hawaii real property by a non-resident person. The party acquiring the property is required to withhold and pay over to the State Department of Taxation the required amount of tax by the 20th day after the date of the transfer of the property, unless the seller furnishes the buyer with a Certificate for Exemption from the Withholding of Tax on the Disposition of Hawaii Real Property (Form N-289). Escrow companies generally make the withholding payment out of the gross proceeds in transactions subject to HARPTA.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Land use is regulated at both the state and county level.

State land use laws classify all lands into one of four land use districts: urban, rural, agricultural, and conservation. HRS § 205-2(a). In establishing the boundaries of the districts in each county, the State Land Use Commission considers the general plan of the county.

Subdivision and zoning regulation is delegated to the four counties. However, zoning is subject to the limitations of the State's districting scheme. Any conflict between the State provision and the county zoning ordinance is resolved in favor of the State statute. As to certain specific areas, county regulations have been superseded by community development districts. In addition, and without limitation, special management area permits issued by the county planning authority are required to develop land within a special management area (land extending inward from the shoreline). There may be significant variations between the four counties' zoning and subdivision ordinances.

Real property taxation is delegated to the counties. Property tax assessments are made, and the property taxes administered, by the finance departments of the respective counties in which the real estate is located. Real property is assessed as of October 1 of each year. Different tax rates are applied to different classifications of land, classified by the counties based on their highest and best use. Except as exempted by ordinance, all real property is subject to tax on 100% of its fair market

value. Although the real property tax laws are essentially similar, administrative procedures or policies and/or tax rates may vary by county.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

USA, Indiana

Prepared by Lex Mundi member firm Faegre Baker Daniels LLP

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, real property may be owned in fee simple in Indiana.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Deed. Deed language that grantor "conveys and warrants" conveys fee simple ownership.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Deeds are recorded in the office of the recorder in the county where the property is located. Searches are conducted of the recorder's grantor/grantee index. Searches are typically conducted by title companies.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is available in Indiana. Rates are not controlled by statute or regulation.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

In commercial real estate, title is typically held by limited liability companies, corporations or limited partnerships.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Indiana has a statute (IC 23-5-1-1 et seq.) that could be used to form a statutory business trust which could elect tax treatment as a REIT. Indiana business corporations can now qualify as REITs.

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

Indiana has no transfer tax applicable to real estate.

- 8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?**

None.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Local jurisdictions perform traditional zoning, land use and similar functions and establish the rate for and collect the state imposed real estate taxes. However, there is currently no significant differences in the types of regulations or real estate taxes imposed by political subdivisions within Indiana.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

USA, Iowa

Prepared by Lex Mundi member firm The Davis Brown Law Firm

1. **Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes

2. **What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

General Warranty Deed, Special Warranty Deed, or Quit Claim Deed.

3. **How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Real estate title transfers are recorded in the office of the County Recorder of the county where the real estate is located. Recordings are public records, and any member of the public can search these records. Professional searches are typically performed by local abstract companies.

4. **What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Abstracts of title prepared by a local abstracting company are commonly used for examination of title by a licensed attorney. In addition, title insurance or Iowa Title Guaranty can be procured. Title insurance may not be sold by persons located in Iowa, but can be obtained from out-of-state title insurance companies. Title Guaranty, which is comparable to title insurance, is available from the Title Guaranty Division of the Iowa Finance Authority. The premium of Title Guaranty is generally \$1/\$1,000 of the insured value. Charges for an attorney's title opinion are generally based on title review time and will typically be less expensive than either title insurance or Title Guaranty.

5. **What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

Limited partnerships and limited liability companies.

6. **Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Iowa has not adopted comprehensive legislation concerning real estate investment trusts. However, Iowa Code Section 557.10 permits declarations of trusts in relation to real estate.

7. **What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

\$1.60/\$1,000 of value above the first \$500 of value. Certain transactions are exempt. The transfer tax is customarily paid by the Seller.

8. **What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?**

None

9. **How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?**

Local Home Rule grants considerable power to local units of government, including the limited power to impose ad valorem real estate taxes that are significant, particularly when coupled with impositions of other taxing authorities. Residential, commercial, and agricultural property is taxed differently. Also, local governments have land-use zoning powers that regulate property development and uses. Private easements and covenants can also impact permitted uses of property.

10. **Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?**

No.

NOTE: Iowa law restricts the ability of non-resident aliens and entities other than family farm corporations (and other comparable entities) from acquiring or leasing Iowa agricultural land.

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Issues In Ownership Of Real Estate

USA, Kentucky

Prepared by Lex Mundi member firm Wyatt, Tarrant & Combs, LLP

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in Kentucky.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Ownership of real estate in Kentucky may be conveyed either by deed or will. KRS § 382.010 states that *"the owner may convey any interest in real property not in the adverse possession of another; but no estate of inheritance or freehold, or for a term of more than one (1) year, in real property shall be conveyed, except by deed or will."* Kentucky does not have a statutory form of deed. Pursuant to KRS § 381.060, unless a different purpose appears by express words or necessary inference, all deeds are construed to convey fee simple title. It should also be noted that pursuant to KRS § 382.110 (1), for a conveyance of the title to real property to be effective against third parties who do not have actual notice of the conveyance, the deed must be recorded in the office of the county clerk of the county in which the property conveyed, or greater part thereof, is located.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Conveyances of real property are properly recorded in the office of the county clerk of the county in which the real property (or greater portion thereof) is located. The most common method to search the ownership of real property is to conduct a title search by means of a grantor/grantee search. A title search may be conducted by an attorney; however, because the search process alone is not generally considered to be the practice of law, the title search is often conducted by an abstractor or a searcher working for a lawyer or a title company. The customary time period of ownership that is searched in Kentucky is 60 years. While the title search may be performed by a non-attorney, a title examination (whereby each document discovered in the title search is examined to determine the interest it creates and compliance under Kentucky law) is generally considered to be the practice of law and must always be performed by an attorney.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is available in Kentucky. Title insurance is regulated by the Kentucky Office of Insurance, and the proposed rates of each insurer must be approved by that office pursuant to KRS § 304.22-020. The cost of obtaining title insurance varies based upon the amount of insurance to be obtained. Title opinions are used with less frequency now, especially in more developed areas of Kentucky.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

