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TELFA COUNTRY BY COUNTRY REAL ESTATE TRANSACTION GUIDE

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1. Introduction

1.1 Real estate transactions across Europe

Real Estate owners, investors, Asset and Property Managers today have a global and European focus when it comes to real estate investments. Being confronted with different legal and tax systems a short practical overview can be helpful for those who are trying to find their way in the different European legal systems.

This guide is intended to provide the reader with a short practical overview of the different legal and tax specialities regarding the transfer of real estate ownership in the different legal systems across Europe. Whilst the terminology is often radically different, the principles are generally very similar but with important specific characteristics. The participating TELFA partners have provided a brief overview on major topics which are relevant in every real estate transaction. This country by county guide makes it possible to determine the most important differences on real estate ownership between the different jurisdictions and the one that are most akin to those in one's own jurisdiction – and therefore guides you through your real estate transaction

The topics covered are:
1. Legal regulation
2. Various types of ownership
3. Legal requirements for the transfer of ownership
4. Land registration
5. Mortgages
6. Transfer tax and VAT
7. Public law aspects
8. Costs

These readily digestible summaries are intended to give the reader a first flavour of another jurisdiction and should not be treated as a complete exposition of the relevant law.
Specific advice will always be required. This document sets out the law and practice as it stands on September 29, 2018.

1.2 About TELFA

Trans-European Law Firm Alliance (TELFA) was founded in 1989 and born out of the need to serve clients doing business across the jurisdictions of Europe.

TELFA member firms now have more than 1,000 lawyers throughout Europe. Through the sustained commitment of its members, TELFA has become one of the strongest alliances of independent law firms in Europe.
The fact that the member firms of TELFA are independent offers clients a flexible alternative to the global law firm model, in which internal pressures sometimes compete with the needs of client service. TELFA's focus is on client service through the provision of quality legal advice, which can be managed by the member firm in the client's jurisdiction, or the client can go directly to the member firm in the foreign jurisdiction(s) in which the client has the need for advice.

TELFA's vision is to create and maintain a network of independent law firms that share a similar ethos. TELFA member firms do not "sell products"; rather we build relationships with our clients so as to become trusted advisers allowing us to serve our clients more effectively.

Just as the foundation of good service for our clients is built on strong personal relationships, so it is among the lawyers that make up the membership of TELFA. The lawyers in TELFA get to know one another both professionally, through working together on client assignments.

Also flexibility - either clients can have a single point of contact through which to engage lawyers throughout Europe, or a personal introduction to law firms in foreign jurisdictions, so that clients can feel comfortable with and assured in the service that they are to receive.

All the member firms offer a partner led - not necessarily "partner does" - service; the firms ensure that clients have continuity of contact and are not passed from one lawyer to another.
TELFA members are sensitive to cultural differences and work hard to frame their advice in a way that is understandable, practical and "digestible" by their clients.

The member firms share resources, knowhow and best practice whilst respecting the different requirements made of each firm by its local "bar rules".

For TELFA clients this means that TELFA is not just a referrals network that operates like a brokerage clearing house; rather the TELFA brand stands for personal service, facilitating clients' needs for advice in what may be unfamiliar jurisdictions, so as to ensure the client feels safe in the knowledge that the firm is respected (and respectable) within their local jurisdiction.

TELFA firms can draw on and leverage the expertise and experience of its members so as to respond effectively and flexibly to the demands made by clients.

More information about TELFA and its wider international associations can be found following the link below:
http://www.telfa.law/

TELFA firms benefit from a strong relationship with USLAW Network, Inc., with firms across most of the United States, and other parts of North and South America. More information about USLAW Network, Inc. can be found following the link below:
http://web.uslaw.org

1.3 This document

This document has been prepared by TELFA lawyers drawn from a broad range of firms. In time, it will be expanded to address all TELFA jurisdictions and other key affiliated jurisdictions.
The document analyses corporate forms across 19 European jurisdictions, listed alphabetically.

1.4 Jurisdictions Covered

Austria, Belgium, Cyprus, Czech Republic, Finland, France, Germany, Greece, Hungary, Luxembourg, Malta, The Netherlands, Portugal, Slovakia, Spain, Sweden, Switzerland, Turkey, United Kingdom.

Hamburg / Arnhem, 1 October 2018

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2. Austria

Legal regulation

In Austria, basic real estate law is incorporated in the Austrian Civil Code (*ABGB*) which contains laws on the entitlement to, the use, sale, transfer of and encumbrances on real estate. Other important topics, including apartment ownership, the land registry and the right to build on foreign land, are incorporated in special acts such as the Land Registry Act (*GBG*), Apartment Ownership Act (*WEG*) and Superficies Act (*BauRG*). In addition, there is the sale of immovable objects which are yet to be built or to be completely renewed, being incorporated in the Property Developer Contract Act (*BTVG*) which is designed to protect to purchaser in case of insolvency of the building company. Most of the relevant rights are rights in rem, meaning these rights can be enforced by the holder against any third party.

Various types of ownership

The following main real estate rights are recognized by ABGB, BaurG and WEG:

Ownership (*Eigentum*)

Ownership is defined in article 354 of the Austrian Civil Code as the absolute right in an object. Ownership includes the owner's power to use their property according to their own design and to exclude everybody else from it. The principle of *superficies solo cedit* (section 297 ABGB) applies, meaning the owner of a plot of land owns everything that is built upon it (with few exceptions explicitely stated by law).

Right of superficies (*Baurecht*)

An exception of the principle of *superficies solo cedit* is the right of superficies (stipulated in the Superficies Act (*BauRG*). The holder is entitled to build and own a building on or under someone else's land. After the right is terminated (this right may exist for no less than ten and no more than one hundred years), the building becomes part of the land and its ownership is transferred to the owner of the land (if no other agreement is made).

Superaedificates (*Superädifikate*)

Another exception of the principle *of superficies solo cedit* is the superaedificate (section 435 ABGB), meaning that a building which is (legally) not destined to stand on the same spot forever does not become one with land and thereby not the land's owner's property. The original ownership of a superaedificate is created by the act of construction. A building qualified as a superaedificate can be sold separately, being not part of the land.

Apartment ownership (*Wohnungseigentum*)

The ownership of a piece of land can be divided into shares. Despite its name, it is also applicable to other objects suitable for apartment ownership, e.g. parking lots. An apartment owner does not "own" the object itself, but a share of the land the object is built upon. The owner is entitled to exclusively use the object conjoined with the share. These shares (and the use of an object) may be transferred separately and can be encumbered with limited rights. The share required to "own" a single object may belong to two natural persons as co-owners (only together they may legally dispose of their shares).
Apartment ownership is created by a contract entered into by all owners of the piece of land the apartments are located on. The apartment owners are co-owners of the land and members of the association of owners. This association has legal capacity concerning ordinary management of the land (often a manager is appointed to act on behalf of the association in such matters).

Easements (*Servitut*) and land charge (*Reallast*)
An easement is a burden on one property (the servient land) for the benefit of another property (the dominant land). The easement consists of an obligation to tolerate or not to do (but never in an obligation to actively do) something on, above or below the servient land. Easements stick to the servient or dominant land, not to the owner of the land. Land charges are similar to easements. The major difference is that the owner of property burdened with a land charge is obliged to actively do something.

Personal servitudes (*persönliche Dienstbarkeiten*)
Personal servitudes are bound to the entitled party, not to the plot of land. They are linked to the entitled party's life and end when they die. The entitled party is obliged to use their rights without damaging the land's substance.

The right of use grants the entitled party the right to personally use the land. This right cannot be transferred without consent of the grantor of right's consent. Usufruct entitles the party to use the land and to consume, separate, sell or encumber the fruits ("fruits" being natural or civil fruits, for instance rent). The right of residence grants the entitled party the right to live in an apartment, a house or parts thereof. Depending on the parties' decision it may be a right of use or a usufruct. The ban of encumbering or selling prevents the owner to do so with their land, unless the entitled party agrees to the encumberment or sale. When recorded in the land registry and agreed upon between close relatives, the ban may have the effect of a right *in rem*.

Legal requirements for the transfer of ownership
Austrian law distinguishes between the purchase agreement and the actual transfer of ownership. The purchase agreement, as title, is the basis for the transfer. The transfer itself requires a registration in the land registry as modus. In the majority of cases, a written purchase agreement is drafted and signed by the parties, their signatures being notarized. In such documents, a registration clause (*Aufsandungsklausel*) is required by which the seller agrees to the recording of their waiver of right and the right of the new owner. Only notarized signatures are recognized by the land registry for the registration of the transfer. Under certain circumstances, an oral purchase agreement can be valid.

Land registration
In Austria, the land registry is electronically kept by the district courts. It consists of two parts, being the register itself and the document archive. In the register, plots of land are listed within larger plots which are labelled with record numbers. For each part labelled with a record number, all relevant rights and encumbrances are listed in the land registry. The document archive contains the documents which are required for the entry of the records.
Two main principles are acknowledged concerning the land registry: the principles of priority and publicity. Priority means that whose right is recorded first has the strongest right. In order to secure an applicant's priority, one may file for a priority wildcard (*Rangordnung*) before recording a mortgage or transfer of ownership. Publicity means that people who trust in the record (or absence of a record) are protected in regard to this entry. If, for instance, an encumbrance is not recorded, a purchaser may acquire the land without this encumbrance.

Mortgages
Mortgages are rights in rem and serve as securities for specified claims, already existing ones as well as ones that will arise from a specified business relationship (an exception is the maximum amount hypothec which secures all claims originating from a specified business relationship up to a certain amount). A mortgage needs to be recorded in the land registry; for this, the land's owner's consent is required (in the form of a registration clause). However, since the mortgage sticks to the land, the land's owner and the debtor are not

necessarily the same person; also, a new owner purchases the mortgage together with the land. The mortgage does not cease to exist when the claim is satisfied, but when it is deleted from the land registry. The deletion requires a document containing a registration clause and bearing a notarized signature of the pledgee.

In case the debtor is in default, the mortgaged land can be realized (e.g. by public auction). The claims are satisfied according to the priority of the creditors' records in the land registry.

Transfer tax and VAT

Selling property in Austria is taxed and subject to fees. The typical taxes concerning the sale of real estates are land transfer tax (*Grunderwerbsteuer*) and profits tax (*Immobilienertragsteuer*). In addition, for the recording in the land registry a recording fee (*Grundbucheintragungsgebühr*) is to be paid. The sale and purchase of real estate is taxed with 20 % VAT. Whether VAT applies lies within the parties' decision sphere of influence and depends on the projected use of the real estate.

Public law aspects

Most of the regulations being called public law are parts of the federal states' legislature, leading to non-uniform regulations throughout the country.

The general use of land is stipulated in the zoning plans (*Bebauungsplan, FLächenwidmungsplan*). The relevant land may only be used and built upon in accordance with its permitted use. The Building Regulation (*Bauordnung*) stipulates how a building is to be constructed and what requirements need to be met in order to obtain a building permit. Various permissions may be required for the purchase of land by foreigners or Austrian citizens in accordance to the (Foreigners) Land Transfer Acts (*[Ausländer-]Grundverkehrsgesetze*). Also, there may be special permissions required for the purchase of land that is used agriculturally or silviculturally.

Costs

Usually, the costs include taxes, fees and the notary's and/or lawyer's costs. The notary's fees for the notarization of the signatures are regulated and depend on the purchase price, a notary's or lawyer's costs for the drafting of a contract are not.

Land transfer tax amounts to 3,5% of the purchase price and is paid by the purchaser. The recording fee is usually borne by the purchaser and depends on the value of the right to be recorded (e.g. ownership, mortgage) and ranges from 0,6 to 1,2%. The profits tax is to be paid by the seller and basically depends on the difference between the latest and the current purchase prices, but there are multiple exceptions (the most common is an exception when the own domicile is sold).

3. Belgium

Legal regulation

The concept of real estate ownership can be found in the Belgian Civil Code. Other legal provisions may be found in various federal and local legislations regarding land-use planning, environment, housing, tax,...

Various types of ownership

The following real property rights are recognized by the Belgian laws:

Full ownership

The right of ownership is defined under Article 544 of the Belgian Civil Code as follows: "the right to enjoy and dispose of things in the most absolute manner, provided that one does not make use of it in a manner prohibited by the laws or regulations".
In full ownership, the holder owns the building and the land it stands on outright.
As it is also considered an absolute right, it confers on the holder the usus (right to use), fructus (right to derive profit), and abusus (right to alienate).

Co-ownership

Co-ownership is the legal organisation of a building which is owned by at least two owners known as co-owners. Each co-owner has full ownership of the unit it owns in the building and which corresponds to private areas, and holds a share in the common areas of the building calculated in proportion to the size of the private areas owned in full. Each co-owner participates in the cost of management and administration of the common areas in proportion to its share.
It is governed both by the law on co-ownership (part of the Civil Code) and by contractual provisions contained in the co-ownership regulations and division description of the building.

Joint possession

It is a collective organisation of the property in which each joint possessor is the owner in part of the entire property.

Leasehold

A tenant may be granted a real property right under a long-term lease. Various forms are possible: emphyteose, right of superficies, usufruct,...

Easements

An easement is a right that the owner of the benefiting property (the dominant land) has over another property (the servient land). Examples include rights of way, rights of light or rights of sight. An easement may result from a private deed between two owners, or may be imposed by the law considering the situation of the lands.

Legal requirements for the transfer of ownership

Transfer of real estate ownership can only results from a notarial deed of transfer executed before a notary who is a State officer.

Land registration

Once executed, a deed of transfer must be registered with the local land registry so as to be enforceable against third parties. Such formality is completed by the notary.

Information available at the land registry includes in particular: identity of the past and current owners of real property, date of purchase, details on easements and other encumbrances, registered mortgages, long-term leases, and real estate finance leases.

Mortgages

Real property may be encumbered by a mortgage which is the most common type of security interest required by a lender (mortgagee) from a purchaser/borrower (mortgagor) of real property to secure a real estate financing. A mortgage must be executed in the form of a notarial deed which is then registered with the local land registry by the notary. The mortgage validity period is the same as the loan for which it has been granted.

If the mortgagor defaults on the loan, the mortgagee is entitled to require the sale of the mortgaged property at a public auction and to be repaid out of the proceeds.

Transfer tax and VAT

The purchase of real property triggers a transfer tax at the rate of 0% up to 12,5 % depending on its location and value. The transfer is levied on the sale of the real property and it is usually paid by the purchaser, unless otherwise agreed between the parties.
However, transfers of real property may also be subject to VAT at the standard rate of 21%. For example, it is the case for sales of brand new buildings.

Public law aspects

Various federal and local legislations regulate this matter.
Planning, urbanistic and environmental permissions are required for the construction, the carrying out of works and the use of a building.

Each building has his own urbanistic affectation: housing, commercial, office,... Any change of affectation has to be the object of a request to the local authorities.

Costs

The costs of the transaction will usually be paid by the purchaser. In addition to the real estate transfer tax mentioned above, the purchaser will also have to pay the notary's fees and the land registry taxes. Notary fees are regulated up to a certain amount. The land registry has a fixed fee structure. Furthermore, it is customary to settle the owner charges (such as land tax) between the seller and the purchaser for the current calendar year.

4. Cyprus

Legal regulation

Real estate in Cyprus is regulated by The Immovable Property (Tenure, Registration & Valuation) Law, Cap. 224, which is the most important law. This legislation was introduced in 1946 while Cyprus was still under British rule and replaced the Ottoman Land Law that operated until then. It is regarded as the cornerstone of immovable property in Cyprus, regulating all matters relating to the tenure, registration, disposition and valuation of immovable property. In Cyprus there is a Land Registry which administers every procedure and process by which all immovable property is defined, recognized, secured and valued.

Furthermore, there are also other laws governing other aspects of real estate in Cyprus which are:

- The Sale of Immovable Property (Specific Performance) Law, No. 81(I)/2011;
- The Compulsory Acquisition of Property Law, No. 15/1962;
- The Acquisition of Immovable Property (Aliens) Law, Cap. 109;
- The Immovable Property (Transfer and Mortgage) Law, No. 9/1965;
- The Immovable Property Tax Law, Cap. 322;
- The Immovable Property (Towns) Tax Law, No. 89/1962;
- The Capital Gains Tax Law, No. 52/1980; and
- The Rent Control Law, No. 23/1983.

Various types of ownership

The law provides and recognizes the following forms of ownership.

Full freehold title

The full freehold title to immovable property means that the registered owner is entitled to the whole interest in the plot of land and can do whatever he likes with his property subject to any town and country planning restrictions.

Beneficial Ownership

Beneficial Ownership confers on the owner those rights which are provided in any trust deed which is deposited with the Land Registry. The beneficiary has no title as the registration and the title deed is issued to the trustee who is the legal owner. The title deed expressly states that the property is held on trust.

Another form of beneficial ownership is reserving a life interest. This confers on the beneficial owner the right to possess or exploit the tenement for the period of his life while the title is in the name of another. This is usually a course adopted by parents when transferring their land to their children.