In Kentucky, the most common forms of entities used for investment in real estate include limited liability companies, limited partnerships, general partnerships and corporations, with limited liability companies being used with increasing frequency.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Although there is no specific REIT statute in Kentucky, the term "Real Estate Investment Trust" is included within the definition of "business trust" pursuant to KRS § 386.370, provided that the same is in compliance with the Internal Revenue Code of 1986, as amended. In Kentucky, a business trust may be established by written declaration for the purpose of acquiring, holding, or selling real property pursuant to KRS § 386.380.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

In Kentucky, pursuant to KRS § 142.050, a transfer tax is imposed upon the grantor named in the deed at a rate of fifty cents (\$0.50) for each five hundred dollars (\$500) of value or fraction thereof, which value is declared in the deed and sworn to by both grantor and grantee. This transfer tax is to be computed and collected by the county clerk as a prerequisite to the acceptance of the deed for recordation. Exemptions to transfer tax liability are detailed in KRS § 142.050 (7).

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

No transfer tax applies to the transfer of interests in an entity owning real estate; the transfer tax only applies when a deed is recorded.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

The Kentucky transfer tax statute listed above applies uniformly in all counties in Kentucky and no other specific transfer taxes are levied upon the transfer of real estate at the local level. The state rate of ad valorem real property tax also applies uniformly. Local cities, counties, school districts, and other special taxing districts have varying rates of ad valorem taxes and fiscal years for which such taxes apply. Each political subdivision of Kentucky may adopt local laws governing the real property contained within its boundaries, so long as such local laws are not otherwise inconsistent with state or federal law.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

USA, Massachusetts

Prepared by Lex Mundi member firm Foley Hoag LLP

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in Massachusetts.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed is used to convey ownership of real estate. Mass. Gen. Laws chapter 183, §1.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Massachusetts has two systems of maintaining real property records: (1) the registered land system administered by the Land Court (sometimes described in other jurisdictions as a "Torrens System") and (2) an unregistered (or recorded) land system, administered by the local registries of deeds. The most common method is to conduct a title search by means of searching grantor/grantee indices. A title search may be conducted by an attorney; however, a title search is generally conducted by an abstractor or a searcher, either working for a lawyer or a title insurance company. The customary time period of ownership that is searched in Massachusetts is 50 years. REBA Title Standard No. 1.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is available in Massachusetts. The premium for the title insurance policy will depend on several factors, including the purchase price of the real property, the type of coverage desired, and the premium rates charged by title insurance companies, which rates change from time to time.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

A Massachusetts nominee trust, a Massachusetts limited liability company, or a Massachusetts corporation are the most common forms of entities used.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Although there is no specific REIT statute in Massachusetts, several Massachusetts entities may be used to form a REIT.

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

There is a Massachusetts Excise Tax statute. Mass. Gen. Laws chapter 64D, §1. Any document that conveys an interest in real property is subject to a tax on the consideration paid by the grantee for the transfer. A document is any deed, instrument or writing whereby any lands, tenements or other realty

within Massachusetts are granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser. The Massachusetts Excise Tax statute contains several exemptions, including instruments given to secure a debt or deeds to which the Commonwealth of Massachusetts, a city or town in Massachusetts, or the United States or any of their agencies are a party.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

The Massachusetts Excise Tax statute may apply to certain transfers of an interest in nominee trusts.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

For all counties except Barnstable, the Massachusetts Excise Tax is 0.456 percent of the value of the property (\$4.56 per \$1,000 of consideration), and the Excise Tax in Barnstable is 0.57 percent of the value of the property (\$5.70 per \$1,000 of consideration). Dukes and Nantucket counties require an additional fee of 2 percent of the purchase price, which is paid to the local land bank commission. This amount is paid by the seller of real estate, unless the parties agree otherwise.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

USA, Missouri

Prepared by Lex Mundi member firm Armstrong Teasdale LLP

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

In Missouri, real property may be owned in fee simple absolute.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A general warranty deed typically conveys an indefeasible estate in fee simple. A deed with the words "grant, bargain and sell" is typically construed to represent a general warranty deed. RSMo 442.420.

A special warranty deed differs from a general warranty deed in that the former provides some protection for the grantor against past encumbrances on the property. Special warranty deeds are created when a guarantee by the seller to the buyer is included in the language of the deed, but the warranty applies only to encumbrances created by the seller.

A quitclaim deed conveys property without any title warranties.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Written instruments that convey real property in the state of Missouri are recorded in the office of the recorder for the county in which the property is situated. RSMo 442.380. Individuals and companies (typically, title companies) perform searches through an office of the recorder for a county.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is available in Missouri and is regulated by the provisions of RSMo Chapter 381. Mortgagee title insurance is also available for those entities holding security interests in real property. The cost of obtaining title insurance varies.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

In Missouri, the most common forms of entities used for investment in real estate include limited liability companies, limited partnerships, general partnerships and corporations, with limited liability companies being used with increasing frequency.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

N/A.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

There are no local or state transfer taxes, however, each county can impose a fee on the recordation of instruments including those required by RSMo 442.380 (regarding the conveyance of real estate).

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

None.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

In Missouri, each county is required to assess, levy, and collect state property taxes. RSMo 137.035. Each property is reassessed semi-annually. RSMo 137.115. Each assessment rate is established annually and is limited by a variety of statutory provisions (e.g., 92.030.1). Additionally, real estate is divided into subclasses—such as residential, agricultural, and commercial—with different assessment percentages applied to appraised property values. RSMo 137.115.5.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

In general, the ultimate beneficial owner need not be disclosed unless the property in question is agricultural land and the beneficial owner is a foreign entity. See RSMo 442.592.

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Issues In Ownership Of Real Estate

USA, Nebraska

Prepared by Lex Mundi member firm Baird Holm LLP

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple ownership of unlimited duration is permitted.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Fee simple ownership is conveyed by deed. General warranty deeds are commonly used, and special warranty deeds also may be used subject to the limitations of those instruments. A quitclaim deed transfers only the interest, if any, the grantor may have in the property at the time of the conveyance, and its use may be considered as notice to the grantee of outstanding equities.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Records regarding ownership of real property are recorded in the office of the Register of Deeds of the county where the property is located. Searches regarding the ownership of property are generally conducted by title insurance agencies of national or regional title insurance companies.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is customarily used to provide assurances of ownership of real property. Title insurance premium rates are regulated and uniform up to certain policy face amounts under state law. Above such policy face amounts, premium rates may vary among insurers.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

The most common forms of investment vehicles involved in real estate ownership in this state are corporations or limited liability companies. General and limited partnerships also are used with less frequency. There are statutory restrictions upon the ownership of certain real property by aliens, foreign corporations or corporations controlled by aliens. Matters related to income taxes are beyond the scope of our responses to this survey.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Statutes permitting the creation of real estate investment trusts have been adopted in this jurisdiction (see §30-3213, et seq., Nebraska Revised Statutes).

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

A documentary stamp tax may be imposed on the grantor or seller on deeds recorded in the Register of Deeds office. The rate of tax is currently \$2.25 for each \$1,000 (or fraction thereof) of value of the property. There are a number of exemptions from the tax (see §76-902, Nebraska Revised Statutes).

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Other than possible application of answer to question 7 above, depending on facts of the transaction there should be none. (However, although this is beyond the scope of the question asked, existing title insurance on the real estate should be reviewed to determine whether a "Fairway" type endorsement is needed upon the transfer of interests in an entity owning the real estate.)

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Local jurisdictions have authority to enact land use regulations, such as zoning and subdivision regulations, and their authority can extend outside the jurisdictional limits of the political subdivision. Real estate is subject to ad valorem taxation and also can be specially assessed by certain political subdivisions for public improvements specifically benefiting the real estate. Variations among political subdivisions in local regulation of real estate can be substantial, generally related to the amount of their populations.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

Generally, no. For example, title to real estate can be held in trust for an undisclosed beneficiary. However, as indicated in answer to question 5 above, in the event the prohibited ownership of real estate by aliens, foreign corporations or certain entities controlled by aliens is disclosed by required public filings in non-real estate records, the real estate could be subjected to judicial proceedings in the local jurisdiction to declare its reversion and forfeiture to the state.

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Issues In Ownership Of Real Estate

USA, Nevada

Prepared by Lex Mundi member firm Lionel Sawyer & Collins

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

The two main instruments are Grant Bargain Sale Deeds and Quitclaim Deeds.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Ownership of real property is recorded and searched by grantor/grantee by county. Ownership may be searched on-line through the relevant county recorder's website, though title companies frequently perform more complex searches.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance. The cost varies depending upon the amount of coverage and what types of endorsements are requested.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

The most common forms of investment vehicles are corporations, limited liability companies and limited partnerships.
Limited liability companies are the most common entity employed to own investment real estate in a tax efficient manner.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

No.

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

Nevada imposes a real property transfer tax on the direct transfer of real estate, though there are several exceptions. The amount of the real property transfer tax varies depending on the county in which the real property is located.

In any county whose population is equal to or greater than 400,000, the rate is \$2.55 per \$500.00 of declared value of property transferred. Clark County is the only county whose population is equal to or greater than 400,000.

In any county whose population is less than 400,000, the rate is \$1.95 per \$500.00 of declared value.

The rate in Washoe County is \$2.05 per \$500.00 of declared value of property transferred.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

None.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Regulation and taxation is largely county specific and there may be significant variations from one county to the next.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

USA, New Hampshire

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

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Perpetual fee simple ownership of real property, or fee simple absolute, is permitted in New Hampshire.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

The instrument used for conveying fee simple ownership is generally a deed. N.H. RSA §477:1. A deed comes in many forms, including the warranty deed, the quitclaim deed, the fiduciary deed, the foreclosure deed, and the tax deed. A warranty deed is still customary in arm's length transactions. In general, a deed is construed to convey an interest in fee simple unless a different intention is clearly stated in the deed. N.H. RSA §477:24.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Usually a title search is conducted by a grantor/grantee search. An attorney may perform the title search; however, a title search is generally conducted by an abstractor or searcher, working for either a lawyer or a title company. Searches may be conducted on line, but registries do not certify the accuracy of the on line records. New Hampshire Title Standards require a search of thirty-five years from a warranty deed, fifty years from a quitclaim or fiduciary deed, and fifty years from a mortgage deed if subsequently properly foreclosed. The Standards do not specify the search required for a tax deed.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

The most common assurance available is title insurance. Although some practitioners do still issue title opinions, these are rare. The cost of obtaining title insurance depends on the company issuing the policy. In New Hampshire, title companies are required to file their rates with the State.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

The most common entities employed to own investment real estate are limited liability companies. Limited partnerships and corporations are also used.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

No. In New Hampshire, property held "in trust" is held in the name of the trustee. Further, it is important to note that in New Hampshire, a corporation or trust that is treated as a real estate investment trust for federal tax purposes will be taxed as a separate entity, not as a pass-through

entity, for New Hampshire business profits tax purposes. The state has not adopted and is not considering any legislation permitting the creation of real estate investment trusts in New Hampshire.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

There is a tax imposed upon the sale, granting and transfer of real estate and any interest therein, unless such sale, grant, or transfer is specifically exempt from taxation under the statute. N.H. RSA §78-B:1 et seq. One such exemption includes the noncontractual (gift) transfer. However, the general rule remains that all transfers are subject to the tax, including those without consideration, those between related parties, and mergers. Beneficial interests are taxed as well as fee transfers.