Leasehold

Leasehold Ownership confers on the Leasehold title deed holder those rights which are provided in the lease which if long term, is deposited with the Land Registry. Such leasehold title deeds issued for long leases, for example 15 years or over and subject to the provisions of the lease, can be sold, transferred or mortgaged at the holder's option.

Undivided shares

Ownership in undivided shares is a singular form of ownership. The owner is registered, for example, in 1/3 undivided shares of the plot of land or building covered by the registration. Such ownership is invariably the

result of inheritance where the heirs instead of selling the property and sharing the purchase price or alternatively distributing the property they register the property in multiple names in undivided shares in proportion to their hereditary right. Each undivided shareholder has a right to possession together with the others to the whole of the property without a specific part of the property being allocated to him. Although, they can together lease or sell the property. Each one has the right to transfer by donation or inheritance his share and further has the right to mortgage or otherwise encumber his undivided share. Each undivided shareholder is subject to the powers of the Director of Lands and Survey's Department. It is common for larger pieces of land for co-owners to sign agreements setting out specified parts of the land belonging to a named co-owner enabling each to have control of their own part in the land. This is typically the first step in the separation of a larger piece of land into smaller plots.

Acquiring Property

Property may be acquired by outright transfer by the registered owner and such transfer may be by gift or sale or exchange with other property and is achieved by the signing of a transfer form before a District Land Office. Also transferring of property may be by inheritance on the application of the Administrator of the estate of a deceased person and by division or distribution. Finally, property may be acquired by a Court Order which is issued in the most common situation in cases of wrong registration, fraudulent transfers, breach of trust, and breach of Contract.

Hereditary Rights

The appreciation in the value of land in recent years has led to a lot of expatriates who have for a long time even generations neglected their rights to inheritance to seek and claim their hereditary rights. The existence of the Land Registries and the availability of the history of each registration enable them to trace the properties of their ancestors. On occasions these properties may be found to have been registered in the names of the rest of the heirs. In such situation the Director has no power and the only way to claim is through the Court. However, in all the situations where the Director is empowered to decide he does so accordance to the Registries, Records, and Plans kept in the Land Registries. He has no power to decide over conflicting claims of ownership or hear evidence. Further every Director's Decision is subject to an appeal to the District Court of the District where the land is situated and from the decision of the District Court to the Supreme Court.

Legal requirements for the transfer of ownership

Cyprus became full member of the European Union on 1st of May 2004 and therefore amended the Acquisition of Immovable Property (Aliens) Law Cap. 109 to comply with the European acquis.

All European citizens and companies incorporated in other EU member states can purchase without restraint property in the Republic of Cyprus. All former limitations and boundaries have been removed and residents of the European Union have the same treatment as Cyprus residents.

For all other third country nations the above law applies.

According to the law 'acquisition of immovable property' includes

a. The lease of immovable property for a period more than 33 years or the lease of immovable property for less periods of years under which terms of the agreement the lease period can, due to a unilateral right provided therein, be extended for a lease period over 33 years;

b. The acquisition of share(s) in a company registered in the Republic or in the Sovereign Base Areas and which (in either case) owns immovable property in the Republic or in the Sovereign Base Areas, in circumstances where such acquisition of share(s) can result in control of the company by aliens, taking into account and any other shares of the same company which might belong to aliens;

c. The creation of a trust to the benefit of an alien, which concerns in total or partly immovable property, leasing of immovable property, the share(s) of a company.

The law states that the acquisition of immovable property by third country nationals is prohibited, unless this happens by way of death or the prior permission of the Council of Ministers approval.

The Council of Ministers (District Officer of the District where the property is situated are now responsible) must approve any acquisition of property by third country nationals, who apply for approval by written application enclosing a sale agreement of land containing a clause that the sale will only proceed if the permission of the Council of Ministers is granted. When consent is given purchasers must verify that the purchase consideration is from foreign currency. Third country nationals are solely allowed to a freehold ownership of a villa, an apartment or of land not exceeding 4,014 sq.m in size.

Land registration

The transfer of ownership is concluded with the transfer of ownership by a simple process of registration at the District Land's Registry once the necessary permissions are granted (as prescribed above) and as soon as separate title deed for the property sold is issued by the Land Registry Office reflecting any property erected on the land. In the division of apartments within blocks of flats delays may be experienced. For the transfer the buyer is responsible for the transfer fees. Purchasers should aim to buy properties with title deeds or should be very cautious when buying property without separate title deeds and in this respect should seek professional advice.

After signing of the agreement or contract of sale, the buyer must have the contract stamped at the tax authorities affirming payment of stamp duty and a copy of the purchase agreement must be submitted to the Land Registry within 60 days. Depositing the purchase agreement is essential as it ensures the protection of the buyer for specific performance purposes.

Mortgages

A mortgage means a voluntary encumbrance of a property to secure payment of an existing, future or contingent liability. The "mortgagor or mortgage debtor" is an owner of immovable property who creates a mortgage thereon whereas the person in whose favour the mortgage is created is called "mortgagee or mortgage creditor".

This is a limited security right which has the purpose to enforce a claim for payment of a sum of money on the property subject to it in preference to other creditors. The establishment of a mortgage as security interest for the financier is customary with regards to the financing of both private and commercial real estate. A mortgage right is created by a notarial deed recorded in the public registers.

If a debtor is in default with the payment for that which the mortgage serves as guarantee, the mortgagee shall be granted the right of immediate execution of the property. Furthermore, the mortgagee is a secured creditor in the event a mortgagor goes into liquidation. In principle, the foreclosure takes place in the form of a public auction. With court approval, a private sale under execution may also be held.

Transfer tax and VAT

Real Estate Transfer Fees are imposed by the Land Registry Office in order to transfer FREEHOLD ownership to the name of the Purchaser. The transfer fees are due for payment when the transfer of the Title Deed in the name of the Purchaser takes place. The Purchaser is solely responsible for the payment of the Transfer Fees. The rates are on a graduated scale.

Value of Property (€)	Transfer Fee Rate (%)
up to 85,000	3
from 85,001 to 170,000	5
from 170,001 and over	8

If the property is in joint names e.g. a couple - husband and wife or two individuals, then the purchase value is divided into two parts which results in reduced Transfer Fees.

An amendment regarding the reduction of Immovable Property Transfer Fees has been approved by the Cyprus House of Representatives. It applies only to the first sale of a property and it abolishes or reduces Transfer Fees provided that the Contract of Sale has been deposited with the Land Registry within the month period set by the law.

More specifically:

- No Transfer Fees will be payable for properties which are subject to VAT.
- Transfer Fees are reduced by 50% in case the purchase of the property is not subject to VAT.

Capital Gains Tax

Capital Gains Tax will be imposed at the rate of 20% with the first €17,086 being exempt for each person on any disposal. If the disposal relates to a private residence there is an exemption up to €85.430 and finally if the disposal is made by a farmer and it relates to agricultural land there is an exemption up to €25.629. The gain is the difference between the sales proceeds and the original acquisition price of the property. In the case of a property which was purchased before 1st January 1980, the gains are the difference between the sales proceeds and the market value of the property as at 1st January 1980.

There are exemptions under the law where certain disposals are not subject to Capital Gains Tax:

- Transfers arising on death
- Gifts made from parent to child or between husband and wife or between up to third degree relatives
- Gifts to a company where the company's shareholders are members of the donor's family and the shareholders continue to be members of the family for five years after the day of the transfer
- Gifts by a family company to its shareholders, provided such property was originally acquired by the company by way of gift. The property must be kept by the donee for at least three years
- Gifts to charities and the Government
- Transfers as a result of reorganisations
- Exchange or disposal of immovable property under the Agricultural Land (Consolidation) Laws
- Expropriations
- Exchange of properties, to the extent that the gain made on the exchange has been used to acquire the new property. The gain that is not taxable is deducted from the cost of the new property, i.e. the payment of tax is deferred until the disposal of the new property

Stamp Duty on Contracts

The Purchaser is liable for the payment of Stamp Duty on the purchase price of the property at the following rates:

First € 5,000	€ 0.00
€5,001 to € 170,000	1.5%
over € 170,001	2%*

* Capped at a maximum of €20.000

VAT

On November 3, 2017, The Cyprus House of Representatives approved a new VAT Law which amended the main VAT Law N.95 (I)/2000. It was published in the Official Gazette of the Republic of Cyprus on 13 November 2017 and came into force as of 2 January 2018.

The new law introduces VAT at the standard rate for the sale of building land and the leasing/rental of business premises as per the conditions included in the law. It also introduces the reverse charge mechanism for VAT-subject supplies of land and property under a loan restructuring/force-sale arrangement, which will mostly impact financial institutions.

Public law aspects

Under the provisions of Article 23 of the Constitution of Cyprus, every person has the right to acquire own possess enjoy or dispose of any movable or immovable property. No deprivation or restriction or limitation is allowed except for restriction or limitations which are necessary in the interest of public safety or public health or the public morals or the town and country planning or the development and utilization of any property to the promotion of the public benefit or the protection of the rights of others and only if imposed by law. The restrictions and limitations imposed are those relating to Town and Country Planning and the imposition of various planning zones which restrict the use of the land or the buildings to be constructed for example, area or height or both or the ability to build by imposing a maximum length of access to a public road.

Costs

The transfer fees and the stamp duty are payable by the purchaser. The Capital Gains Tax and any other local authority taxes due at the time of the purchase are payable by the seller prior to the transfer of the property.

5. Czech Republic

Legal regulation

The new Czech Civil Code (effective as of 1 January 2014, Act no. 89/2012 Coll.) incorporates most of the real estate law related to ownership and transfer thereof, as well as other rights *in rem* (i.e. those vested in property). The Civil Code includes an exhaustive list of rights *in rem*, which include easements, mortgages, retention right and the right to build.

The Civil Code also recognizes personal rights to real estate, such as the rights of lease, which may not be invoked against a third party.

Various types of ownership

The following real property rights in rem are recognized by Czech law (for mortgages please see a separate paragraph below):

Ownership (*vlastnictví*)

Ownership is the most comprehensive right that a person may have in an object. All other property rights are derived from ownership. Czech law recognizes different types of ownership, such as exclusive ownership, joint ownership, co-ownership of apartment units, accessory co-ownership, and undivided co-ownership of spouses.

The principle of *superficies solo cedit* (vertical accession), i.e. who owns the land owns all that is attached to it, is the elementary principle of Czech real estate law. Exceptions to this rule include certain underground constructions and utility networks.

Easements (*služebnosti*)

An easement is a right that the owner of the benefiting property (the dominant land) has over another property (the servient land). Most typical examples include a right of way, or rights for utility networks placement and management.

Easements are usually created by an easement agreement and registered with the Land Register. The owner of the dominant land can be obliged to pay a lump-sum upfront fee or a regular fee (monthly or annually) to the owner of the servient land.

Right to build (*právo stavby*)

The right to build gives the beneficent right to place and use a construction on a land owned by a third party. The beneficent is then entitled to carry out such development within the limits stated by the underlying agreement. The beneficiary can be obliged to pay a lump-sum upfront fee or a regular fee (monthly or annually) to the land owner. The right to build is established for maximum 99 years and may be prolonged during its term.

The right to build is usually created by an agreement and registered with the Land Register.

The most relevant rights to real estate which are not vested in property include lease and emphyteutic lease:

Lease (*nájem*) and emphyteutic lease (*pacht*)

Lease grants the tenant the right to use the leased asset; emphyteutic lease includes the right to use and to enjoy the fruits, typically when the use of agricultural land or enterprise is granted. Both lease and emphyteutic lease may be registered with the Land Register with the owner's consent, however, it is not very common.

Legal requirements for the transfer of ownership

Transfer of real estate under Czech law requires a written agreement between the parties (e.g. purchase agreement, gift agreement, etc.) with verified signatures of the parties. The title is officially transferred when the change of ownership is registered with the Land Register with effect as of the date when the application for registration of the change was filed with the relevant Cadastral Office. Cadastral Office is the responsible authority maintaining the Land Register.

Land registration

Ownership of real estate is transferred when the change of ownership is registered with the Land Register with effect as of the date of filing of the application for registration of the change with the relevant Cadastral Office. The application must be filed on a specific form and accompanied by one original copy of the transfer deed. Once the application is received by the Cadastral Office, the Cadastral Office immediately informs the persons whose rights registered in the Land Register are to be changed or cancelled, about the fact that the rights are affected by a change; following this, a 20-day period ensues during which no changes to the Land Register in respect of the relevant real estate can be made. Once this period lapse, the Cadastral Office resolves on the application.

Mortgages

Real property may be encumbered with a right of mortgage (in Czech: "zástavní právo") as a security right. Establishment of a mortgage as security instrument for the financier is customary with regard to the financing of both private and commercial real estate. A mortgage right is created by registration with the Land Register.

Czech law is flexible in terms of structuring of mortgages and registering various instruments which provide stronger position for the relevant creditor, e.g. it enables to register higher ranking mortgage to be established in the future with the Land Register. Financing institutions also often benefit from registration of prohibition to dispose of or encumber the mortgaged asset.

If a debtor is in default with the payment for which the mortgage serves as security, the mortgagee shall be granted the priority right to proceeds from the sale of the mortgaged asset. The existence of mortgage also ensures priority treatment in case of bankruptcy or liquidation proceedings where the mortgagee enjoys the status of a secured creditor.

Transfer tax and VAT

In the Czech Republic, the transfer of real estate is subject to real estate acquisition tax paid by the party acquiring the real estate (unless the parties to the transfer agree otherwise). The current rate is 4% and is calculated either on the purchase price specified in the purchase agreement or determined by an expert opinion, whichever is higher. First acquisition of a newly built property (in Czech: "*novostavba*") is exempt from the real estate transfer tax if such acquisition occurs within five years after the building is completed. VAT at the rate of 21% is payable on transfer of built-up land (in Czech: "*stavební pozemek*") by the transferor; built up land is any land which is capable of being built up in accordance with the relevant administrative approvals. The most important exemption to VAT duty applies if the land transfer takes place after expiry of five years following issuance of an occupancy permit. Czech VAT regulations are rather complex and therefore specific tax advice should always be sought at the stage of transaction structuring.

Public law aspects

The ability to build, and the restrictions thereon, are generally governed by zoning documentation (in Czech: "územně *plánovací dokumentace*"), which include zoning plan (in Czech: "územní *plán*") as the most common tool for municipalities to regulate construction activity on the given territory.

Provided that the contemplated development is in compliance with the zoning plan, the applicant must obtain a planning permit (in Czech: "územní *rozhodnutí*") and a building permit (in Czech: "*stavební povolení*"). Once the construction is completed, the use thereof is approved by an occupancy permit (in Czech: "*kolaudační souhlas*" or "*kolaudační rozhodnutí*"). Certain, in particular industrial activities also require procedure on environmental impact assessment (EIA).

One or more permits (e.g. planning and building permits) may be obtained in the form of a joint permit (in Czech: "*společné povolení*"), which is typical for smaller developments; larger ones which require extensive project documentation and public consents are usually difficult to manage in one joint proceedings.

Costs

Except for the transfer tax and VAT mentioned above, the costs of transaction are relatively negligible; they include fees for signature verification and the Land Register registration fee (currently approx. EUR 40 per one application).

6. Finland

Legal regulation

In Finland, the most important act related to real estate is the Code of Real Estate (maakaari, 540/1995). The Code of Real Estate regulates the ownership and the sale of a real estate, as well as mortgage rights. In regard to apartment ownership, the most important acts are the Housing Transactions Act (asuntokauppalaki, 843/1994) which basically regulates the sale of an apartment as well as the Limited Liability Housing Companies Act (asunto-osakeyhtiölaki, 809/1991), which sets the standards for the ownership of an apartment in a housing company. Further, the Tenancy Act (maanvuokralaki, 258/1966) regulates the lease of the property.

Various types of ownership

Direct ownership

The standard way to own a real estate is the so-called direct ownership, which means that the purchaser of the property purchases directly owns a certain piece of land.
In principle, direct ownership means that the owner of the property also has full authority over the property in question. In Finland, the owner of the land owns also all the buildings in the property.
A real estate can also be owned jointly. This means that each of the co-owners own a designated share of a property. None of the co-owners has ownership of any specific area of the property but the ownership is defined, for example, as 1/12 of the property. However, the co-owners can divide the possession of the jointly owned property by executing a special agreement called the "joint owners´ agreement" (Finnish: hallinnanjakosopimus).

Leasehold

Leasehold gives the tenant the right to build on and use the property on a piece of land owned by another person. The owner of the land grants a lease in return for the payment of rent. The leasehold is based on a written agreement between the tenant and the owner of the land. At the end of the term of the lease agreement the estate returns to the owner. The owner is usually under an obligation to compensate the tenant at the end of the lease for the value of the building(s) built on the land.

Housing Company

This form of ownership is somewhat different from the beforementioned ownership and leasehold models. In this form, a housing company owns the buildings and either owns or leases the land. The purpose of the housing company is to own and govern the land and the building(s) on it.

Certain shares of the housing company entitle the owner to possess and use a certain apartment of the company. In other words, a shareholder in the housing company does not own the apartment itself but the shares that entitle to use and possess the apartment and use it for residential purposes.