The tax is calculated at a rate of \$1.50 per \$100, or fractional part thereof, of the price or consideration paid. "Price or consideration paid" means the amount of money or the value of property or services received in exchange for the real property. The amount of taxable consideration shall, absent proof to the contrary, be presumed to be the fair market value of the real estate transferred when the transfer is (a) from the seller to the unrelated buyer, (b) between an entity and an owner of the entity, or (c) between two entities controlled by the same owners. N.H. Administrative Rule Rev 802.06. The tax is computed to the nearest whole dollar, and is typically split between the buyer and the seller.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Transfers of interests in real estate holding companies, transfer of which would be subject to the real estate transfer tax if transferred directly, are taxable to the extent of the fair market value of the property. N.H. RSA §78-B:1-a(V). Under the statute, a real estate holding company is an entity that is engaged principally in the business of owning, holding, selling, or leasing real estate and that owns real estate or an interest in real estate within New Hampshire. Real estate transfer taxes are a significant source of revenue for the state, and therefore the Department of Revenue Administration aggressively audits real estate transfers of interests in holding companies.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Land use regulation in New Hampshire occurs at the municipal level, rather than at the county or state level. While regulation may vary from municipality to municipality, an owner of real property should assume that municipal approval is required for any construction or change in use of the property. Because real estate taxes are one of the state's most significant sources of revenue, forms stating the sales price are filed at both the state and municipal level in order to ensure that municipalities are kept current of recent transactions and hence the value of property being transferred. Generally speaking, taxes are assessed at 100% of the value of the real property.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No, there is no requirement that the ultimate beneficial owner of an entity owning real estate be disclosed as a matter of public record.

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Issues In Ownership Of Real Estate

USA, New Jersey

Prepared by Lex Mundi member firm Day Pitney LLP

1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

A fee simple estate, by definition, is owned by a person and their heirs forever. At common law, in order to create a fee simple estate, it was necessary that the deed contain the word "heirs." However, today, by statute, the word "heirs" is not necessary, and a fee simple estate is presumed unless a contrary intention is indicated in the deed. *N.J.S.A. 46:3-13*.

Other forms of estates include: the fee tail (an estate of inheritance limited to the heirs of the grantor's body, i.e. children), conditional estates, life estates, and co-ownership estates.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership of real estate?

A bargain and sale deed with covenants against grantor's acts is the principle instrument used in New Jersey in the purchase and sale of a fee simple ownership in real property.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs this search?

All instruments affecting the title to an interest in real estate must be acknowledged and may then be recorded in the county recording office where the real estate is located. Once the interest is recorded, it serves as notice to all subsequent judgment creditors, purchasers and mortgagees of the property.

The compilation of the recorded instruments relating to a specific property makes up that property's chain of title. The chain of title can be traced by using the grantor/grantee index, which chronologically lists the buyers and sellers of the subject property. Title insurance companies usually complete these searches to confirm property ownership and to determine if there is a defect in title before issuing a title insurance policy.

4. What assurances of ownership are available to purchasers of real property (e.g. title insurance or title opinions)? What is the cost of obtaining such assurances?

A title insurance policy insures a policy holder against actual financial loss caused by a defect in title covered by the policy. Prior to closing, the title agent searches the public records to determine ownership, encumbrances and any adverse matters affecting the property title. After the research is complete, the title agent will issue a commitment to insure the property, subject to certain encumbrances being removed prior to settlement and subject to the title insurance premium being paid.

In New Jersey, all rates are filed with the Department of Banking and Insurance. Title agents are bound by law to charge only the accepted fees and rates as filed with the Department, therefore rates from agency to agency are essentially the same.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient matter?

Limited partnerships and limited liability companies are the most common entities employed in New Jersey to own investment real estate in a tax efficient manner.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

A Real Estate Investment Trust (REIT) is a tax designation for a corporation investing in real estate that reduces or eliminates corporate income taxes. REITs are permitted in New Jersey. New Jersey's Corporate Business Tax Act (*N.J.S.A. 54:10A-4*) follows the same definition as the federal definition (26 USCS §856), for tax purposes.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

There are several methods of taxation levied upon the transfer of real estate. The Reality Transfer Fee (*N.J.S.A. 46:15-7*) is imposed upon the recording of deeds evidencing transfers of title to real property. This fee includes three separate calculations (the basic fee, the additional fee and the general purpose fee), based on the amount of consideration recited in the deed.

Under *N.J.S.A. 46:15-8*, supplemental fees are imposed on the seller and based on the consideration cited in the deed. Some of the proceeds from these fees are used for public health services by the county and some proceeds are given to the state for extraordinary aid.

Finally, under *N.J.S.A. 46:15-9*, a 1% tax is imposed on the purchasers of certain property with consideration in excess of \$1,000,000. This tax applies to residential properties, commercial properties, farm land containing a residential building, and cooperative units. Similarly, under *N.J.S.A. 54:15C-1*, a 1% tax extends to the transfer of a controlling interest in certain commercial property (see below).

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

N.J.S.A. 54:15C-1 imposes a 1% tax upon the transfer of over a \$1,000,000 controlling interest in certain commercial property. Controlling interest is expressly defined as "in the case of an entity that is a corporation, more than 50% of the total combined voting power of all classes of stock of that corporation, and in the case of a partnership, association or trust or other organization, more than 50% of the beneficial ownership of classified real property of that partnership, association, trust, or other organization."

Serial transactions occurring within 6 months of each other are deemed to be one aggregate sale. The statute does provide exemptions for those types of transfer which are typically exempt from the imposition of real property tax on the seller. Accordingly, transfers between husband and wife and parent and child are specifically exempt from the tax.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Generally, New Jersey property owners pay some of the highest per capita property taxes in the nation. However, tax rates vary greatly between municipalities. For example, the average total property taxes for a property owner in Milburn Township were \$15,860, while the average total property taxes for a property owner in Camden City were \$1,145.¹⁵

¹⁵ Based on 2005 property tax records available through the New Jersey Division of Taxation, *available at*

Local property law also varies greatly between municipalities. A municipality's objectives in creating its local property law is are often influenced by its geography. Urban municipalities often impose local property laws that will encourage growth and development, while more rural areas seek to protect farmland through local zoning law. Furthermore, municipalities containing sensitive regions must tailor property law to protect those areas. Specific areas of local concern may include the shoreline, wetlands, highlands and pinelands.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public law?

The transfer of an interest in real property must be recorded and is a matter of public record. The party of record can be a business entity, which does not necessarily include the names of the owners of the entity. However, depending on the type of business entity, the names of the owners may need to be disclosed in the instrument that creates the entity. For example, under *N.J.S.A. 14A:2-7* a corporation's certificate of incorporation must include the names and addresses of the incorporators. Similarly, under *N.J.S.A 42:2B-11*, to create an LLC, one or more persons must execute a certificate of formation and file it with the Secretary of State. This certificate must also give the name and address of the LLC's registered agent.

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www.nj.gov/treasury/taxation.

Issues In Ownership Of Real Estate

USA, New Mexico

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

Note: The responses to this survey cover the types of real property most commonly encountered in commercial transactions in New Mexico, and exclude the following types of real property, to which some different rules may apply: (a) real property of Native American or Indian nations, tribes and pueblos, or otherwise located in “Indian Country” (a well-established, non-derogatory term of federal law) or subject to federal Indian regulation; (b) subsurface estates, such as oil, gas and other mineral interests, and related surface rights; and (c) water and water rights.

1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Yes, fee simple absolute property ownership is permitted in New Mexico. It is the most common type of ownership interest encountered here.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

A deed is used to convey ownership of real estate. A deed will be construed to convey an estate in fee simple unless a different intention clearly appears in the deed. §47-1-34 NMSA 1978 (1947).

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

The ownership of real property is recorded in real estate records maintained by each county clerk. There are 33 counties in New Mexico. Each county clerk maintains grantor/grantee indices. In addition, each title insurance agent licensed to issue title insurance policies must maintain a “title plant” containing all real estate records imparting constructive notice for each county in which the agent issues policies. The title agent must also maintain indices organized by property and by grantor/grantee. §59A-12-13 NMSA 1978 (1984). The most common method of search is to order a title search from one of these title insurance agents.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

Title insurance is available in New Mexico. Title insurance is regulated by the New Mexico Superintendent of Insurance, who annually sets rates and approves mandatory forms of policies and endorsements. Our rates are higher than those of at least some other states in which the rates are unregulated. Litigation is pending, which challenges these rates.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

The following types of entities formed either in New Mexico or elsewhere, are most commonly used: a limited liability company, limited partnership, limited liability partnership, or corporation. On July 1, 2009, a New Mexico limited liability limited partnership will become available. A foreign entity, i.e., an entity formed under the laws of a jurisdiction other than New Mexico, must register to do business here before transacting business here. Registration is a simple, inexpensive process.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

No. However, the Foreign Business Trust Registration Act, which is somewhat ambiguous, may require a foreign real estate investment trust, i.e., a real estate investment trust formed under the laws of a jurisdiction other than New Mexico, to register to do business here before transacting business here. §§53-20-1 *et seq.* NMSA 1978 (2001). Registration is a simple, inexpensive process.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

There are no state or local transfer, stamp or similar taxes levied generally on sellers or buyers upon the direct transfer of real estate.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

There are no state or local transfer, stamp or similar taxes levied generally on sellers or buyers upon the transfer of interests in entities that own real estate.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Generally speaking, zoning ordinances, land use regulations and building codes may be imposed by each municipality for land within its boundaries and by each county for land outside those boundaries. These ordinances, regulations and codes vary greatly from location to location, subject to minimum standards set by state statute and, in the case of building codes, by state rule.

Real estate taxes, payable semi-annually in arrears, are also imposed by each municipality, county and a variety of local and regional districts. These taxes are also subject to standards and maximums set by state law. The assessed valuations of real property for tax purposes and the rates of the taxes levied upon them vary greatly from place to place. Our real property taxes are quite low compared with those of many, if not most, other states.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

USA, Oklahoma

Prepared by Lex Mundi member firm Crowe & Dunlevy

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, perpetual fee simple ownership of real property is permitted in Oklahoma.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed is used to convey ownership of real property. Okla. Stat. tit. 16, § 19 (2001). Every estate in land which is granted, conveyed or demised by deed shall be deemed an estate in fee simple unless expressly limited. Okla. Stat. tit. 16, § 29 (2001).

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Typically a title search is conducted by means of a grantor/grantee search. A title search is usually performed by an abstractor or searcher working for a title company.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is available in Oklahoma. The cost of title insurance in Oklahoma is based on a certain dollar amount per thousand dollars of coverage and varies by title company, as premium charges are not regulated in Oklahoma as they are in some states.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

An Oklahoma limited liability company, an Oklahoma limited partnership and an Oklahoma corporation are the most common types of entities used for investment in real estate.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

There are no specific statutes in Oklahoma governing the creation of real estate investment trusts, although several statutes contemplate their existence. See Okla. Stat. tit. 18, § 1055 (2001); Okla. Stat. tit. 59, § 2083 (Supp. 2005); Okla. Stat. tit. 60, § 175.401 (2001).

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

A documentary stamp tax is normally assessed on all conveyances of realty at a rate of \$.75 per \$500.00 of consideration. Okla. Stat. tit. 68, § 3201 (2001). The tax attaches at the time the deed or other instrument of conveyance is executed and delivered to the buyer, irrespective of the time when the sale is made. Certain exemptions are available, including transfers pursuant to mergers of partnerships, limited liability companies or corporations. Okla. Stat. tit. 68, § 3202 (2001).