The operations of the housing company as well as the relationship of the company and the shareholder is regulated by Limited Liability Housing Companies Act. For example, the responsibility for the maintenance of the property and the buildings is divided between the company and the shareholders. The shareholders are not permitted to take all actions related to, for example, alteration work in the apartment without the housing company's consent.

To cover expenses incurred by the real estate company, such as maintenance expenses, taxes, housing management costs, financial costs etc., the company collects a monthly fee from the shareholders. The fee is based on the shareholder's share in these expenses (usually per m2 or per number of shares owned), as defined in the articles of association.

Legal requirements for the transfer of ownership

The model of the transfer of ownership is highly dependent on the form of the ownership. In direct ownership of the land the object of purchase is the land itself. These types of purchases are governed by the Code of Real Estate and they require, for example, a written deed of purchase as well as the signature of a notary public.

Transfer of a lease is also possible. In this case, the object of purchase is the right to lease the land. The sale of leasehold is governed mainly by the same rules than the sale of the land. The buyer usually bears the costs of all post-sale registration procedures.

In the housing company form the object of purchase is movable property; the share(s) of the housing company. The buyer will become a shareholder in the housing company. These transfers of shares are governed by the Housing Transactions Act and the sale can be executed by either written or oral agreement without any formal requirements.

Land registration

The real estate register as well as the title and mortgage register, both maintained by the NLS (Nation Land Survey of Finland), are the public registers in which real estate units and the ownership of a real estate in Finland is registered. These registers include information concerning, for example, the real estate itself (unit number, location etc.), ownership of a real estate, mortgages and different kind of special rights (leasehold, joint-owners' agreement etc.). These registers are reliable so that anyone can rely on the correctness of these registers. Furthermore, these registers are open to public.

After the sale of real estate, the new owner is under an obligation to register his/her ownership to the title and mortgage register. A leaseholder is usually also obligated to register his/her leasehold to the real estate register as a special right.

Title of the shares of the Finnish housing companies are not currently registered in Finland contrary to real estates and real estate ownership. However, housing companies shall, under the Limited Liability Housing Companies Act, keep and maintain a share register which includes the information concerning all the shares and the shareholders of the company. This share register is public so that anyone can have access to it upon request.

Transfer tax and VAT

In Finland, real estate transfer tax is 4 per cent of the purchase price. The transfer tax in sale of the leasehold is also usually 4 per cent. However, in sale of the shares of a housing company, the transfer tax is 2 per cent. The buyer is liable for paying the transfer tax.

The obligation to pay the property tax for the current calendar year is usually agreed upon between the buyer and the seller in the contract of sale.

Public law aspects

Land Use and Building Act (maankäyttö- ja rakennuslaki, 132/1999) sets the framework for the planning and developing of land use. This act regulates, for example, planning (kaavoitus), general preconditions for building as well as building permits and action permits. In principle, all developing actions concerning the land and its use (such as building and other alterations and modifications) require a permit from (either local or national) public authority. Authorities consider the preconditions for granting the permit on the grounds of law and the local plans. A refusal of apermit is usually subject to appeal.

Furthermore, for example the Environmental Protection Act (ympäristönsuojelulaki, 527/2014) sets restrictions for land use. Real Estate Formation Act (kiinteistönmuodostamislaki, 554/1995) governs the formation of new real estate units.

7. France

Legal regulation

The concept of real estate ownership can be found in the French Civil Code. Other legal provisions may be found in the French Housing and Construction Code and the French Planning Code. Taken as a whole, this legal corpus governs the entitlement to the use, sale, transfer of ownership of and encumbrances on real property as well as land development or construction of real property. The right of ownership is also a right protected by the French Constitution.

Various types of ownership

The following real property rights are recognized by the French laws:

Full ownership (*pleine propriété*)

The right of ownership is defined under Article 544 of the French Civil Code as follows: "*the right to enjoy and dispose of things in the most absolute manner, provided that one does not make use of it in a manner prohibited by the laws or regulations*".

In full ownership, the holder owns the building and the land it stands on outright.
As it is also considered an absolute right, it confers on the holder the *usus* (right to use), *fructus* (right to derive profit), and *abusus* (right to alienate).

Co-ownership (*copropriété*)

Co-ownership is the legal organisation of a building which is owned by at least two owners known as co-owners. Each co-owner has full ownership of the unit it owns in the building and which corresponds to private areas, and holds a share in the common areas of the building calculated in proportion to the size of the private areas owned in full. Each co-owner participates in the cost of management and administration of the common areas in proportion to its share.

This organisation applies to one or more collective buildings (vertical co-ownership) and to a group of buildings standing on a common land (horizontal co-ownership).

It is governed both by the law on co-ownership and by contractual provisions contained in the co-ownership regulations and division description of the building which are registered with the local land registry.

Volume division (*division en volumes*)

In this organisation, each owner of a real estate volume is the owner of that volume and the constructions included in it. Unlike co-ownership, the ownership of the land and common facilities is not divided into shares of common areas.

Inside the volume, each owner is free to apply the ownership legal regime of its choice. Each volume may therefore be used for the implementation of a co-ownership in it, the common areas being composed of the real estate volume itself and the common facilities included in it. The volumes are identified in contractual specification (*cahier des charges et servitudes* governing the relationships between the owners and the status of the easements) and a division description.

Joint possession (*indivision*)
It is a collective organisation of the property in which each joint possessor is the owner in full of the entire property.

Leasehold
A tenant may be granted a real property right (or right *in rem*) under a long-term lease entered into for a period between 18 and 99 years: the construction lease (*bail à construction*) whereby the tenant must build a predetermined building on the leased land, and the long-term lease known as *bail emphytéotique* whereby the tenant must maintain and pay for the upkeep of the property. As the tenant benefits from the equivalent of a full real property right, it is entitled to grant mortgages over the property.

Easements (*servitudes*)
An easement is a right that the owner of the benefiting property (the dominant land) has over another property (the servient land). Examples include rights of way, rights of light or rights for energy supply. An easement may result from a private deed between two owners, or may be imposed by the law. It may also have a civil nature (e.g. rights of way), or administrative nature (e.g. easement of alignment). The owner of the dominant land can be required to pay an (annual) fee to the owner of the servient land.

Legal requirements for the transfer of ownership

Transfer of real estate ownership can only results from a notarial deed of transfer executed before a notary who is a State officer. The transfer of real estate ownership can occur against payment (e.g. sale, exchange, contribution to a company), or free of charge (e.g. donation, inheritance).

Land registration

Once executed, a deed of transfer must be registered with the local land registry so as to be enforceable against third parties. Such formality is completed by the notary within one month after the completion date. Information available at the land registry includes in particular: identity of the past and current owners of real property, date of purchase, details on easements and other encumbrances, registered mortgages, long-term leases (leases have a term exceeding 12 years), and real estate finance leases.

As long as such information must be registered with the land registry, it remains available to third parties. Other details of a transaction included in the deed of transfer remain available to third parties as the notary completes the registration procedure of the entire deed. However, the appendixes attached to the notarial deed are not registered with the land registry.

Mortgages

Real property may be encumbered by a mortgage which is the most common type of security interest required by a lender (mortgagee) from a purchaser/borrower (mortgagor) of real property to secure a real estate financing. A mortgage must be executed in the form of a notarial deed which is then registered with the local land registry by the notary. The mortgage validity period is the same as the loan for which it has been granted, but this period cannot exceed 50 years.

If the mortgagor defaults on the loan, the mortgagee is entitled to (i) require the sale of the mortgaged property at a public auction and to be repaid out of the proceeds, or (ii) obtain a court order transferring title to the mortgaged property as payment for the unpaid sums. In case of default, the mortgagee can also be entitled under the mortgage agreement to be automatically vested with title to the property for a consideration determined by an expert appointed by the parties or the court. If the mortgagor defaults and files for insolvency proceedings, there is an automatic stay on all enforcement actions, including enforcement

of a mortgage (subject to a few exceptions). The mortgagee is a secured creditor should the mortgagee goes into liquidation.

Transfer tax and VAT

The purchase of real property triggers a transfer tax at the rate of 5.09% or 5.81% depending on its location. The transfer is levied on the sale of the real property and it is usually paid by the purchaser, unless otherwise agreed between the parties.

Specific transfer tax regimes with a reduced rate of 0.715% also apply in the certain situations such as the purchase of a development land or brand new building if the transfer is fully subject to VAT, or the purchase of a property if the purchaser undertakes to resell within 5 years (or 2 years if the purchaser intends to split the property into several units to be sold separately). The purchase of office, commercial and storage premises located in the Paris region may be subject to an additional tax of 0.6%. If the purchaser undertakes to build and complete the building within 4 years, the purchase may be exempted from the transfer tax. However, transfers of real property involving VAT payers may also be subject to VAT at the standard rate of 20%. For example, it is the case for sales of development land and sales of brand new buildings.

Public law aspects

The French Planning Code (which applies nationwide) and local land use plans (*plan local d'urbanisme or PLU / plan d'occupation des sols or POS*) regulate zoning and urban planning. Each municipality enacts local land use plans which divide the area into zones dedicated to various uses and allocate building density ratios to each zone. Historic buildings benefit from specific legal provisions which may be found in the French Heritage Code and which apply nationwide.

Planning permissions are required for the carrying out of works and the use of a building. In particular, a building permit is required to build a brand new building or carry out works on existing buildings if those works result in a change of its use or in the creation of additional surface areas. A development permit will be required when the development project involves the division of the land into one or more plots to develop. A commercial operation authorisation (*authorisation d'exploitation commerciale*) may also be required to operate a commercial activity beyond specific legal thresholds (such as retail or cinema).

In the Paris region, a specific administrative approval (*agrément*) is required if the building is to be used for certain activity purposes (office, industrial, commercial, professional, administrative, technical, scientific or educational use).

If classified facilities for environmental protection are to be operated in the building, a specific authorisation may also be required.

Costs

The costs of the transaction will usually be borne by the purchaser. In addition to the real estate transfer tax mentioned above, the purchaser will also have to pay the notary's fees and the land registry taxes. Notary fees are regulated up to a certain amount. The land registry has a fixed fee structure. Furthermore, it is customary to settle the owner charges (such as land tax) between the seller and the purchaser for the current calendar year.

8. Germany

Legal regulation

In Germany, most real estate law is incorporated in the German Civil Code ("Bürgerliches Gesetzbuch" or "BGB") and the Apartment ownership law ("Wohnungseigentumsgesetz" or "WEG"), which contains laws on the entitlement to, the use, sale, transfer of and encumbrances on real estate and apartments.

Various types of ownership

The following real property rights are recognized by the German Civil Code:

Ownership or Freehold (*Eigentum*)
Ownership is defined as the right to use a property at the owners pleasure and exclude others from its use. All other property rights, such as leasehold, are derived from ownership. In Germany, the owner of land also becomes the owner of buildings etc build onto his land.

Leasehold (*Erbbaurecht*)
Leasehold gives the leaseholder the right to build and use a property on land owned by another person. A lease must be granted by the owner of land for a fixed period of time in return for the payment of a rent (Erbpacht). At the end of the term of the lease the estate returns to the freehold owner of the land. It is common practice that the owner of the land compensates the tenant for the value of the building build on the land at the end of the lease.

Apartment ownership (*Wohnungseigentum*)
If someone owns an estate or a lease, he owns buildings build on that estate. However, in an apartment complex, the apartments can have seperate owners (Wohnungseigentümer). All apartment right holders are considered co-owners of the whole complex and will jointly form the association of owners (Wohnungseigentümergemeinschaft). In addition, each of them has an exclusive right to use a specific apartment unit.

Easements (*Grunddienstbarkeiten*)
An easement is a right that the owner of the benefiting property (the dominant land) has over another property (the servient land). Examples include a right of way, rights of light or rights for energy supply. Easements are usually created by deed and registered on the title of the property. The owner of the dominant land can be obliged to pay an (annual) fee to the owner of the servient land.

Legal requirements for the transfer of ownership

The transfer of real estate ownership, under German Law only takes place once a notarial deed of transfer in the form of a Sale and Purchase Agreement has been registered with the Land Registry. Verbal or other written agreements regarding the transfer of land are invalid and unenforceable.

Land registration

The Land Register (Grundbuch) keeps and maintains the public register of title in which the ownership of land and property in Germany is registered. It is part of the local courts (Amtsgerichte). Therefore, the Land Register is run by the German States (Bundesländer) and there is no Federal Land Register. However, public

notaries are allowed to access the electronic version of all Land Registers all over Germany. Each piece of land (or apartment in an apartment complex) is registered with its own unique title number. The extent of the title is set out on a plan which forms part of the title. The title also reveals the details of the owner of the land, the class of title (whether it is leasehold or freehold or apartment right), any rights benefitting the land (e.g. easements that the land enjoys), any matters which burden the land (e.g. restrictive covenants and easements to which the land is subject) and charges and leases to which the land is subject. It is compulsory to register all burdens and charges on the land. Since no transfer of land is valid until registered in the Land Register and no charges or mortgages are enforceable until registered in the Land Register, anyone can rely on the correctness of the Land Register. Therefore, someone acquiring property from the registered owner can legally acquire ownership even if the registered owner already sold the property to someone else but has not registered the transfer yet. It is therefore important to have the notary register an ownership reservation right after the notarization of the Sale to prevent the Seller from selling the property to somebody else before the Buyer has been registered in the land register as the new owner. The Land Register is not open to everyone. It is therefore best to ask a public notary to check it.

Mortgages

A charge by way of legal mortgage is the most common form of security that a lender will require from the purchaser of land or property.

It is compulsory to register a legal mortgage over freehold land and a legal mortgage over a lease at the Land Registry. In the event of insolvency of the borrower, legal mortgages rank in the order that they are shown in the Land Registry title register of the property and not in order of the date they were created (subject to any entry in the register to the contrary) and so prompt registration is critical. In the event a borrower company goes into liquidation, the mortgagee is a preferred creditor in the liquidation of the assets of the company. If the borrower defaults the lender can enforce its security by taking possession of the property and the lender has a statutory power of sale through auction by a public notary. A charge will also grant the lender the power to appoint a receiver to take control of the property and sell the property. The receiver will use the proceeds of sale to repay the lender.

Transfer tax and VAT

In principle, real estate transfer tax (Grunderwerbsteuer) is levied upon acquisition of land located in Germany. The current rate varies between 3.5 and 6.5% of the purchase price depending of the German State (Land) the property is located in. No real estate transfer tax is charged in case of a share deal of 95% of shares (at most) of a land owning company. The remaining 5% of shares have to be held by a separate company with different shareholders for a minimum of 5 years. However, new legislation has been announced for 2019 regarding the preferential tax treatment of share deals.

The default position on Value Added Tax ('VAT') is that supplies of land are exempt so that no (further) VAT is charged when a property is purchased or rented out. In order to recover VAT on goods and services supplied in respect of a property (e.g. building services) a landowner can 'opt to tax' the land so that the supply is subject to VAT (chargeable at 19%). VAT would be levied on the completion monies for acquisition of a property and the rent payable under a commercial lease (residential leases are free of VAT). If the transaction is the sale of a property rental business which takes effect as a transfer of a going concern and the necessary formalities have been met there will be no charge to VAT.

Further, business tax (Gewerbesteuer) can be levied on the purchase price in certain circumstances.

Public law aspects

The German Federal Building Code ("Bundesbaugesetzbuch") and its local equivalents ("Landesbauordnungen") sets out the legislative framework for planning control and development. Stricter controls apply to buildings which are Listed for their architectural or cultural significance and for properties located in Conservation Areas.

Planning permission is required for the carrying out of any development of land or a material change of use. Permission is granted by the local planning authority (usually the borough or district council). Development is broadly defined and it catches building, engineering and other operations to the land. Planning applications are determined in accordance with the Local Plan (Bebauungsplan) for each local planning authority. A refusal of planning permission is subject to appeal. In certain German States (Länder) citizen participation can stop or delay a Local Plan / project.

Costs

The costs of the transaction will usually be borne by the purchaser. In addition to the real estate transfer tax mentioned above, it is customary that the purchaser will also have to pay the notary and the Land Registry. However, by law, the Seller and the Purchaser can be charged for all costs jointly by the German Tax Authorities. Notary fees are regulated. The Land Registry has a fixed fee structure. Furthermore, it is customary to settle the owner`s charges (such as property tax) between the seller and the purchaser for the current calendar year.

9. Greece

Legal regulation

In Greece, the general legal framework regarding the ownership of real estate and ownership rights thereon is represented by the Presidential Decree under No 456/1984 "Greek Civil Code", as amended and in force today. According to the Greek Civil Code, an owner is entitled to possess, use and dispose of the subject of his ownership and enjoy the fruits and benefits thereof within the limits of the law. Greek Civil Code also governs the entitlement to the use, sale, transfer of and encumbrances on real estate.

Various types of ownership

The following rights on real estate are provided by Greek legislation:

Ownership («κυριότητα»)
Ownership is defined in the Third Book, 3rd Chapter of the Greek Civil Code, as the right of the owner to "*disposethe object at his own discretion and exclude any action of third party, provided that such right is not against the law or third parties' rights*".