- 8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?**

None.

- 9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?**

See discussion regarding documentary stamp tax in Question No. 7 above.

- 10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?**

No.

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Issues In Ownership Of Real Estate

USA, Puerto Rico

Prepared by Lex Mundi member firm McConnel Valdés, LLC

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, perpetual fee simple ownership of real property is permitted in Puerto Rico.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

The most common instrument to convey fee simple ownership in Puerto Rico is through a public document (Deed of Sale) duly recorded in the corresponding section of the Registry of Property of Puerto Rico. Titles of ownership or other real estate rights relating to real property which are not properly recorded in the Registry of Property are not prejudicial to third persons which acquire rights to such real property in good faith. 31 L.P.R.A. 1872.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Ownership of real property is recorded at the Registry of the Property. The Registry is organized by geographical sections and each parcel of land is identified by a property number unique to such parcel of land in each registry section. Property Registries are open to the public, thus, title searches may be conducted by any person. Ordinarily title searches are conducted by a title abstractor working for a law firm or a title insurance company.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is available in Puerto Rico. Title opinions are not usually rendered. Registrars of the Property also issue certifications of register inscriptions. Title Insurance policies are regulated by the Office of the Insurance Commissioner of Puerto Rico (the "OIC"). Rates are also set by the OIC.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

The most common vehicles for real estate investments in Puerto Rico are Limited Liability Companies, the Corporations and the Special Partnerships. All of these vehicles may elect to be treated as pass-through entities for tax purposes, provided they meet particular purposes.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Real Estate Investment Trusts are permitted in Puerto Rico and are regulated by the Puerto Rico Internal Revenue Code of 1994, as amended.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

The Tariff Act of the Registry of Property of Puerto Rico of 1970, as amended establishes the tariffs to be paid for each Registry of the Property operation. In general, any document filed in the Registry, including conveyances and constitution and cancellation of mortgages, is subject to tariffs fees based on the amount of the transaction. There is also a standard filing fee of \$10.50 for any document filed in the Registry. 30 L.P.R.A. 1767a to 1770c. Tariffs fees of the Registry of the Property are based on the amount of the transaction as follows: For \$1,000 or less, the charge is \$2; for \$1,001 up to \$25,000, \$2 for each \$1,000 or fraction thereof; in excess of \$25,000, \$50 for first \$25,000, \$4 for each additional \$1,000 or fraction thereof. Value for leases is fixed at stipulated rent for first twelve years of lease, or total rent to be paid. Where no value is stated in deed, fees will be base upon value assessed for property tax purposes or last value of property as it appears from Registry.

In addition to the Tariff Act of the Registry of the Property of Puerto Rico, the Puerto Rico Notarial Act, 4 L.P.R.A. 851 et seq., provides for additional stamp tax and legal aid tax on the original and certified copies of public instruments. Typically, this charge is \$1.00 per each \$1,000 of value of the transaction on the original of each public instrument and one half that amount on each certified copy.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

The Tariff Act of the Registry of Property of Puerto Rico of 1970, as amended, as well as the stamp taxes imposed by the Notarial Act, applies to transfers of interests in real estate. See prior answer for additional information.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

There is no variation of tariff fees among political subdivisions (Municipalities) in Puerto Rico. Taxation of real property varies by Municipalities although the maximum contribution for taxable year 2007-08 is 10.23%. Real property taxes are assessed by the Municipal Revenue Collection Center (CRIM) based on appraisal values as of the year 1957.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

Real property is recorded in the name of the persons or entity(ies) appearing on the Deed of Sale or conveyance as acquirers. If the ultimate beneficial owner is different from the named owner, the ultimate owner is not required to be disclosed.

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Issues In Ownership Of Real Estate

USA, South Carolina

Prepared by Lex Mundi member firm Wyche, P.A.

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in South Carolina.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed is used to convey fee simple ownership of real estate. S.C. Code § 27-7-10

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

The most common method is to conduct a title search by means of a grantor/grantee search. A title search may be conducted by an attorney; however, a title search is generally conducted by an abstractor or a searcher, either working for a lawyer or a title company. The customary time period of ownership that is searched in South Carolina is 60 years on commercial property.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is available in South Carolina. Title insurance is regulated by the South Carolina Department of Insurance, and rates are regulated by that body.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

A South Carolina limited liability company, a South Carolina limited partnership or a South Carolina corporation are the most common forms of entities used.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

As of 2007 (the date this survey was completed), there is no specific REIT statute in South Carolina, several South Carolina entities may be used to form a REIT, such as a South Carolina statutory trust, a South Carolina limited liability company, a South Carolina corporation or a South Carolina limited partnership.

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

The South Carolina Deed Recording Fee is one dollar eighty-five cents for each five hundred dollars, or fractional part of five hundred dollars of the realty's value and is imposed upon recording a deed in which any lands and all other improvements on the land, tenements, or other realty is transferred to another person. The grantor is primarily liable for payment of the fee. The South Carolina Deed Recording Fee statute contains a number of exemptions from the fee. S.C. Code § 12-24-10 *et seq.*

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Pursuant to S.C. Code § 12-54-124, transfers of a majority of business assets require that a certificate of compliance be obtained from the South Carolina Department of Revenue or any tax generated by the business which was due on or before the date of any part of the transfer constitutes a lien against the assets in the hands of the purchaser, or any other transferee, until the taxes are paid. In addition, transfer of interests in entities which own real estate may trigger an appraisal or re-appraisal of the real estate and a corresponding increase in the real estate taxes. S.C. Code § 12-37-3150 requires property to be appraised or re-appraised by the county assessor whenever there is an “assessable transfer of interest in real property.” However, there are a number of exceptions to “assessable transfer of interest in real property.”