In the Greek legal system, there are different types of ownership, such as full ownership, co-ownership, horizontal ownership or horizontal co-ownership (the so-called "οριζόντια(συν)ιδιοκτησία», that is separate ownership on a building's floor or on an apartment of such floor).

Leasehold (as provided by Law under No 1665/1986)
Leasehold is a right in rem which gives the leaseholder the power to hold and use immovable property owned by another party.

Extension of ownership (under article 1001 of the Greek Civil Code)
The absolute right of ownership on a real estate extends to the space on and under the land, except as otherwise provided by law. Thus, the owner who owns the land, owns all that is attached thereto (art. 1001 subparagraph a' Greek Civil Code, in combination with art. 948 and 954 Greek Civil Code).

Though, there are specific restrictions of the aforementioned extension of the ownership right, as provided by law, such as under subparagraph b' of art. 1001 Greek Civil Code and special legislation indicatively, for mining, aviation, thermal springs, etc.)

Co-ownership (under article 1113 of Greek Civil Code)
This type of right is the ownership of more than one people on the property, undividedly in ideal portions.
Horizontal ownership or horizontal co-ownership (so-called "οριζόντια (συν)ιδιοκτησία") under art. 1001 and 1117 of Greek Civil Code and Law under No 3741/1929

This constitutes a special type of ownership, which is defined in articles 1002 and 1117 of the Greek Civil Code. Objects of this right may be only floors and the apartments thereof, as well as underground apartments under the roof considered as floors by law.
Furthermore, horizontal ownership consists of a) exclusive ownership on a building floor or an apartment thereof, and b) compulsory ownership on the common areas. The under a) and b) elements mentioned above co-exist and constitute the horizontal ownership.

Easements (so-called "δουλείες")
An easement as defined in article 1118 of the Greek Civil Code, is a right in rem on one's property (that is the servient land) for the benefit of another's property (that is the dominant land) orfor the benefit of another person. No easement may be granted or created over an existing easement (servitusservitutisessenequit).

Under the Greek Civil Code, easements are divided in two categories:

a) Easements for the benefit of the dominant land. Such easements are a burden on the servient land and the components thereof, but not on the movable components and especially on the appurtenant thereof. Said easement exists as long as the servient property exists. Thus, the death of the rightholder does not lead to the extinction of the easement.

   Such easements are indicatively, the right-of-way, the right-of-water supply, right-of-supporting the building on an adjacent property, etc.

b) Easements for the benefit of another specifically designated person, either an individual or a legal entity. Such easements are the following: i) usufruct (so-called "επικαρπία"), ii) right–of-residence (so-called "οίκηση") and iii) restricted easements for the benefit of another person.

Usufruct (articles 1142 et seq. of Greek Civil Code), right-of-residence (articles 1183 et seq. of Greek Civil Code), restricted easements for the benefit of another person (articles 1188 et seq. of Greek Civil Code)

Usufruct right and right–of-residence provide their holders with full and total enjoyment of the property, whereas the restricted easements provide only restricted use of the property, a priori defined between the parties involved, depending on the righholder's needs.

Regarding the usufruct, this ceases to exist upon the death or dissolution of the usufructuary-individual or dissolution of the usufructuary-legal entity respectively.

The usufructuary has to provide security as provided by law. On the contrary the right-of-residence holder is not obligated by law to provide security.

Legal requirements for the transfer of ownership

For the purpose of protecting the real estate transactions, Greek legislation imposes the obligation of publicity of the rights in rem over real estate.

The transfer of real estate ownership is executed exclusively through a notarial deed, which is submitted thereafter to the Cadastre for registration, in order to transfer the title of the property in the name of the new owner/rightholder.

The aforementioned obligation of publicity is ensured through the registration of the notarial deed of transfer to a publicbook (register) of the deeds, which change the relations in rem on real estate. Said book is accessible to the public. Therefore, no transfer of real estate ownership or no granting or creation or abolition of a right in rem on real estate takes place without registration of the notarial deed of transfer to the Cadastre.

Land registration

Taking into account the under III. mentioned above "Legal requirements for the transfer of ownership", the registration of the notarial deed of transfer to the Cadastre (so-called "Υποθηκοφυλακείο") and Land Register (so-called "Κτηματολόγιο") is a prerequisite for the transfer of real estate ownership or for the granting or creation or abolition of a right in rem on real estate.

The registration of the notarial deed of transfer takes place at the competent Cadastre and Land Register, where the property is located (article 1192 Greek Civil Code). It should be noted that the Land Registers were introduced by the Law under No 2308/1995, as amended and in force today. There are still today geographical areas where the process of land mapping through Land Registers is still under progress and subsequently, in such cases the registrationis limited only to the competent Cadastre.

The notarial deeds of transfers which must be registered to the Cadastre and the Land Register are restrictively mentioned (numerous clausus) in articles 1192 and 1193 of Greek Civil Code.

Mortgages

Under article 1257 of Greek Civil Code, a real estate property may be encumbered with a right of mortgage, as a form of security, in favour of a creditor, who acquires a right in rem over the property, which in case the debtor (owner of the property) does not pay the debt, the creditor can proceed to compulsory liquidation thereof and be preferentially satisfied over the other unsecured creditors. The mortgage,in order to be legally binding, should be registered to the Book of Mortgages of the competent Cadastre, where the real estate is located (art. 1268 Civil Code).

Transfer tax and VAT

Real estate transfer tax is imposed in case of an acquisition of real estate property located in Greece, which is up to 3% of the fiscal valueof the property.

It should be noted that a further tax (in favour of the fire protection authority) is applicable only in certain areas of Greece, imposed on the aforementioned real estate transfer tax.
In principle, no Vat is applicable, except for specific cases as provided by law.

Public law aspects

Real estate property in Greece has to comply with specific urban planning, environmental, etc. requirements as provided by law and the competent administrative authorities (such as building permits, etc.). The fulfillment of such requirements is certified in writing by a competent engineer, incorporated in the notarial deed, which is examined and verified by lawyers.

Costs

Further to the real estate transfer tax mentioned above, there are other fees and costs involved, which are as follows:

- the public notary fees are defined by law on a gradual scale, such as indicatively, such notary feesare up to 1% of the property fiscal value, in case such a value is up to €120.000, and up to 0,70% of the property fiscal value, in case such a value is up to €380.000;
- the registration costs to the Cadastre are up to 0,475% of the property fiscal value, plus VAT (23%).
- In case the property is registered in the Land Register, the respective registration costs are up to €300.00.

10. Hungary

Legal regulation

The legal framework governing real estate ownership in Hungary is set out in Act V of 2013 on the **Civil Code** which constitutes the general framework with regard to real estate and in Act CXLI of 1997 on the **Real Estate Registration**. Special rules for acquisition of agricultural land are set out in Act CXXII of 2013 on Trade of **Agricultural and Forestry Lands**.

Various types of ownership

Hungarian law generally does not distinguish on the fact whether the person entitled to the ownership is a private individual or a legal entity, thus the legal regulation stipulates basically the same provisions for both private and legal persons, apart from some exemptions in case of agricultural land.

The ownership as an absolute legal status attached to the real estate involves five well-separable rights which the owner is exclusively entitled to:

1. right of possession
2. right of use
3. right of beneficial use
4. right of beneficial enjoyment
5. right of disposal

The transfer of the ownership the real estate means the transfer of all partial rights without any exception. The owner is however also entitled to assign one or more partial rights of the ownership to third persons. The ownership of real estate may be held by more than one person at a time which is called co-ownership. Unless otherwise agreed between the co-owners their property shares shall be claimed equal. Each co-owner shall have the right of pre-emption on the property share owned by the other co-owner before third persons.

Beside the ownership the following rights may be exercised in relation to the real estate under Hungarian law:

- Land use ('földhasználati jog'): in case a building is built on a land owned by a third person the owner of the building is entitled by the law to use the land the building is built on during the existence of the building.
- Easement ('szolgalmi jog'): granted to enable a person to use someone else's property for a specific purpose to a limited extent or to require the owner of the other property to refrain from certain activities. The purpose shall be especially the right-of-way, or the installation of water lines or water conduits, basement, building abutment, etc., established by the law or by contract.
- Mortgage ('jelzálogjog'): established by contract between mortgagor and mortgagee, secures financial claims of the mortgagor and allows satisfaction of due and unpaid claims of the mortgagor by sale of the real property secured by the mortgage.
- Call option ('vételi jog'): based on contract, allows the beneficiary of the call option to purchase the property with a unilateral statement at any time within the option period at the price previously agreed between the parties.
- Put option ('eladási jog'): based on contract, allows the beneficiary of the put option to sell the property with a unilateral statement at any time within the option period at the price previously agreed between the parties.

- Pre-emption right ('elővásárlási jog'): based on contract or by the law, the person who was granted the right of pre-emption shall be entitled to purchase the property under the terms and conditions described in the purchase offer made by a third person.
- Repurchase right ('visszavásárlási jog'): based on contract, in case the purchaser grants the right to the seller to repurchase the property sold under such agreement the seller may repurchase the property with a unilateral statement addressed to the purchaser at the price previously agreed between the parties.

Legal requirements for the transfer of ownership

According to Hungarian law transfer of real estate ownership is basically free. Real estate ownership shall be freely acquired by any person (including private individuals and legal entities), however in certain cases described by law the acquisition shall be subject to restrictions depending on (i) the person of the acquirer and (ii) the type of the real estate.

In Hungary **EU resident** private persons and legal entities shall acquire ownership of real estate with the **same requirements as prescribed for Hungarian citizens**.

However,

(i) the acquisition of the ownership of real estate is restricted for non-EU resident private individuals and legal entities since such acquisition is - with some exemptions - subject to a previous authorization process.
(ii) regarding the acquisition of agricultural and forestry land the regulation (a) sets out strict limits to the size of acquirable land for any persons; and (b) prohibits the acquisition completely for non-EU resident private and legal persons and (c) prohibits the acquisition even for legal persons irrespective of their nationality, with some exceptions.

As for the form requirements the transfer of the ownership shall be valid and enforceable only if the relevant agreement between the parties is concluded **in writing**. In order to have the transfer and the new title recorded in the land registry the sale and purchase agreement shall be countersigned by a Hungarian attorney or concluded in form of a notarial deed.

The transfer of ownership in relation to the real estate is valid once it is **registered** into the land registry, thus the ownership right is created upon being recorded into the real estate registry.

Land registration

In Hungary there is an official database that records the data and information - i.e. ownership, title, size etc. - prescribed by law for all real estate located in Hungary, the land registry. This registration system guarantees the safety of real estate transactions and bears a significant role in relation to any real estate transfer. Any alteration (such as registration, modification and cancellation) of any data or information relating to a real estate located in Hungary must be registered in the Hungarian land registry within 30 days.

Mortgages

Mortgage on a real estate shall be established upon satisfaction of two preconditions: (1) a pledge agreement has to be concluded in writing and (2) the mortgage has to be registered into the land registry. The mortgage may be established to secure one or more existing or future, conditional or unconditional pecuniary claims of a specific amount.

Upon the failure of the obligor to perform its obligation secured with mortgage the mortgagor shall become entitled to seek satisfaction prior to other claims against the property mortgaged as security for its claim. The right to satisfaction granted to the mortgagor shall open only following the claim secured by the mortgage falls due.

Transfer tax and VAT

The acquisition of a real estate located in Hungary is subject to transfer tax obligation. Transfer tax is always borne by the purchaser. The tax base is calculated based on the market value of the real estate. The current transfer tax rate - with some exceptions – is 4 %. Acquisition of shares of real estate holding companies are under certain conditions subject to the same transfer tax.

Real estate transactions might be subject to VAT depending on the type of real estate – newly built building or already in use, free building plots or agricultural land etc. VAT payment is in some cases obligatory prescribed by the law in other cases it might be chosen depending on the aim of the transaction. VAT tax rate is generally 27 %, in some exemptional cases 5 %.

Public law aspects

The determination of the zoning rules in Hungary falls into the competence of the local municipalities. The issuance of a building permit also falls into the competence of the local municipalities. In order to obtain such permit a request shall be submitted to the building authority for administrative service.

Costs

Unless otherwise agreed by the parties the costs arising from the transfer of the ownership shall be borne by the purchaser which involves – in addition to the transfer tax – especially the legal fee of the attorney drafting the transfer agreement and the procedural fee of the land registration proceeding.

11. Luxembourg

Legal regulation

Luxembourg property law including real estate law is mainly governed by the Luxembourg Civil code which was inherited from the French Civil code.

Book II of the Luxembourg Civil code is on property (immovable and movable) and amendments to ownership (usufruct, right of use or habitation; easements).

Book III of the Luxembourg Civil code deals with the ways of acquiring property (including inheritance, donations, agreements, sale, exchange, mortgages, forced expropriation).

Various types of ownership

The property "real" rights are

- the ownership right, being "the right to enjoy and dispose of things, provided that one does not make use of it in a manner prohibited by laws or regulations or causes a trouble that exceeds the normal incommodities of neighborhood, disrupting the balance between equivalent rights" (art. 544 Civil code);

- the usufruct right, being the right to enjoy things owned by another as one's own, subject to the obligation of preserving its substance (art. 578 Civil code);
- the right of usage, within the limits of one's needs and the needs of one's family (art. 630 Civil code);
- the residence right (personal and family use of a dwelling house – art. 632 Civil code);
- easements, that allow the owner of a piece of land ("dominant tenement") to use another piece of land (the "servient tenement"); art. 637 sq. Civil code;
- the emphyteutic lease, which is a long-term lease (27 to 99 years) – law of 22 October 2008;
- the surface right, similar to the emphyteutic lease – law of 22 October 2008.

Legal requirements for the transfer of ownership

The usual way for ownership transfer is by mutual agreement, either free of charge (donation) or against payment (mainly sales).

In the case of a sale, two principles apply:

- the freedom of contract of the parties (art. 711 and 1134 combined of the Civil code);
- the immediate transfer of property (art. 1138 Civil code). This rule is not a rule of public policy, which means that the parties can depart from it.

There is no specific compulsory form for a sale or exchange of real estate property to be valid. It may even be oral. However, for proof purposes, it is better concluded in written or before notary (art. 1341 Civil code). A deed under private seal shall be made in as many original copies as there are counterparties (art. 1325). Even though a sale under private seal (or even oral) is considered valid and "perfect" between the parties to the agreement, registration with the mortgage office is compulsory in order to ensure enforceability against third parties. Only notary deeds and judgements can be thus registered, which excludes transfers under private seal (art. 1 of the law of 25 September 1905 on the registration of real property rights, as amended).

Land registration

The registration is made through filing of a certified copy of the deed or of the judgement with the relevant mortgage registry office (art. 3 of the law of 25 September 1905).

The Luxembourg district has two such offices, the first one competent for the counties of Luxembourg, Mersch, Grevenmacher, Remich, the second one for the counties of Esch-Alzette and Capellen. The Diekirch district has one office.

The registration delay is 2 months following the last day set for the registration (to be made at the latest within 10 or 15 days after passing the deed, depending on the notary's professional residency).
The purpose of registration is mainly to make the transfer public vis-à-vis third parties.

Mortgages

A mortgage is a real accessory right attached to a claim and placed on an immovable property. In case of default, it gives to the creditor the right to seize the property whoever the owner is (right of pursuit) and to be paid by preference on the sale price (preferential right).

A mortgage can be held on immovable property that is tradable, accessory immovable and their usufruct (art. 2118 Civil code).

It can be legal, resulting from the law; judicial, resulting from judicial acts, or conventional, resulting from agreements (art. 2117 Civil code).

Registration is very similar to land registration (cf. above), to be filed with the same office.

Transfer tax and VAT

The sale of an immovable property located in Luxembourg is submitted to a proportional registration right of 6% (5% + 2/10 - law of 7 August 1920 as modified) plus a municipal tax of 50% of the said registration right if the property is located in Luxembourg-City (regulation of 14 March 1988). There is also a transcription right of 1%.

As regards VAT,

- the acquisition of existing immovable property is VAT-exempt (with an option right for the acquirer);
- regarding a planned building:
  - the land purchase is submitted to the above registration/transcription rights;
  - the building construction is subject to VAT at the rate of 17%.

Public law aspects

The general development plan (PAG – plan d'aménagement général) is a set of regulatory requirements applicable to a specific municipality. It defines how the land shall be used (dwelling, forests, economic activities) and the degree of use (number of houses, etc.). The drawing up and amending of a PAG is of the competence of the aldermen. Any natural or legal person who owns land or wants information about the planning permission rules applicable for a piece of land, and wants to develop a plot or a building following a purchase or reassignment, can contact the board of mayor and aldermen to propose the amendment of a general development plan.

Special development plans (PAP - plans d'aménagement particuliers) implement and specify the nature and extent of land use in each zone, or part of a zone, of a municipality's general development plan. Special development plans are subordinate to general development plans and to the municipality's building regulations. Any natural or legal person wishing to carry out specific work on a zone or on part of a zone defined in the general development plan can file a PAP application.