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

The South Carolina Deed Recording Fee is composed of two fees – a state fee of one dollar thirty cents for each five hundred dollars, or fractional part of five hundred dollars, of the realty's value and a county fee of fifty-five cents for each five hundred dollars, or fractional part of five hundred dollars, of the realty's value. Some counties and municipalities, especially in coastal areas of South Carolina, have special and additional local real estate taxes in connection with purchase and sale of real estate.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

USA, Tennessee

Prepared by Lex Mundi member firm Bass, Berry & Sims PLC

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in Tennessee.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed is most often used to convey ownership of real estate. Tenn. Code Ann. §66-5-103. Every grant or devise of real estate shall be construed as conveying the entire estate or interest that the grantor owns unless a limitation is clearly expressed or necessarily implied in the terms of the instrument. Tenn. Code Ann. §66-5-101.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

The most common method is to conduct a title search by means of a grantor/grantee search. A title search may be conducted by an attorney; however, a title search is generally conducted by an abstractor or a searcher, either working for a lawyer or a title company. The customary time period of ownership that is searched in Tennessee is 30 years.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is available in Tennessee. Title insurance is regulated by the Tennessee Department of Commerce and Insurance, and rates are regulated by that body.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

A Tennessee limited liability company, a Tennessee general partnership, a Tennessee limited partnership or a Tennessee corporation are the most common forms of entities used.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

There is no specific REIT statute in Tennessee.

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

There is a Tennessee recordation tax statute. Tenn. Code Ann. §67-4-409. All transfers of realty, whether by deed, court deed, decree, partition deed, or other instrument evidencing transfer of any interest in real estate, are subject, upon recordation, to a tax of thirty-seven cents (\$0.37) per one hundred dollars (\$100.00) of the greater of (i) the consideration for the transfer or (ii) the value of the

property transferred. The Tennessee recordation tax statute contains a number of exemptions to transfer tax liability. The recordation tax amount is typically paid by the buyer of real estate, but may be negotiated by the parties.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

The Tennessee recordation tax statute applies to certain transfers of an interest in real estate. See prior answer for additional information. However, if the transfer is only in the ownership of the entity that owns the realty, such as a transfer of stock or limited liability company interest, there is no transfer of realty from one entity to another, and thus, there should be no recordation tax.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Local jurisdictions have significant control over zoning and land use regulation and over the levying of general property taxes. However, local jurisdictions are prohibited from levying any taxes on the transfer of realty in addition to the Tennessee recordation tax described above. Tenn. Code Ann. §67-4-401.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

USA, Utah

Prepared by Lex Mundi member firm Van Cott, Bagley, Cornwall & McCarthy, P.C.

1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Yes. Fee simple title is permitted and is presumed to pass by a conveyance of real estate unless it appears from the conveyance that a lesser estate was intended.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

Warranty Deeds, Special Warranty Deeds, and Quitclaim Deeds. There are statutory forms of these deeds (UCA Sections 57-1-12 through 57-1-13) but the use of these forms is not required. The words "convey and warrant," unless otherwise limited in the conveyance, constitute a warranty of title. Special warranty deeds contain language to the effect that the grantor "conveys and warrants against all claiming by, though, or under grantor" and are often used in commercial transactions.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

County recorders maintain tract indexes, among other indexes, and most searches are conducted by title companies using the tract indexes.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

Title insurance is available and is commonly used. Title opinions are not common except in situations where the focus of the opinion is the mineral estate. Title insurance premiums and escrow charges must be filed with the Title and Escrow Commission of the Department of Insurance and are available to the public.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

Corporations and limited liability companies are the most common forms of entities.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

The creation of real estate investment trusts is authorized by statute. UCA Sections 16-12-1 through 16-12-6.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

None. There is no state or local transfer, stamp or similar taxes levied generally on sellers or buyers of real estate.

- 8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?**

None.

- 9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?**

Most zoning and land use regulation matters are handled at the local (county or municipality) level. Most ad valorem assessment and taxation of real property occurs at the county level but includes municipal components. There are marked variations among county and municipal ordinances throughout the state, but otherwise the variation of real estate law among political subdivisions is not significant.

- 10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?**

No.

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Issues In Ownership Of Real Estate

USA, Virgin Islands

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

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in the U.S. Virgin Islands.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed with full, special or no warranties is the instrument used to convey ownership of real estate in the U.S. Virgin Islands. 28 V.I.C. § 41.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Documents affecting real property are recorded in the office of the Recorder of Deeds (<http://www.virginislands.us.landata.com>) in the political district in which the property is located. 28 V.I.C. § 121. It is common to search by the grantor/grantee and property estate indexes. When dealing with a purchase, it is customary for the title insurer to search back to the creation of the original estate out of which the parcel is subdivided; typically 75 to 100 years. When dealing with the refinance of a parcel, it is customary to search the record of the last two or three prior owners. Title searches are generally conducted by a trained title searcher working under the supervision of an attorney, an attorney, or paralegal working for an attorney.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title Insurance is available in the U.S. Virgin Islands. Title Insurance is regulated by the Division of Banking and Insurance in the Office of the Lieutenant Governor of the Virgin Islands (<http://ltg.gov.vi/division-of-banking-and-insurance.html>). All rates for title companies doing business in the U.S. Virgin Islands are regulated and published by the Division of Banking and Insurance.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

The most common forms of tax efficient investment vehicles are limited liability companies, partnerships, limited partnerships and, limited liability partnerships.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

There is no Virgin Islands statute specifically regulating real estate investment trusts but they can be organized under U.S. Virgin Islands law.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