Costs

The costs linked to a transfer of real property usually include:

- the sale price;
- the notary price (in accordance with a set fee scale);
- the above registration/transcription/VAT charges;
- the tax on the capital gain realized by the seller, as the case may be.

12. Malta

Legal regulation

In Malta, real estate law is regulated primarily by the Maltese Civil Code, Chapter 16 of the Laws of Malta, although there are other special (older) laws that regulate lease; the relative provisions of the law regulate ownership, use, usufruct, habitation, emphyteusis, possession, co-ownership, sale, transfer of and encumbrances on real estate. The relevant laws in the Maltese Civil Code find their origins in old Roman principles, whereby a distinction exists between rights directly connected to the property (in rem), such as ownership, as opposed to personal rights of enjoyment and use of property (in personam), such as tenancy. Under Maltese Law, a mode of differentiating between the two rights is the instrument used to create the relative title; a right in rem must necessarily result from a public deed, published by a Notary Public and registered at the Public Registry, whereas a right in personam is created by means of a private agreement.

Various types of ownership

The following real property rights are recognized by the Maltese Civil Code:

Ownership
Ownership is defined in Section 320 of the Maltese Civil Code as the right of enjoying and disposing of things in the most absolute manner, provided no use thereof is made which is prohibited by law.

Leasehold
Leasehold is a right in personam which gives the lessee the right to make use of, for a determinate period of time and against payment of rent, immovable property owned by another party. The right of use is personal to the lessee, and only exceptionally can this right be transferred unto third parties, with the specific consent of the owner.

Emphyteusis
Emphyteusis is defined in Section 1494 of the Maltese Civil Code; it is a contract whereby one of the contracting parties grants to the other, in perpetuity or for a time, immovable property against payment of a stated yearly ground rent. Perpetual groundrent can be redeemed by the emphyteuta, thereby rendering the immovable property freehold, whereas in the case of temporary emphyteusis, the immovable reverts to the grantor upon the lapse of the stipulated term.

Apartment ownership
In the case of ownership, rental, use or habitation of an apartment will render the occupant responsible for payment of a contribution for the maintenance and upkeep of the common parts of the block, irrespective of whether the common parts are co-owned by the occupant, or otherwise. Occupants of an apartment are required to become members of the block association, as regulated by the Condominium Act, Chapter 398 of the Laws of Malta, and in turn will appoint an Administrator to administer and oversee all matters and affairs pertaining to the common parts of the block.

Easements / Servitudes
An easement is a right established for the advantage of a tenement over another tenement belonging to another person, for the purpose of making use of such other tenement or of restraining the owner from the free use thereof; hence an easement is a burden on one property (the servient tenement) for the benefit of

another property (the dominant tenement). Easements can be created by Law, such as right of way and watercourse, or by the act of man, such as the installation of an aperture overlooking third party properties. Easements can be created by title, through the passage of time (prescription) or the disposition of the owner of two tenements.

Co-ownership
Common ownership of real estate can either arise by operation of the law, such as in the case of common dividing walls or other boundary walls constructed/erected on a median line separating two tenements from each other, or due to a legal act, such as the joint acquisition of immovable property. Co-ownership entitles either party to the full and unfettered enjoyment of the property owned jointly.

Usufruct and the right of use and habitation
Usufruct is the real right to enjoy things of which another has the ownership, subject to the obligation of preserving their substance with regard both to matter and to form. Use is the real right of a person of making use of a thing belonging to another, or of taking the fruits thereof, but only to the extent of his own needs and those of his family. Habitation is the real right of a person to live in a house belonging to another. All must be created ad validatem by means of a public deed.

Legal requirements for the transfer of ownership

Transfer of ownership of immovable property is only valid, in terms of Maltese law, if executed by means of a public deed, published by a Notary Public and duly enrolled at the Public Registry. The relative deed is usually preceded by a promise of sale agreement (konvenju), by means of which an obligation is created on the part of the promisor to carry out the sale, or if the sale can no longer be carried out, to make good the damages to the promisee. The period between the promise of sale agreement and the contract of transfer of ownership is utilized to carry out the relative property conveyance preparatory process.

As detailed in the Immovable Property (Acquisition by Non-Resident) Act, Chapter 246 of the Laws of Malta, there are additional legal requirements for the acquisition of immovable property in Malta by non-residents. In fact, one would need to obtain an AIP permit from the AIP section within the Capital Transfer Duty Department which would be subject to certain conditions. If the property in question is located in a Special Designated Area (SPA), the non-resident is at liberty to rent the property and also purchase another. EU citizens that are not residents in Malta do not require a permit to acquire an immovable property in Malta for the purposes of establishing their residence, business or supply of services.

Legal persons including trusts and commercial partnerships which are registered, operating and controlled within an EU member State may also freely purchase immovable property, subject to certain criteria. Permits may also be issued by the Minister responsible for finance where the acquisition is for an industrial or touristic project, or if the acquisition will contribute towards the economic development of Malta.

Land registration

Immovable property in Malta falls within two distinct categories, within a land registration area and outside a land registration area. Every transfer of immovable property falling within a land registration area must necessarily be registered at the Land Registry, apart from the Public Registry. Immovable property falling outside a land registration area is not required to be registered at the Land Registry. It is the Maltese legislators' intention to create a harmonized and structured system of registration of immovable property, thereby providing for a centralized system of registration of immovable property without the necessity of double registration with two State entities.

Mortgages

In terms of Maltese law, immovable property may be encumbered with a hypothec (general or special) or privileges. These must necessarily be created by public deed, and hence registered at the Public Registry. This is a limited security right which is duly registered on immovable property and serves the purpose of enforcing a claim for payment of a sum of money on the immovable property on which it has been registered in preference to other creditors. Hypothecs and privileges are legal instruments used by financing entities, that would have provided financing for the acquisition of the immovable property, to secure payment of the debt due.

Transfer tax and VAT

In principle, real estate transfer tax is levied upon acquisition of immovable property located in Malta. As from 1st January 2015, the standard rate of Property Transfer Tax or 'PTT' is 8% on the value of the immovable property. However, in a variety of different circumstances there are also favourable and applicable tax rebates depending on where the property is situated and the reason for which it is being acquired. Some circumstances may even exempt a withholding tax entirely.

At the moment, as a non-resident buying an immovable property in Malta, one may choose to opt out of the final PTT and instead pay a capital gains tax which is a flat rate of 12% tax on the transfer value or the selling price of the immovable property, which is consequently payable to the Inland Revenue. In fact, this is akin to the tax system applicable to properties bought prior to 1st January 2015 in Malta. However, in order to qualify for this option, non-residents must prove that they are not tax residents of Malta by producing a statement issued by the local competent tax authorities of their country of origin.

Public law aspects

As a result of extensive public consultations, the planning development legislation in Malta has been subject to many changes in view of striking an appropriate balance between urban yet sustainable development in Malta. The national agency responsible with monitoring the development of land use and environmental regulations is the Malta Environment and Planning Authority which was set up in 1992 and has been recently split up into two autonomous and independent authorities; The Planning Authority and the Environment and Resources Authority. The Planning Authority carries out its regulatory functions by processing and issuing permits that allow for or reject development proposals in the interest of protecting Malta's urban foundations, natural environment and cultural heritage. Planning permission is required from the Planning Authority in order to change the permitted use of a building or for certain structural works or projects. However, if there are no objections, the process can be expeditious. In cases of a refused application or an approval with conditions, one may seek redress by appealing to the Environmental and Planning Review Tribunal and further on points of law to the Court of Appeal (Inferior Jurisdiction).

Costs

In furtherance to the PTT or tax on capital gains detailed above, the costs of the transaction will usually be borne by the purchaser. Usually, upon the promise of sale of the immovable property, the purchaser would be bound to pay an agreed deposit to the vendor which is generally 10% of the full and final value along with a provisional 20% of the stamp duty (calculated on the value of the acquired property) due to the Commissioner of Inland Revenue. During this period, the Notary will need to conduct the appropriate searches to verify the legal root of title of the immovable, for which the purchaser will be required to pay.

On the final deed of sale the purchaser would be bound to pay the remainder of the value of the property along with the rest of the 5% stamp duty. However, there are some exemptions on the 5% stamp duty of which could reduce the duty down to 2%. On the final deed of sale the purchaser would also need to pay around 1 - 2% notarial fee (calculated on the value of the property) to the Notary Public, however this may be increased if the title requires more rigorous research. Naturally, any Land and Public Registration fees shall be borne by the purchaser. For non-residents, the costs associated with the acquisition of an immovable property, including legal fees and a fee of €233 for the AIP permit should also be taken into consideration.

13. The Netherlands

Legal regulation

In the Netherlands, most real estate law is incorporated in the Dutch Civil Code, which contains laws on the entitlement to, the use, sale, transfer of and encumbrances on real estate. The relevant laws in this Dutch Civil Code are based on the old Roman distinction between rights on property (in rem) and personal rights on the performance of obligations (*in personam*). Unlike a personal right, a right on property is absolute and can be enforced against third parties. In order to qualify as a right in rem, this right must be explicitly recognized as such in the Dutch Civil Code. This is called the *numerus clausus* and almost all of the rights recognized under the numerus clausus as a right in rem are listed in Book 5 of the Dutch Civil Code.

Personal rights to real estate, such as the rights of lease, agricultural lease or beneficial ownership, can generally not be invoked against a third party. These rights are generally listed in Book 7 of the Dutch Civil Code.

Various types of ownership

The following real property rights are recognized by the Dutch Civil Code:

Ownership *(eigendom*)
Ownership is defined in clause 5:1 of the Dutch Civil Code as the most comprehensive right that a person may have in an object and is the most common title to real estate in the Netherlands. All other property rights, such as leasehold or a right of superficies, are derived from this ownership.

Leasehold *(erfpacht*)
Leasehold is a right in rem which gives the leaseholder the power to hold and use immovable property owned by another party.

Right of superficies *(recht van opstal)*
The principle of *superficies solo cedit* (vertical accession) is one of the main principles in Dutch real estate law. He who owns the land, owns all what is attached to it (clause 5:20 of the Dutch Civil Code). Exceptions to this rule are only possible if these are allowed by law (the Dutch Civil Code or special legislation). One of these exceptions allowed by the Dutch Civil Code is the right of superficies. This right allows the holder to own a building, construction or plantation on, under or above someone else's land (clause 5:101 of the Dutch Civil Code).

Apartment ownership (*appartementsrechten)*
Ownership, leasehold and rights of superficies can be divided into apartment right. All apartment rightholders are considered as co-owners of the whole complex. In addition, each of them has an exclusive right to use an apartment unit and will become a member of the association of owners by operation of law. This association of owners is not the owner of the common areas, but takes care of the daily management of the complex. Apartment rights may be transferred separately and can be encumbered with limited rights (a mortgage, for example).

Easements *(erfdienstbaarheden)*
An easement is a burden on one property (the servient land) for the benefit of another property (the dominant land). The easement consists of an obligation to tolerate or not to do something on, above or below the servient land. For example, this right can consist of a right of way or a right to apply buildings and plantings. The owner of the dominant land can be obliged to pay a (yearly) fee to the owner of the servient land.

Common ownership (*mandeligheid*)
Common ownership of real estate can either arise by operation of law or due to a legal act. The first occurs in the case of common dividing walls, fences and hedges that are on the boundary of the property. The latter occurs when real estate is jointly owned by the owners of two or more (neighbouring) properties and is designated by them for the common use of those properties. The co-owners must give each other access to the common real estate and they have shared use of the common real estate.

Usufruct and the right of use and occupation *(vruchtgebruik en recht van gebruik en bewoning)*
Usufruct gives the entitled party the right to use goods that belong to another party and enjoy the fruits thereof. The usufructuary has the right to consume, alienate and encumber the goods subject to the usufruct. He also has to insure the goods. The most important characteristic of a usufruct is that it is linked to the life of the usufructuary. When the usufructuary dies, the right of usufruct will end. If the usufructuary is a legal entity, the right shall end upon dissolution of this entity, and in any event after thirty years have elapsed since the date of establishment.

The right of use and occupation is a special form of usufruct. The entitled party has the right to use a house and enjoy the benefits to the extent that the party needs for himself or his family. The rules applicable to usufruct also apply to the right of use and occupation.

Legal requirements for the transfer of ownership

Dutch law is characterized by a clear distinction between the purchase and the transfer of real estate. The purchase agreement forms a legal basis for the transfer of property and may be created by any given instrument (even orally; except for the sale of a private home). The Dutch Civil Code contains virtually no mandatory provisions. The transfer of real estate ownership, however, only takes place once a notarial deed of transfer has been registered with the Land Registry, in which deed the immovable property is delivered by a person authorized to dispose of the property pursuant to a valid title (a purchase agreement, for instance).

Dutch law has no special requirements for foreign property owners. The aforementioned legal requirements for the transfer of ownership apply to both Dutch and foreign persons or legal entities.

Land registration

The Dutch Agency for Cadastre and Public Registers (the 'Land Registry') keeps and maintains the public registers in which the ownership of Dutch real estate is registered. The Land Registry has a statutory duty to register the geographical location of real estate and any rights created thereon. This duty also applies to networks, ships and aircraft. This registration is based on the so called negative system. A registration with the Land Registry proves that the notarial deed of transfer has been registered, but does not prove that the intended effect of the transaction did actually occur. The data is accessible to the public and third parties relying on the registered facts may be protected (note, this is not always the case).

Mortgages

Immovable property may be encumbered with a right of mortgage. This is a limited security right which has the purpose to enforce a claim for payment of a sum of money on the property subject to it in preference to other creditors. The establishment of a mortgage as security interest for the financier is customary with regard to the financing of both private and commercial real estate. A mortgage right is created by a notarial deed recorded in the public registers.

If a debtor is in default with the payment for that which the mortgage serves as guarantee, the mortgagee shall be granted the right of immediate execution of the property. Furthermore, the mortgagee is a secured creditor in the event a mortgagor goes into liquidation. In principle, the foreclosure takes place in the form of a public auction in the presence of a Dutch civil law notary. With court approval, a private sale under execution may also be held. The sale under execution of Dutch real estate is possible via the internet.

Transfer tax and VAT

In principle, real estate transfer tax is levied upon acquisition of immovable property located in the Netherlands. This also applies to limited rights to which real estate is subject, such as a leasehold or a right of superficies. The current rate is 2 % for housing and 6 % for all other properties. The due transfer tax is calculated on the market value (*waarde in het economisch verkeer*) of the property. This market value shall be at least equal to the purchase price.

The Dutch Real Estate Transfer Tax Act contains several exemptions. For example, an exemption from real estate transfer tax applies to the acquisition of newly constructed real estate or a building site, in respect of which VAT (21 %) is due.

Public law aspects

The zoning plan (*bestemmingsplan*) is the main legal instrument containing generally binding provisions for the use of the ground. The zoning plan is adopted by the municipal council of each municipality regarding its territory. Another key instrument in Dutch real estate law is the environmental permit (*omgevingsvergunning*). In principle an environmental permit is required if a natural or legal person wants (i.a.) to build a building, construct or modify an establishment, or use the ground or a building in conflict with the zoning plan. Also the zoning plan can contain permit obligations, for instance to demolish a building. In general the Municipal Executive is the competent authority to grant most environmental permits (or to revoke them, or alter the conditions attached to the permits).

Costs

The costs of the transaction will usually be borne by the purchaser. In addition to the real estate transfer tax mentioned above, the purchaser will also have to pay the notary and the Land Registry. Notary fees are not regulated. The Land Registry has a fixed fee structure. Furthermore, it is customary to settle the owner charges (such as property tax) between the seller and the purchaser for the current calendar year.

14. Portugal

Legal regulation

In Portugal, most real estate law is incorporated in the Portuguese Civil Code ("*Código Civil*"), which contains laws on the entitlement to, the use, sale, transfer of and encumbrances on real estate.

Various types of ownership

The following real property rights are recognized by the Portuguese Civil Code:

Ownership *(Propriedade plena)*

Ownership (full ownership) is defined as the full and exclusive right of possessing, enjoying and disposing of real estate property within the limits of the law.

Usufruct *(Usufruto)*

Usufruct is the right to fully use and enjoy real estate owned by a third party, for a certain period of time, without changing its form and substance. If the beneficiary is a natural person the right will terminate with his death, in case it's a legal person the right may not exceed 30 years. The right of Usufruct includes all the powers that could be exercised by the owner, namely the collection of any natural, industrial or civil profits (*ius utendi* and *ius fruendi*).

Right of use and occupation *(Direito de Uso e habitação)*

The right of use and occupation entitles its beneficiary to use a real estate property and enjoy its benefits to the extent of his own or his family's needs. The rules applicable to usufruct also apply to the right of use and occupation, except that it may not be transferred or encumbered.

Right of Superficies or Surface Right *(Direito de Superfície)*

Surface Right is the right to build and maintain a construction or to make plantations in someone else's property, temporary or perpetually. If and when the right terminates the works and plantations revert to the owner of the land. The owner and the beneficiary may agree on a full up front payment or on the payment of an annual rent. The right is freely transferable but the owner of the land has a preemption right on the transfer.