“A stamp tax at the rate of two percent (2%) for property valued up to \$350,000, two and one-half percent (2 ½%) for property valued from \$350,001 to \$1,000,000, three percent (3%) for property valued from \$1,000,001 to \$5,000,000, and three and one-half percent (3 ½%) for property valued over \$5,000,001 is imposed on the transfer of title to – real property by instrument of conveyance; personal property by bill of sale.” 33 V.I.C. § 121. Additionally, “[a] stamp tax at the rate of \$25 is imposed on each certified copy of an order, judgment, decree or other document issued by the District or Superior Court of the Virgin Islands.” *Id.* However, there are a number of available exemptions to the stamp tax imposed on the transfer of property. 33 V.I.C. § 128.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

None.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Real estate in the U.S. Virgin Islands is assessed and taxed on an annual basis by the Office of the Tax Assessor of the U.S. Virgin Islands. The U.S. Virgin Islands is divided into two political districts; the District of St. Croix and the District of St. Thomas-St. John, both of which apply the same law and the separate offices in each division that administer the U.S. Virgin Islands property laws apply the same statute and regulations.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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Issues In Ownership Of Real Estate

USA, Virginia

Prepared by Lex Mundi member firm McGuireWoods LLP

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in Virginia.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed is primarily used to convey fee simple ownership of real estate. Fee simple ownership may also be conveyed by a will.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Deeds and other instruments are recorded in the Clerk's Office of the Circuit Court of the county or city in which the real property is located. Ownership of real property is indexed and searched using the names of the grantor and grantee and using the tax map parcel number. A title search is generally conducted by a title insurance agency or by an attorney.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Title insurance is available in Virginia and some Virginia attorneys issue title opinions. The premiums on title insurance are negotiable. Premium rates tend to be lower as the value of the real property increases.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

Virginia limited liability companies and limited partnerships are common forms used in Virginia.

- 6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Virginia has a real estate investment trust statute, but it is used less often.

- 7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

On every recorded deed, except for tax exempt deeds, a state recordation tax must be paid equal to \$0.25 for every \$100 or fraction thereof of the consideration or the actual value of the property, whichever is greater. In addition to the state recordation tax, a city or county may impose a recordation tax in an amount equal to one-third of the amount of state recordation tax. When the consideration or value of the interest, whichever is greater, exceeds \$100, an additional state tax is imposed on the grantor equaling \$0.50 for each \$500 or fraction thereof.

8. **What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?**

Generally, none, although it may depend upon the structure of the transaction.

9. **How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?**

Local real estate taxation and zoning regulations are significant and vary substantially among political subdivisions.

10. **Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?**

Generally, no.

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Issues In Ownership Of Real Estate

USA, West Virginia

Prepared by Lex Mundi member firm Jackson Kelly PLLC

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple ownership is permitted in West Virginia.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed can be used to convey fee simple ownership in West Virginia. Without any words of limitation, a fee simple interest in all the rights of the grantor are presumed to pass to the grantee. W. Va. Code § 36-1-11. Any instrument indicating an intent on the part of a grantor to convey real property will be effective as a deed. W. Va. Code § 36-3-4.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Ownership of real property is generally searched through the use of grantor/grantee indices, which are maintained by the Clerk of the County Commission for each county in West Virginia. Lawyers, abstractors, land men, and title searchers have all traditionally conducted title examinations; however, the West Virginia State Bar has recently placed additional burdens upon the non-attorney land abstractors and title searchers that often perform these types of searches in other jurisdictions. In West Virginia a "title abstractor," or any other non-lawyer, cannot conduct title examinations to be used or relied upon by someone else, unless under the direct supervision of an attorney. West Virginia State Bar Unlawful Practice Committee Advisory Opinion 06-01. Under that Advisory Opinion, the review of work performed by a non-employee, non-attorney performing title examinations is not sufficient to amount to direct supervision.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

A purchaser of real property may obtain title insurance. Certain fees are mandated to be paid to the Insurance Commissioner by all insurers in West Virginia. W. Va. Code § 33-3-13. Further costs for title insurance will be derived from the premium rate for individual policies, subject to the regulation of the West Virginia Insurance Commissioner.

- 5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

West Virginia Corporations, West Virginia Limited Liability Companies, and West Virginia Limited Partnerships and West Virginia Limited Liability Partnerships are the entities that most commonly own investment real estate in West Virginia.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

There is no specific law authorizing a real estate investment trust in West Virginia. However, the creation of a trust in land is authorized, pursuant to W. Va. Code §§ 36-1-4 and 36-1-4a.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

For the privilege of transferring title to real estate, West Virginia requires the payment of a \$1.10 excise tax per five-hundred dollars of value or consideration, as written upon the deed transferring title. There is further required a \$0.55 per five-hundred dollars of value or consideration payable to the county in which the transfer is recorded. On July 1, 1989, counties were given the option to increase their tax to equal the state tax. There is a further requirement of a \$20 fee, payable at recording to the county clerk, for the privilege of transferring property for consideration. W. Va. Code § 11-22-2. These excise taxes and fees are in addition to any document recording fees imposed by the various counties.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

The excise taxes and fees referenced in #7, above, apply to all transfers of real estate for consideration in West Virginia.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Property taxes in West Virginia are supervised by the State Tax Department, but primarily collected by the individual counties. These tax assessments are based on the value of the property in place, but the rates can vary from county to county, so long as they remain within the limits set by the West Virginia State Constitution. West Virginia has established four classes of property: Class I – agricultural personal property (this also used to include intangible personal property until tax on intangible personal property was abrogated by statute in 2003); Class II – Residential and Agricultural real property; Class III – all property outside a municipality, except for Classes I and II; Class IV – all property inside a municipality, except for classes I and II. Tax rate maximums (in dollars per \$100 of property value) are set by the West Virginia Constitution as follows: Class I - \$0.50; Class II - \$1.00; Class III - \$1.50; Class IV - \$2.00. The taxes are split between state government, county government, municipal government, and the schools. Voters in individual localities can decide to exceed these maximum rates, except for the segment apportioned for the state. Generally, the payments of taxes are proportionally split between a buyer and a seller to a transaction, unless otherwise agreed between the parties.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.

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