Horizontal Property *(Propriedade horizontal)*

Any part of a building able to constitute an independent unit may belong to a different owner in the regime of horizontal property. Each unit, including its respective share in the common parts, is considered an independent property and corresponds to a fixed percentage of the whole building. Units in horizontal property may be freely transferred.

Easements *(Servidões)*

An easement is a right that the owner of the benefiting property (the dominant land) has over another property (the servient land). Examples include a right of way, rights of light or rights to water supply. Easements may be legal, imposed by rule of law, or conventional, created by deed and registered on the title of the property. The owner of the dominant land can be obliged to pay an (annual) fee to the owner of the servient land.

Legal requirements for the transfer of ownership

The transfer of real estate ownership takes place, under Portuguese Law, through the execution of a notary deed or of an authenticated private document. The transaction shall subsequently be registered with the Public Property Registry (*Registo Predial*). In case of inheritance no deed is necessary to register the transfer.

Land registration

The main purpose of the Property Register is to make public the legal situation of each land and property and to provide for the safety of the real estate legal trade. The register confers a legal presumption that the right exists, in the exact registered terms, and belongs to the registered holder. The register contains the description of each land and property and its location and limits, as well as whatever rights of real nature created on it. Those rights registered in good faith are legally protected against eventual not registered rights. Someone acquiring property from the registered owner shall, however, apply for a provisional registry, to prevent anyone from registering other rights before the purchaser has been registered as the new owner. The Land Register is public and mandatory and is normally requested directly by the notary or the entity that has authenticated the transfer document.

Mortgages

A mortgage is a security right that entitles the holder to be paid on a specified property in preference to other creditors. Mortgages are used frequentrly in real estate deals as a gurarantee of payment of the financing of the price. Mortagages are created by notatry deed or authenticated private documemt or, in some cases, directly by the law. All mortgages, regardless their nature, must be registered in order to be enforced.

Transfer tax and VAT

In principle, real estate transfer tax (*IMT- Imposto Municipal Sobre Transmissões Onerosas de Imóveis*) is levied upon acquisition of land located in Portugal. The taxable amount is the highest of the purchase value or the taxable value. Tax rates depend on the nature of the property : - urban property used exclusively for habitation – progressive rate up to the maximum of 6%; other urban property – 6,5%; rural property – 5%; property purchased by residents in a “tax haven” – 10%. The following exemptions, among others, will apply: acquisition of properties for resale by real estate companies; acquisition of real estate by real estate investment funds for residential letting; acquisition of urban properties for the purpose of urban rehabilitation; acquisition of properties classified as of national/public/municipal interest; acquisition of properties for the installation of units classified as of tourist interest. A Stamp Duty of 0,8% is also due for the transfer of property in return for a payment. Free transfers are subject to Stamp Duty at the rate of 10%, except in case of transfers between spouses, descendants or ascendants, which pay also 0,8%. In principle, the transfer of real estate is exempt from VAT, which only applies when the purchaser waives the standard VAT exemption.

Public law aspects

The main public law instrument containing the general binding provisions for the use of the ground is, in each municipality, the respective PDM (*Plano Director Municipal*). Each PDM is prepared by the municipal executive council and approved by the municipal assembly, under the framework of Law 31/2014 containing the General Principles of Public Policies on Grounds (*Lei dos Solos*). The municipal council is the competent authority for the final approval of construction projects and the granting of construction permits, unless in case of projects in classified historic sites or involving a listed building, where the approval of the heritage department of the Ministry of Culture (*DGPC*) is necessary. Environment permits, when necessary, are granted by the environment authorities.

Costs

The costs of the transaction will usually be borne by the purchaser. In addition to the real estate transfer tax, it is the purchaser who has to pay the notary's or the authentication entity's fees, as well as the property registry. Notary's fees for purchase and sale deeds are regulated and depend on the value of the price, but in average do not exceed €400, plus VAT at the current rate of 23%. The Land Registry has a fixed fee structure.

15. Slovakia

Legal regulation

In Slovakia, the general legal framework regarding the ownership of real estate and ownership rights is represented mainly by Act No. 40/1964 Coll. Slovak Civil Code as amended. According to the Slovak Civil Code, an owner is entitled to possess, use and dispose of the subject of his ownership and to enjoy the fruits and benefits thereof within the limits of the law. All owners shall have the same rights and obligations and enjoy the same legal protection. Civil Code also governs the entitlement to the use, sale, transfer of and encumbrances on real estate. The ownership of flats and non-residential premises is governed by a special Act – Act No. 182/1993 Coll. on ownership of flats and non residential premises. The registration of ownership rights regarding the real estate is regulated by Act No. 162/1995 on the Real Estate Cadastre and the Entries of Ownership and Other Rights to the Real Estates (The Cadastre Act) as amended.

Various types of ownership

The following real property rights are recognized by the Slovak Civil Code:

Ownership

Ownership is defined in the second part, first chapter of the Slovak Civil Code . The different types of ownership are exclusive ownership, co-ownership, and undivided co-ownership of spouses. The right of ownership in relation to land may be restricted by easements such as the right of way, or the right to build. The existence of pre-emption rights over the land either based on substantial law or based by contract between the parties can be present. The right of lease is solely based upon mutual agreement between the parties. Special right over land can arise from the administration of property of the State, of municipalities, or of regional self-governments.

Leasehold

Leasehold is a right in rem which gives the leaseholder the power to hold and use immovable property owned by another party.

Right of superficies

In the Slovak Republic, the principle is “aedificatio non solo cedit” (the building is not part of the land). Construction as a result of building activity is generally upon Civil Code and is a separate matter. The building is therefore not only a house or a building, but also swimming pool and fencing. In some cases, the building can not be effectively or economically separated from the land on which it is established; the building then falls with such a land, is part of it and forms a single thing with it.

The concept of construction in terms of the Civil Code defines the provisions of § 119 par. 2, according to which a building property is a real estate if it is connected with the land. Only such a building is covered by the provision of § 120 par. 2 of the Civil Code, according to which the building is not part of the land and provisions of § 133 par. 2 of the Civil Code on the Acquisition of the Ownership of Real Estate.

Possession

Possession is defined in § 129 of the Civil Code under which the Holder is the one who treats the matter as his own or who exercises the right for himself.” Possession includes two components - the will to handle the thing as its own and the real handling of the matter.

The Civil Code defines a special way to obtain the ownership – prescription.
The entitled holder becomes the owner of the property if it is held for an uninterrupted period of ten years in the case of real estate.

Suspension requirements are:
(a) the eligible object,
(b) eligible possession, which also includes the existence of a title,
(c) the expiry of the prescription period, which shall be continuous.

Mortgage right
The pledgee secures its claim against the debtor. The lien on real estate arises from the registration in the Land registry. In real estate practice, the mortgage banks provide loans to its clients. Mortgage banks in these cases have the status of a pledgee.

There may be more liens attached to one property, however the mortgage loan may not be secured by a pledge on a real estate that is already subject to a pledge for the benefit of a third party.
The "earliest the strongest" principle applies, the liens are written in the Land registry in the order they were created.

The lien restricts the handling with the property and in the event of default the debt is also removal of the property.

Right of back purchase
Whoever sells a real property, provided that he has the right to request the return of the real property within a certain time after the purchase, and returns the paid price to the buyer, has the right to back purchase. The contract with the right of back purchase has to be concluded in writing.

Legal requirements for the transfer of ownership

Transfer of real estate requires written agreement between the parties (purchase agreement, deed of gift) with legalized signatures. The title is officially transferred when the change of ownership is entered into the Land Registry with effect as of the date when the application to execute the change was filed with an responsible authority maintaining the Land Registry called the Cadastral Office.

Land registration

As is stated in the point 3. - Legal requirements for the transfer of ownership, the ownership may be acquired under a contract of purchase, deed of gift or another agreement, inheritance, decision of a state authority or by virtue of other circumstances stipulated by law.

Contracts for the transfer of real estates shall be in writing; other contracts shall also be in writing if so required by law or by the agreement of the parties. Where a contract for the transfer of real estates is concerned, the act of volition of the parties shall be contained in the same document. If an immovable is to be transferred under a contract, the ownership shall be acquired upon registration in the Land Register.

In order to file an Application for registration of the transfer of ownership rights it is necessary to submit:
- 1 piece of Application for registration of the transfer of ownership rights
- 2 contracts for the transfer to the respective District Office Cadastral department with notarized signatures of seller

The District Office Cadastral Department does not require that the contract is drawn either by a notary or by a lawyer. The contract is still valid if drawn by the parties themselves. There are three possibilities for drawing up the contract in Slovakia. The contract for a real estate can be drawn up by persons themselves (no costs i.e. 0 €), by a notary (this service is charged), by a lawyer (this service is charged).

After proper signing of contract, the application for registration of the transfer of ownership rights is submitted for the registration and for the transfer of the ownership right to the respective District Office Cadastral Department. Registration is executed by the respective District office Cadastral department, according to the location of the real estate. The District Office Cadastral Department shall decide on the application for the registration of the transfer within the period of 30 days (standard procedure) or within 15 days (speed up procedure).

Mortgages

Real estate property may be encumbered with the lien ("mortgage right") in which the subject in favor of whom the real estate was encumbered because he provides financial means is the pledgee (creditor) and subject whose real estate was encumbered and to whom financial means were provided is called the pledger (debtor). These facts are recorded in the Land registry. This lien shall be established by written contract where the signatures have to be authenticated by notary. Lien is in fact mortgage.

If the financial means were not be returned duly and timely, the pledgee is entitled to satisfy his claim or seek satisfaction of the receivable from the pledged property. This can be realized by execution of the lien – sale in the manner set out in the contract or at an public auction in accordance with the Act of voluntary auction. All these legal acts have to be recorded in the Land registry.

This right also provides a guarantee for creditor in case of bankruptcy or liquidation proceedings in which he has the status of secured creditor.

Transfer tax and VAT

In Slovak republic there was an Act about the transfer of real estate which was repealed. So the transferee as a new proprietor is not obliged to pay transfer tax, but as a new proprietor is obliged to pay local tax which is governed by tax administrator according to the Act of local taxes.

VAT is governed by the Act of Value Added Tax and has an exemption for the transferor – the delivery of the real estate is exempted from payment of tax if the delivery was realized after 5 years of occupancy procedure. Lease of real estate is exempted from the payment of taxes, but there are also some exceptions e.g. lease of spaces and parking places for vehicles in which the tax has to be paid.

Public law aspects

The influence on the public aspects has the building office which decides about the buildings, changes of buildings and other construction works according to the Construction Act. When a legal entity or natural person wants to build a building, there are three proceedings in which all questions concerning the building and his influence on the society and environment must be examined. In each of these proceedings, the building office issues decision - permission: territorial permit, the building permit and occupancy permit. Basic documents for issuing the building permit are zooming plan of town, land-use planning documents and other documents. The zooming plan is approved by municipal office. In the territorial permit, building office determines the conditions which has to be in accordance with the interests of society in the area where the building will be situated.

In the building permit – building office determines binding conditions of realizing and using the buildings and also decides about the objections of the participants of the proceeding.

In the occupancy permit building office approves the using of buildings. In this decision some technical requirements may be determined. The purpose of this proceeding is to secure the safety, health of people and environment in the space where the building is situated.

Costs

Application is submitted to the respective Cadastral Office. The Cadastral Office decides on the Application for the registration of the ownership title within 30 days, the fee is in the amount of EUR 66. The parties of the agreement can apply for registration in accelerated proceedings, in this case, the fee is in the amount of EUR 266 and the registration is completed within 15 days.

16. Spain

Legal regulation

In Spain, most real estate law is incorporated in the Spanish Civil Code, which contains laws on the entitlement to, the use, sale, transfer of and encumbrances on real estate. The relevant laws in this Spanish Civil Code are based on the old Roman distinction between rights on property (*in rem*) and personal rights on the performance of obligations (*in personam*). Unlike a personal right, a right on property is absolute and can be enforced against third parties. In order to qualify as a right *in rem*, this right must be explicitly recognized as such in the Spanish Civil Code or other laws. This is called the *numerus clausus* and almost all of the rights recognized under the *numerus clausus* as a right in rem are listed in the Spanish Civil Code but the mortgages (Mortgage Law, by decree of 8-Feb, 1946) and right of superficies, regulated in the Royal Legislative Decree 7/2015, on Soil and Urban Rehabilitation ("texto refundido de la Ley de Suelo y Rehabilitación Urbana").

Personal rights to real estate, such as the rights of urban & rural lease, can generally not be invoked against a third party, unless they're registered in the Land Register. These lease rights are regulated in the Law 29/1994 on Urban Leases ("Arrendamientos Urbanos") and Law 49/2013 on Rural Leases ("Arrendamientos Rústicos"). Warning: some Autonomous Communities and islands have their own Civil Law ("Fueros") and Civil Codes or Laws, and these special laws ("leyes forales") prevail over the common civil law, which regulation would only be subsidiary. These territories with their own civil law are: Galicia, Euskadi/País Vasco, Navarra, Aragón, Cataluña, Comunidad Valenciana and Islas Baleares.

Various types of ownership

The following real property rights are recognized by the Spanish Civil Code and other different laws:

Ownership *(propiedad)*

Ownership is defined in clause 348 of the Spanish Civil Code as the right of enjoy and disposition of a thing without any limitations but these regulated by laws, and is the most common title to real estate in Spain. All other property rights, such as leasehold, usufruct, easements or a right of superficies, are derived from this ownership.

Leasehold *(arrendamiento)*

Leasehold is a right in rem which gives the leaseholder the power to hold and use immovable property owned by another party.

Right of superficies *(derecho de superficie)*

The principle of *superficies solo cedit* (vertical accession) is one of the main principles in Spanish real estate law, with some exceptions. He who owns the land, owns all what is attached to it (clause 358 of the Spanish Civil Code). Exceptions to this rule are only possible if these are allowed by law (the Dutch Civil Code or special legislation). One of these exceptions allowed by the Spanish Civil Code is the right of superficies. This right allows the holder to own a building, construction or plantation on, under or above someone else's land (Royal Legislative Decree 7/2015, on Soil and Urban Rehabilitation ("texto refundido de la Ley de Suelo y Rehabilitación Urbana")

Horizontal ownership *(propiedad horizontal)*

Ownership and rights of superficies can be divided into horizontal right (regulated in Law 49/60 on Horizontal Property). All horizontal rightholders are considered as co-owners of the whole complex or

building. In addition, each of them has an exclusive right of property of an apartment unit and will become a member of the association of owners by operation of law. This association of owners is not the owner of the common areas (but each owner according to its ownership quota), but takes care of the daily management of the complex. Apartment rights may be transferred separately and can be encumbered with limited rights (a mortgage, usufruct or leasehold, for example).

Easements *(servidumbres)*
An easement is a burden on one property (the servient land) for the benefit of another property (the dominant land). The easement consists of an obligation to tolerate or not to do something on, above or below the servient land. For example, this right can consist of a right of way or a right to make buildings and plantings, or the right to bring water or electricity across the servient parcel. There are legal and voluntary easements. The owner of the dominant land can be obliged to pay a compensation to the owner of the servient land (right of way, for example).

Common ownership *(medianería ;mancomunidad o comunidad de bienes)*
Common ownership of real estate can either arise by operation of law or due to a legal act. The first occurs in the case of common dividing walls, fences and hedges that are on the boundary of the property. The latter occurs when real estate is jointly owned by the owners of two or more (neighboring) properties and is designated by them for the common use of those properties. The co-owners must give each other access to the common real estate and they have shared use of the common real estate.

Usufruct and the right of use and occupation –"use and dwelling"- *(usufructo y otros derechos de ocupación –"uso y habitación"-)*
Usufruct gives the entitled party the right to use goods that belong to another party and enjoy the fruits thereof. The usufructuary has the right to consume, alienate and encumber the goods subject to the usufruct. The most important characteristic of a usufruct is that it is linked to the life of the usufructuary. When the usufructuary dies, the right of usufruct will end. If the usufructuary is a legal entity, the right shall end upon dissolution of this entity, and in any event after thirty years have elapsed since the date of establishment.

The right of use and occupation are different rights but very similar to usufruct. The entitled party has the right to use a thing or to dwell in a house or a part of it (rooms), and enjoy the benefits to the extent that the party needs for himself or his family. The rules applicable to usufruct also apply to the right of use and occupation.

Enfiteutical right *("Enfiteusis")* and "forum" *("foro")*
These are right "*in rem*" of medieval origin, used in rural lands and not very common, but they still exist and are regulated by Spanish Civil Code.

The first one divide ownership among a "direct ownership" and "useful ownership", with different rights & obligations for each party, and the right of the direct owner to get a part of the price ("*laudemio*") in case of sale by the useful owner, it's similar to old feudal property.
The second one (widespread in rural Galicia) is a way to receive a rural land with some conditions and obligations over it.

Finally, just mention that each "Foral Law" has other singular legal rights and peculiar institutions too, non-existent in common Spanish civil law.

Legal requirements for the transfer of ownership

Spanish law is characterized by a clear distinction between the purchase and the transfer of real estate ("*título y modo*"). The purchase agreement ("*título*") forms a legal basis for the transfer of property and may be created by any given instrument (even orally). The Spanish Civil Code request a legal way ("*modo*") to hand and transfer the right of property. The most common way for real estate is the notarial deed in which the real estate property is delivered by a person authorized to dispose of the property pursuant to a valid title (a purchase agreement or donation, for instance). Registration with the Land Registry is not compulsory to get the right of property, but it is highly advisable to do so to protect the property against third parties and to win some procedural rights against them (clause 34 of Mortgage Law).

Land registration

The Spanish Provincial Registers of the Cadastre and the Land Registers keep and maintains the public registers in which the description and location, and the ownership and other rights of Spanish real estate are registered. The Provincial Registers of the Cadastre have a statutory duty to register the geographical location of real estate and the description, surfaces and boundaries of the plots and parcels. On their hand, the Land Registers keep and mantains the public registers in which the property any rights *in rem* are registered thereon, and also leases and subleases. A registration with the Land Registry proves that the notarial deed of transfer exist and the property right (or other rights *in rem*) exists and has been already being transferred or executed. The data is accessible to the public online and third parties relying on the registered facts will be protected by law in its "good faith" and due diligence (clause 34 of Mortgage Law) about the true ownership and registered encumbrances over the property.

Mortgages

Immovable property may be encumbered with a right of mortgage. This is a limited security right which has the purpose to enforce a claim for payment of a sum of money on the property subject to it in preference to other creditors. The establishment of a mortgage as security interest for the financier is customary with regard to the financing of both private and commercial real estate. A mortgage right is created by a notarial deed recorded in the public registers. Recording is compulsory for the legal existence of the mortgage (as an exception to the voluntary registration of other rights and contracts).

If a debtor is in default with the payment for that which the mortgage serves as guarantee, the mortgagee shall be granted the right of immediate execution of the property. Furthermore, the mortgagee is a secured creditor in the event a mortgagor goes into liquidation. In principle, the foreclosure takes place in the form of a public auction in a court or a Spanish civil law notary. The sale under execution of Spanish real estate is possible via the internet.

Transfer tax and VAT

In principle, real estate transfer tax is levied upon acquisition of immovable property located in Spain. This also applies to limited rights to which real estate is subject, such as a leasehold, usufruct or a right of superficies. The current rate depends on each Autonomous Community (it ranges from 6% in Madrid to 10% in others, and sometimes there's a scale 8-9-10%) and is calculated on the market value ("*valor de mercado*") of the property. This market value shall be at least equal to the purchase price, or if higher, the cadastral value multiplied by a factor that depends on each municipality (the factor is fixed from time to time by each Provincial Registers of the Cadastre). This last system to calculate it has being recently challenged by the Supreme Court and now the Tax Agency will need to value each property individually (not as before with that automatic mathematic formula) if it believes the price on the deed is not the real market value.

The Spanish Real Estate Transfer Tax Act contains several exemptions. For example, an exemption from real estate transfer tax applies to the acquisition of newly constructed real estate or a building site, or when both parties are professionals, in respect of which VAT (10% or 21 % depending on the kind of property) is due.

Public law aspects

The zoning plan (*planeamiento municipal*) is the main legal instrument containing generally binding provisions for the use of the ground. The zoning plan is adopted by the municipal council of each municipality together with the government of its Autonomous Community regarding its territory. Another key instrument in Spanish real estate law is the urban planning permit ("*licencia urbanística*"). In principle a urban planning permit (there are several ones) is required if a natural or legal person wants (i.a.) to build a building, construct or modify an establishment, rehabilitate or refurbish, or demolish, or use the ground or a building with an alternative use allowed by the zoning plan. In general the Municipal Executive (or a Local Urban Planning Public Agency in big cities –"*Gerencia Municipal de Urbanismo*") is the competent authority to grant most permits (or to revoke them, or alter the conditions attached to the permits).

Costs

The costs of the transaction will usually be borne by the purchaser, but must be agreed. If not agreed, Spanish Civil Code regulates who will pay each cost. In addition to the real estate transfer tax mentioned above, the purchaser usually will also have to pay the Civil Notary and the Land Registry. Notary and Land Registry fees has a fee structure regulated by law. Notaries are allowed by law to negotiate a discount on their invoices (up to 10%). Furthermore, it's customary to settle the owner charges (such as Property Tax –"*I.B.I.*"-) between the seller and the purchaser for the current calendar year.

17. Sweden

Legal regulation

Real property law is primarily codified in the Swedish Land Code of 1970 ("Jordabalken"), the Real Property Formation Act 1970, the Planning- and Building Act 2010 and the Environmental Code 1998.

Various types of ownership

"Real property" is defined as land. Land is divided into real property lots which are limited horizontally or both horizontally and vertically (three dimensional real property). The real property comprises buildings, pipes, fences and other constructions placed on the lot for permanent use (by the owner or subsequently acquired by him). Buildings also comprise fittings for permanent use such as in a home; stove, refrigerator e t c, or in a shop; shelves, sales counters e t c. As regards real property intended for industrial use, also manufacturing and other equipment for the business belong to the real property. The owner can exclude industrial fittings and equipment from being part of the real property, through a declaration registered in the Land Register.

Lease *("Nyttjanderätt")*

Lease of real property for housing-, commercial-, agricultural- and other purposes is regulated in the Land Code. Agreements, except for agricultural purposes, may be made for a person's lifetime. Otherwise agreements are valid for the most 50 years, outside detail planned area, and 25 years within detail planned area and for agricultural purposes.

Easement *("Servitut")*

Easements, a right of a ruling property to use or require something from a serving property, can be created through private written agreements, but also through decisions by the Land Registration Authority. An easement must serve a permanent purpose for the ruling property.

Joint Property Association *("Samfällighet")*

Real property can be allotted to a Joint Property Association created by the Land Registration Authority. The association is administered jointly for the purpose of satisfying a common interest of the participating real property lots, e. g. access roads.

Cooperative Housing Association ("Bostadsrättsförening")

Cooperative Housing Associations are economic associations that owns a house, in which its members each have residential right to an apartment. Such right is not regulated by the Land Code and is not defined as a right to real property.

Long usage right, Emphyteusis *("Tomträtt")*

The Swedish government and municipal authorities can grant a long term right to use land in accordance with existing plans or for specifically described purposes. The fee is regulated every ten (10) years or longer. The contract can only be terminated by the public entity after sixty (60) years and is otherwise prolonged for successive forty (40) year periods.

Legal requirements for the transfer of ownership

Sale and purchase of real property is regulated in the Land Code. All transfers of real property to a new owner requires written form. A sale and purchase contract must be signed by both seller and buyer and include information about the purchase price and a declaration from the seller that the property is assigned to the

buyer. The buyer has an extensive duty to examine the property and cannot claim that detectable conditions constitute faults. The seller is responsible for hidden faults i. e. faults that were impossible to observe during a thorough investigation.

A sale and purchase agreement for real property does not require involvement of a notary. Normally it is a two-step procedure with an initial sale and purchase agreement stipulating that when full payment is made, the seller shall issue a transfer deed *("Köpebrev")* to allow the buyer to apply for registration of title *("Lagfart")*.

In recent years most commercial transactions concerning real property in Sweden have been made by way of "packaging". This means that the Seller, instead of selling the real property itself, will sell shares in a limited share company. The first step is to sell the real property to a wholly owned shelf company. This transfer can be made below market value, at a tax optimized price and a low stamp duty cost. Disposal of the shares in the newco for market value is normally income tax exempted and there is no stamp duty on sale of shares. Instead of the Land code the sale of shares fall under the Sale of Goods Act. Packaged transactions have acquired attention from the government to be too tax favorable. A public investigation was initiated in 2017 but has not yet resulted in any proposal for legislation.

Land registration

The Swedish Land Register is managed by the Swedish Mapping, Cadastral and Land Registration Authority *("Lantmäteriet")*. An acquirer of a real property lot is obliged to apply for registration of title within three (3) months from the creation of the transfer deed. If the transaction is subject to conditions, requires authority approval or the like, the time starts counting from the time such conditions were fulfilled.

The Land Register contains information about registered owner, mortgages, easements and other rights of use that burden real property. Leases are normally not registered as they are automatically valid against a new owner of the property, provided that the agreement is in writing and that the leasee has taken possession prior to the acquisition.

Mortgages

Real property can be used as security through a mortgage system whereby a mortgage amount is recorded in the Land Register and may be pledged as security for a loan or other obligation. Either a physical mortgage certificate *("Pantbrev")* is issued or an electronic mortgage recording *("Datapantbrev")*. Only the registered owner can record mortgages and execute pledges. The stamp duty to register is 2 % of the recorded amount.

Transfer tax and VAT

The registration of title in the Land Register triggers the liability to pay stamp duty. Stamp duty amounts to 1,5 % of the sellers consideration (purchase price) for individuals and housing associations and 4,25 % for legal persons. Both the seller and the buyer are jointly liable to pay the duty. The sale and purchase agreement normally stipulates that, between the parties, the buyer is responsible for stamp duty. If the purchase price is lower than the preceding year´s tax value of the property, stamp duty will be calculated on that value instead.

A sale of real property where the owner has deducted input VAT for new-, alteration- or extension construction work in a building, will trigger a liability to adjust VAT during the preceding ten year period. The latent obligation to adjust VAT can be assumed by the buyer through a particular form exchanged between

the parties. The real property tax for the current year is also normally apportioned between the seller and the buyer in a special set off account *("Likvidavräkning")* on completion.

Public law aspects

The Real Property Formation Act regulates new formation and re-shaping of real property lots, creation and annulation of easements and provides rules on sorting out and determining real property conditions.
The Planning- and Building Act affords municipalities a right to determine the use of land and buildings through planning- and permit decisions. The municipality must produce non-binding Overview Plans for the long term development of the physical environment. Detail Plans *("Detaljplan")* and Area Instructions *("Områdesbestämmelser")* are binding instructions issued by the municipality. The act specifies when a permit is required in order to erect *("Bygglov")* or tear down a building ("Rivningslov"), to alter the design or use of an existing building, or to do ground work *("Marklov")*.

The Environmental Code is extensive and contains general rules for the protection of health and environment. The code defines different protection classes for land and the environment such as the general waterline protection (*"Strandskydd"*, i. e. a general ban on building closer than 100 meters to the shore), water protection areas, nature reserves, e t c. Permits are required for certain activities and the code confers an obligation on municipalities, county boards and other authorities, to be active and supervise the application of the code. The rules of the code must also be observed when forming or re-shaping real property lots or allowing building permits.

Costs

The only cost for a real property transaction, except for the parties own costs, is the stamp duty and an administrative fee of app. 80 EUR to the Land Registry. The buyer may also need to register new mortgages in the property to finance the acquisition. "Packaging" of real property can minimize costs, including the income tax cost of the seller, compared to a straight real property transaction.

18. Switzerland

Legal regulation

Switzerland is a civil law country hence real estate is mainly governed by written laws. The most important legal regulations are to be found on a federal level, such as the Swiss Civil Code, the Swiss Code of Obligations, the Act on the Acquisition of Real Estate by Persons Abroad (the so-called Lex Koller), the Debt Enforcement and Bankruptcy Act and the Ordinance on the Land Register.

Various types of ownership

The most important types of rights over land in Switzerland are the following:

Ownership

Part four, division one, of the Swiss Civil Code contains the regulations concerning ownership. Sole ownership is the most comprehensive right a person may have in an object as it gives an owner the right to dispose of an object as he or she sees fit within the limits if law.

Co-ownership

Co-ownership exists where several persons own a share in an object which is physically undivided. Unless otherwise stipulated, they are co-owners in equal measure. Each co-owner has the rights and obligations of ownership in respect of his or her share in the object.

Condominium

Condominium is a form of co-ownership of immovable property that gives the co-owner the exclusive right to make sole use of specific parts of a building thereon and design the interior of such parts. The common areas of a property are managed by the condominium association.

Building right

In case of a building right, immovable property may be encumbered with an easement entitling a third party to erect or maintain a construction above or below ground on such land. The legal transaction creating a building right is only valid if done as a public deed.
In such a scenario, there are two owners: one that owns the soil; and the other that owns the building built thereon.

Easements in general

An easement is a burden on a property (the servient land) for the benefit of another property (the dominant land). The easement consists of an obligation to tolerate or not to do something on, above or below the servient land. An easement is created by entry in the land register.

Usufruct and the right of residence

Usufruct gives the entitled party the rights to use, posses and enjoy goods that belong to another party but at the same time the entitled party is also responsible for looking after it. Unless otherwise provided, it confers complete enjoyment of the object on the usufructuary. The most important characteristic of a usufruct is that it is linked to the life of the usufructuary; usufruct ceases with the death of the usufructuary and in the case of legal entities on their dissolution. However, in the case of legal entities, it may not last longer than 100 years.

The right of residence is a special form of usufruct. It is the right to live in all or part of a building and is neither transferable nor heritable. The rules applicable to usufruct also apply to the right of residence unless the law provides otherwise.

Lease contract

Furthermore, lease contracts (use only) as well as usufructuary lease contracts (use and benefit of its fruits) play a major role, with residential and commercial properties. The latter are purely contractual between the parties unless they are annotated in the land register.

Legal requirements for the transfer of ownership

In Switzerland, an agreement for the sale of immovable property is only valid if done as a public deed. Otherwise, there is only a commitment to transfer the property but the transfer itself is null and void. In order to transfer the ownership, an entry in the land register is required (such transaction is entered first in the "journal" of the land register and thereafter – after being approved – in the "main register" of the land register).

Land registration

Switzerland has 26 cantons which are each responsible for establishing a land registry containing all properties in their district. The land register is an official record of the rights pertaining to plots of land. These rights encompass ownership, easements, encumbrances and liens. The constitution, amendment, assignment and cancellation of these rights are effected via entries in the land register. In certain cases, personal rights such as purchase, pre-emptive and repurchase rights, or lease and tenancy agreements, may also be included in the land register.

Some sections of the land register are publicly accessible such as designation and description of a plot, form of ownership, date of acquisition, easements and encumbrances, certain remarks. In addition, all information of a property is accessible in case someone is able to demonstrate a plausible interest. The land register is deemed to be correct and complete ("public faith").

Mortgages

The mortgage is the main method by which a real estate lender seeks to protect itself from default by the borrower in Switzerland. A mortgage may be created on immovable property in the form of a mortgage contract or a mortgage certificate only and must be recorded in the land register. A specific amount must be indicated as the debt and the immovable property must be clearly specified.

Mortgages have a certain assigned rank among each other. In general, the claims based on mortgage certificates prevail over unsecured or unprivileged claims. In the event of default on the part of the debtor, the creditor has the right to payment out of the proceeds of the sale of the property. In principle, the foreclosure takes place in the form of a public auction in the presence of the debt enforcement office. Under certain circumstances, a private sale under execution may also be held.

Transfer tax and VAT

The acquisition of real estate may be subject to real estate transfer tax of between 1% and 3%, de-pending on the canton where the property is located. Certain cantons – such as Zurich – do not apply a real estate transfer tax; they abolished real estate transfer tax a few years ago. The transfer tax has basically to be paid by the purchaser but often, purchaser and seller are jointly and severally liable. Furthermore, contractual agreements are possible with respect to the internal allocation of the tax burden between purchaser and seller. To secure the transfer taxes, the tax laws of certain cantons may foresee a lien on the property.

Apart from that, the gain realised through the real estate transfer is also subject to tax either as a special real estate income tax or – in exceptional cases – as normal income tax.

As a rule, transfers of real estate are exempt from VAT. However, waiver of exemption and option for VAT on the purchase price of the building(s) is possible, provided that the real estate is not used for private purposes only.

Public law aspects

The Swiss system of zoning and planning is performed on four levels (federal, cantonal, regional and local); on each level, respective laws exist. Environmental protection is mainly addressed on a federal level.

In general, a permit is necessary to build, modify, demolish or change the use of a building. The local authorities are mainly responsible for such permits as they know the region and its specialties best. The base for whether and what can be built in a particular case is the zoning plan. In addition, the building laws of the relevant municipality and canton contain the most important regulations.

Costs

Each party usually bears its own costs in connection with the transaction. The fees and expenses of the notary and the land registry are often paid in equal parts by the parties; they are jointly and severally liable for this by law.

With respect to taxes please see above under “Transfer tax and VAT”.

19. Turkey

Legal regulation

The relevant laws in this Turkish Civil Code are based on the old Roman Law distinction between rights on property (in rem) and personal rights on the performance of obligations (*in personam*). Unlike a personal right, a right on property is absolute and can be enforced against third parties. In order to qualify as a right in rem, this right must be explicitly recognized as such in the Turkish Civil Code. This is called the '*numerus clausus*'.

Turkish law recognizes lands, independent and permanent rights (such as usufruct rights) perfected into the land registry records and independent units registered under the Condominium Code as real estate. An individual or a legal entity may own real estate in the form of individual ownership or ownership in common. The ownership may be in the nature of a freehold or easement right.

Various types of ownership

Ownership can occur in two different ways; Individual ownership and Ownership in common. Ownership in common subdivided into "joint ownership "and "common ownership". In "individual ownership" the owner holds the full ownership of the real estate by itself. In addition; another type of property that applies to flats is also the condominium ownership.

1) Joint Ownership:
Ownership of those who have been owner to properties jointly in consequence of community composed pursuant to contracts that are at or provided by law, is joint ownership. There being not particularized shares of partners in joint ownership, right of each one, is spread over all properties included in community.

The main details that should be known about co-ownership are that according to the Turkish Law; partners of a co-owned property need a unanimous vote for the use, sale, or possession issues. In case of a deadlock, the only way out for partners is to apply to a court of law for a partition action. The court may either decide to distribute the property amongst the owners or sell the property or distribute the sales price. The parties' choice in this matter is primarily taken into consideration by the court. However, as real estate may be difficult to divide equally between the partners, the courts usually order that the real estate be sold and proceeds from the sale distributed to the co-owners in relation to their interests.

2) Common Ownership:
In common ownership regime, owners have their defined pieces of property whereas in tenancy in common, each owner has a part of ownership in each piece of the property.

>>>Condominium (flat) Ownership:
One other form of real estate ownership that needs to be known is "condominium ownership" ('*kat mülkiyeti*' in Turkish) which means the division of a building into private flats to be owned by different owners and common parts, which belong to all the owners. The neighbors share ownership of the common parts, such as the outside walls, the elevator, the land, the roof, and jointly pay the maintenance fees of these common parts. In case of buying a flat in Turkey: it is important to have the title deeds checked for an annotation of this sort. Otherwise, you may be forced to have the deeds revised yourself; which means fulfilling certain bureaucratic procedures and additional costs.

Legal requirements for the transfer of ownership

According to the Turkish Code of Obligation Art. 237 "For the real estate sale to be valid, the sales contract shall be done in form of official deed."

Acquisition by Individuals (i.e. real persons)

1) Acquisition by Turkish İndividuals

There is no restriction on Turkish individuals acquiring real estate in Turkey.

2) Acquisition by non-Turkish İndividuals

Until 2012, non-Turkish individuals were allowed to acquire real estate in Turkey only if their country of citizenship were allowing, either under an international treaty or de facto, Turkish citizens to acquire real estate (i.e. on the basis of the reciprocity principle). However, following a change in the legislation, the reciprocity principle was abolished and now citizens of those countries listed by the Council of Ministers may acquire real estate and rights on property (in rem) in Turkey, subject to certain restrictions as explained below. Such list is quite extensive, covering almost every developed country in the world.

In terms of restrictions, the Council of Ministers has the discretion to restrict their acquisition of real estate for reasons including, among others, citizenship and location and/ or because the total area that is being acquired exceeds certain limits. As a general practice, acquisition of real estate by nonTurkish nationals in or nearby military zones and other security zones is not allowed. Furthermore, where a non-Turkish national has acquired an undeveloped real estate, it must submit a development project within 2 years from the acquisition to the Ministry of Environment and Urban Works and complete such development within the timeframe to be determined by such Ministry.

There are also some restrictions specific to the total area which individual non-Turkish nationals may acquire as follows: (a) the total area that may be acquired by foreign individuals and the total area of the rights in rem owned by the foreign individuals in a single district cannot exceed 10% of the total area of such district subject to private property (i.e. lands owned by individuals and/or legal entities and not the State); and (b) country-wide, a foreign individual cannot own more than 30 hectares of land. Prior to 2012, this limit was 2.5 hectares. The Council of Ministers is entitled to double such 30-hectare limit.

Acquisition by Companies

Acquisitions by companies of real estate in Turkey can be classified into three sub-categories: (i) acquisition by Turkish Companies with full local shareholding, and (ii) acquisition by Turkish Companies with foreign shareholding, and (iii) acquisition by non-Turkish companies

1) Acquisition by Turkish Companies having no foreign shareholder

There is no restriction preventing Turkish Companies with full local shareholding from acquiring the ownership of real estate in Turkey.

According to the Domestic Legislation on Foreign Investment, an investor is required to notify the Ministry of Economy. If, as a result of a share transfer or otherwise, a foreign shareholder acquires 50% or more of the shares, or the privilege to appoint or dismiss the majority of the members of the board of directors of a Turkish company with full local shareholding, the Ministry of Economy will inform the General Directorate of Land Registry and Cadastre of such change, and subsequently such directorate will advise the relevant

governorship to evaluate whether the Turkish entity (now with foreign shareholding) can own real estate in Turkey. If real estate is located in or nearby military zones and other security zones, the relevant governorship may notify the company to provide additional documentation and may eventually require the company to sell such real estate.

2) Acquisition by Turkish Companies with foreign shareholder(s)
The acquisition by Turkish companies with foreign shareholding of real estate in Turkey shall require prior written consent of the relevant governorship where the real estate is located, if the foreign shareholders own 50% or more of the shares, or have the privilege to appoint or dismiss the majority of the members of the board of directors of such company. If the foreign shareholder own less than 50% of the shares or have no such privilege, no prior written consent of the relevant governorship shall be sought.

Also, Turkish companies with foreign shareholding are not required to obtain the relevant governorship's prior written consent to (i) perfect mortgages in their favor, (ii) acquire real estate through foreclosure, and (iii) acquire real estate in industrial zones, technological development zones and free trade zones.

3) Acquisition by non-Turkish companies
The acquisition of real estate by non-Turkish companies is allowed only if the purpose of such acquisition relates to petroleum exploration and extraction, touristic developments, or in industrial zones. Identical with non-Turkish individuals, a foreign company must submit development project within 2 years from the acquisition to the Ministry of Environment and Urban Works and complete such development within the timeframe to be determined by such Ministry.

Acquisition by Foundations and Associations
1) Acquisition by non-Turkish foundations and associations
There is a specific restriction on foreign foundations, associations and similar entities to acquire real estate in Turkey. In other words, legal entities other than foreign trade companies can not acquire real estate. However, foreign legal entities may freely establish a mortgage over real estate located in Turkey.

2) Acquisition by Turkish foundations and associations
The associations and foundations may purchase real estate or sell real estate through decision of the board of directors with the authority of the general assembly.

Land registration

The land registry records are kept in an electronic centralized system known as the Turkish Land Registry and Cadastre Information System (TAKBIS) and in physical title books maintained by the relevant land registry directorate. Each land registry directorate is under the supervision of regional land registry group directorates which in return are under the control of the national General Directorate of Land Registry and Cadastre.

Parties to an asset transaction shall finalize the sale and transfer of ownership by executing and registering an agreed form of official deed before the relevant land registry directorate. Registration is mandatory in order to be recognized as the owner and enforce ownership rights. The execution of an official deed thereof may not be necessary where a real estate is inherited or acquired by a court order, or via execution proceedings.

Due to the public nature of TAKBIS, any holder of a particular right registered therewith will have protection against third party claims, including against bona fide purchasers. Therefore, a third party may rely on the content of the land register as any establishment or transfer of a right made by a person registered in the land register as the right holder will be upheld.

In addition, Personal rights cannot be registered as a rule; however, some personal rights listed in the article 1009 of the Turkish Civil Code can be annotated in the Land Registry and become fortified personal rights.

Mortgages

Under Turkish law, security interests on a variety of assets can be granted as collateral for a financing. It is possible to establish mortgages on real assets, pledges on (public listed and privately held) shares, on bank accounts, on receivables, on intellectual property and on movable assets, and to assign rights and receivables under contracts and insurances. Certain establishment and perfection requirements, notarization and notification requirements apply depending on the type of the collateral. For example, mortgages for real properties are made by added annotation into the official title register.

The Turkish Mortgage Act enacted on February 21st 2007 have changed the home loan structure in Turkey by enabling Turkish Banks to supply consumers with loans that usually have longer repayment periods and different options concerning interest rates. However, the biggest impact of the new mortgage act shall be to help increase the liquidity that banks can make available to borrowers by enabling banks to securitize the mortgage loan contracts and transact these securities in the secondhand market on the Istanbul Stock Exchange

Transfer tax and VAT

Title Deed Fees

In accordance with the law no.492 named Act of Fees, the rate to be applied to the apartments and offices is %1, until October 31(after that date, the rate will be %2). In accordance with the law no.492 named Act of Fees, the rate to be applied to the lands and fields is %2. These fees shall be cashed from both two parties.

Circulating Capital

In accordance with the law no.6544 named Act of Circulating Capital, If the transaction is made with the relevant directorate of land registry, the charge to be applied to parties ranges from 52 to 259 TL. If the transaction is made with the different directorate of land registry, the charge to be applied to parties is multiplied by two.

VAT

The VAT rate varies according to the square meter of the building. Many VAT rates were reduced from 18% to 8% until October 31, 2018. Such as, for a building over 150 square meters, the VAT rate is 8% until October 31(After that date the VAT rate will be %18). For a building under 150 square meters, buyer must check the law no 6306.

If the real estate is taken from the owner who has not commercial liabilities, the VAT rate to be paid is calculated over the profit difference. If the real estate is taken from the owner who has commercial liabilities, the VAT rate to be paid is calculated over the sale price.

FOOTNOTE; In order not to be legally liable, the declared value for charges (VAT, fees, tax etc.) must be at least the current value.

Legal Rights of Ownership

Freehold vests in the owner full legal and beneficial ownership of the property. It is the most extensive right over real estate under Turkish law granting the right to freely use (usus), enjoy the benefits (fructus) and dispose of the property (abusus). On the contrary, easement rights are limited in rem. Usufruct rights grant the beneficiary the right to freely use and enjoy the benefits of the property, but the beneficiary cannot dispose of the property.

General Footnote for the foreign buyers

Although it is not a legal necessity, it is also advisable for foreign buyers to sign a separate written sales contract with their sellers; since real estate sales to foreigners may include a waiting period before the title is legally transferred to the foreign buyer's name.

20. United Kingdom

This summary is based on the laws of England and Wales. Please note that England and Wales, Scotland and Northern Ireland are largely separate jurisdictions for property law purposes.

Legal regulation

There are two branches of law in England and Wales. The first is statute law set out in Acts of Parliament. The detail is contained in statutory instruments known as regulations. The judiciary interpret any disputes on statute law. This has led to the development of a second body of law called common law. Common law derives from case law which is heard in publicly accessible courts of law. European Community law has had a smaller influence on UK property law than many other areas of law.

Key pieces of legislation are the Law of Property Act 1925 which creates and governs legal estates in land and the Land Registration Act 2002 which sets out the law on registration of the estates. There is a large body of legislation relating to landlord and tenant matters.

It is usual to exclude the rights of parties who are not an original contracting party to a document.

Various types of ownership

Estates in land

Almost all land is held in one of the two following types of legal estate:

Freehold

Freehold ownership gives absolute ownership of the property and the land upon which it stands for an unlimited period of time (forever). As such it is usually the preferred method of investment in real estate for institutional investors as it gives the owner absolute control over the land and property. A freehold owner will benefit from any capital gain in the land as well as rental income from occupational tenants.

Leasehold

A leasehold estate is granted out of the superior freehold estate. Rights of occupation and use (but not ownership) are created by the grant of a lease to the occupier who is called a tenant. A lease must be granted for a fixed period of time in return for the payment of a rent. At the end of the term of the lease the estate returns to the freehold owner.

Long leasehold interests (such as 999 years) usually grant the tenant a high degree of control over the land permitting redevelopment with superior landlord consent. They allow investors to benefit from rental income generated by occupational tenants. Shorter leases (5-25 years) are commonly used for occupation by commercial tenants. Residential tenants will usually take a lease of at least 85 years. The terms of a commercial lease differ from those in a residential lease.

Other interests

The following can be created and registered as legal interests but they are not estates in land:

Easement

An easement is a right that the owner of the benefitting property (the dominant land) has over another property (the servient land). Examples include a right of way over an access road and rights of light. Easements are usually created by deed and registered on the title of the property but they can also be

acquired by 20 years continuous use without interruption (prescription).

Charge by way of legal mortgage

A charge by way of legal mortgage transfers the title of the land over which it is granted as security for obligations by the borrower, usually repayment of a loan. Completion of the charge by way of legal mortgage creates the transfer of the title. Unlike other types of transfer the property is not registered in the name of the mortgagee, but the mortgage takes effect as a disposition which creates a legal interest in land. The transfer is made on the condition that the property will be retransferred to the borrower when the obligations are discharged. A charge by way of legal mortgage must be created by a deed.

Rent charge

A rent charge is an annual or periodic sum charged on land (other than rent payable under a lease). Although now only created in exceptional circumstances they are still seen on the titles of some properties and can be troublesome.

Legal requirements for the transfer of ownership

It is usual for the parties to enter into an agreement for sale and purchase at which point beneficial ownership of the land passes to the buyer. Completion is effected by a transfer which takes legal effect when it is registered at the Land Registry and the buyer is named as the registered proprietor on the title of the property. Until the registration takes place the seller holds the property on trust for the buyer. The terms on which the property is transferred will usually be framed around a set of industry standard commercial property conditions which govern the transaction.

Land registration

HM Land Registry ('Land Registry') a government department keeps and maintains the public register of title in which the ownership of land and property in England and Wales is registered. Each piece of land is registered with its own unique title number. The extent of the title is set out on a plan which forms part of the title. The title also reveals the details of the owner of the land, the class of title (whether it is leasehold or freehold), any rights benefitting the land (e.g. easements that the land enjoys), any matters which burden the land (e.g. restrictive covenants and easements to which the land is subject) and charges and leases to which the land is subject.

It is compulsory to register freehold conveyances, a first legal mortgage over a freehold and the grant of leases of more than seven years. It is also compulsory to register the assignment of a lease which has more than seven years left to run and a legal mortgage over a lease which has more than seven years left to run. Other interests such as leases for less than seven years, deeds of easement and restrictive covenants can be noted on the title of the land.

'Absolute title' is the best class of title which is recommended for all acquisitions. This means that the Land Registry guarantee the owner of the land against a third party claiming a right to ownership of the land. Anyone who suffers loss due to an error or omission in the register or because the register needs to be corrected (e.g. because of the registration of a fraudulent document) will be compensated.

Mortgages

A charge by way of legal mortgage is the most common form of security that a lender will require from the purchaser of land or property. This is the case for both commercial and residential properties.
Where the mortgage is granted by a company it must be registered at Companies House (a government

department) which maintains company information on a publicly accessible register. It is also compulsory to register a legal mortgage over freehold land and a legal mortgage over a lease which has more than seven years left to run at the Land Registry. In the event of insolvency of the borrower, legal mortgages rank in the order that they are shown in the Land Registry title register of the property and not in order of the date they were created (subject to any entry in the register to the contrary) and so prompt registration is critical. In the event a borrower company goes into liquidation, the mortgagee is a secured creditor in the liquidation of the assets of the company.

If the borrower defaults the lender can enforce its security by taking possession of the property and the lender has a statutory power of sale. A charge will also grant the lender the power to appoint a receiver to take control of the property and sell the property. The receiver will use the proceeds of sale to repay the lender.

Transfer tax and VAT

Tax treatment will depend on the type of corporate vehicle used for the acquisition of the property.
The default position on Value Added Tax ('VAT') is that supplies of land are exempt so that no VAT is charged when a property is purchased or rented out. In order to recover VAT on goods and services supplied in respect of a property a landowner can 'opt to tax' the land so that the supply is subject to VAT (chargeable at 20%). VAT would be levied on the completion monies for acquisition of a property and the rent payable under a lease. If the transaction is the sale of a property rental business which takes effect as a transfer of a going concern and the necessary formalities have been met there will be no charge to VAT. The sale of a newly constructed property is zero rated for VAT (taxable at 0%).

Additionally Stamp Duty Land Tax ('SDLT') is payable on the consideration for the acquisition of an interest in land. A slice system applies to the rate of tax. For commercial properties 0% tax is payable on the first £150,000, 2% for amounts between £150,000 and £250,000 and 5% on the remainder of the consideration. Potentially higher rates apply on the transfer of residential properties with the slice of consideration over £1.5 million taxed at 12%. Residential properties held by corporate vehicles are subject to SDLT on acquisition of up to 15% and Annual Tax on Enveloped Dwellings which is an annual tax charge

In 2019 new legislation will create a charge to Capital Gains Tax on non-UK resident individuals disposing of UK property and a charge to Corporation Tax on gains by non-UK companies disposing of UK real estate.

Public law aspects

The Town and Country Planning Act 1990 sets out the legislative framework for planning control and development. Stricter controls apply to buildings which are Listed for their architectural or cultural significance and for properties located in Conservation Areas.

Planning permission is required for the carrying out of any development of land or a material change of use. Permission is granted by the local planning authority (usually the borough or district council). Development is broadly defined and it catches building, engineering and other operations to the land. Planning applications are determined in accordance with the Local Plan for each local planning authority. A refusal of planning permission is subject to appeal. Strategic and important matters may be referred to the Secretary of State to decide the appeal.

Costs

On a sale and purchase transaction each party will usually be responsible for their own costs. The purchaser will also be responsible for any VAT on the purchase price , SDLT and the fees for registration of the transfer and any security at the Land Registry and Companies House.

APPENDIX key contacts

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