Guide to the Real Estate Industry in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam
FOREWORD

There are many sayings about the attractiveness of real estate investments. “Buy land, they don’t make it anymore.” (Mark Twain) “Landlords grow rich in their sleep without working, risking or economizing.” (John Stuart Mill) “Don’t wait to buy real estate. Buy real estate and wait.” (Will Rogers(!)).

If only it were that simple. Real estate is immovable, and therefore very much tied up in the legal, regulatory and market environment in which it finds itself, as well as the local customs, practices and perspectives which influence or dictate the investors in that market. A keen understanding of all these considerations is critical to working out the basic features of any real estate deal – the most advantageous structure, the indispensable and the unacceptable terms, and the costs of completion, compliance and enhancement. This is no easy feat when it comes to regions such as ASEAN and China – each a huge group of multiple and varied jurisdictions with enormous promise but each also having different laws, regulations, and native conditions and cultures.

Rajah & Tann Asia is very proud to present this Guide. We like to see it as an extremely useful aide to investors who are navigating or are looking to navigate this part of the world for their real estate investments. It is a project that has been fuelled by the zeal, energy and expertise of our real estate lawyers in our regional offices across ASEAN and in Shanghai. It has taken many hours of effort, coordination, review and research. However, it has been most rewarding as our real estate experts have enjoyed and benefited from putting all these together. It is a further testament that we indeed know Asia.

Lee Eng Beng, Senior Counsel
Chairperson
Rajah & Tann Asia
This guide gives a brief comparative overview of certain key insights to the real estate industry in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

Across all our offices, we work together as one highly rated team with in-depth and extensive experience having dealt with the most significant and largest real estate transactions in the region.

Our multinational and multi-linguistic team of highly regarded real estate lawyers, paralegals and legal executives brings enormous experience and professionalism to real estate transactions of every kind and across multiple jurisdictions. When faced with challenging and complex cross-borders issues, we are able to draw upon the local knowledge of our specialists in each of our regional offices and synergise and deliver expedient coordinated advice with similar strategies to our clients.

A key pillar to our strength is our Rajah & Tann Asia network with offices in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam, as well as dedicated desks focusing on Japan and South Asia. With the most extended legal network in Asia, our lawyers have a tight grasp of the local culture, business practices and language not just within their own home countries, but in the other markets that they frequently conduct cross-border deals as well. Our depth of transactional and regulatory experience allows us to advise clients strategically and creatively, from structuring to eventual execution and implementation of the transaction.

This gives us an unparalleled edge over our competitors in presenting and pursuing solutions that are both practical and cost-effective. It provides our clients with the “home advantage” in any corporate real estate matters.

It is important to seek specific legal advice in any corporate real estate matters, and our team would be pleased to discuss your specific objectives and requirements.
Real estate is considered one of the fastest growing sectors in Cambodia. The political stability, as well as the fast, stable and growing economy, combined with infusions of foreign capital, has fueled a real estate boom not only in the capital city of Phnom Penh, but also in other parts of the country.

The rapid growth of the real estate and construction sectors also drives the regulatory review and development pertaining to these sectors. The government land authority is continually refining their land policies and has issued directives to tackle practical issues.
System of Registration

After the genocide regime which destroyed most of Cambodia's infrastructure and legal framework, the first positive sign in relation to real estate rights came in 1992 following the passing of the 1992 Land Law which formalised the rights to private properties by first vesting in Cambodian nationals the rights to own and transfer land. In 2001, the new Land Law ("2001 Land Law") was passed to introduce and recognize various individual's private land rights including ownership right and surety. More importantly, this put in place a framework through which land can be recognized and registered at the national level.¹

The Cambodian land authority continued to improve land tenure through the passing of the Sub-Decrees Nos. 46 and 48 in 2002 ("Sub-Decrees"). The Sub-Decrees introduced two forms of land registration programmes: systematic and sporadic land registrations. The former refers to a government land registration project whereby the whole district or commune is demarcated for land ownership rights in government designated areas.² The latter refers to the registration of land in areas not yet declared as designated areas.³

Despite such development, Cambodia still does not have a uniform land title registration system, prompting the implementation of a multi-tiered system. This refers to a dual land tenure system containing both "hard" and "soft" land titles.

Applicable Law

The main legislations which govern real estate transactions in Cambodia are the 2001 Land Law, the Civil Code of Cambodia⁴, and the 2011 Law on the Implementation of the Civil Code⁵ constituting the primary framework applicable in Cambodia.

Land and Title Classifications

As introduced in the 2001 Land Law, there are three main categories of land under the land classification systems in Cambodia, namely private land, public state land and private state land.

Private land refers to property which is legally owned or possessed either by individual(s), private legal entity(ies) or jointly by individual and legal entity(ies).⁶

Public state land comprises all properties which are of public value, including but not limited to land of natural origin (e.g. rivers, lakes and mountains), properties specially developed and available for public use, as well as protected areas.⁷

Private state land refers to other types of properties owned by the state but that does not have any public value. Private state land can be sold or leased/conceded through long-term lease or land concessions for either economic or social purposes.

Private ownership can be procured through one of three forms of Cambodian land title: Soft Title, Hard Title and Private Ownership in co-owned Buildings (also known as Strata Title).

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¹ Royal Kram No.NS.RKM.0801.14 promulgating Land Law dated 30 August 2001 ("2001 Land Law").
² Sub-Decree No. 46 on the Procedure to establish Cadastral Index Map and Land Register ("Sub-Decree No. 46") dated 31 May 2002.
³ Sub-Decree No. 48 on Sporadic Land Registration ("Sub-Decree No. 48") dated 31 May 2002.
⁴ Royal Kram No.NS.RK.1207.030 Promulgating Civil Code dated 08 December 2007 ("Civil Code").
⁶ 2011 Land Law, Article 10.
⁷ 2011 Land Law, Article 15; Sub-Decree No. 118 on State Land Management dated 2005, Article 4.
(i) Soft Title

Soft Titles, also known as “Possessory Titles”, are recognized at the local authorities level – local Sangkat (Khum) and/or district (Srok) levels. They signify “possession” of the land as opposed to a mere “ownership” status. Until recently, this was the most common title in existence in Cambodia.

(ii) Hard Title

Hard titles indicate the most secured form of ownership rights. They are not only recognised at the local Sangkat and district levels, but also registered at the national ministerial level, and issued by the relevant municipal or provincial cadastral office of the Ministry of Land Management, Urban Planning, and Construction (“MLMUPC”).

It should also be noted that there are several forms of hard title. The latest, most recognized and secured form is the Land Management and Administration Project (“LMAP”) title. LMAP title is a titling system introduced in 2002 by the World Bank with a goal of improving land tenure security through the usage of GPS coordinates for all land plots in Cambodia. For landowners who possess a LMAP title, it signifies that their plots of land have been clearly measured and demarcated by the relevant cadastral officials.

(iii) Ownership in Co-Owned Building

This is the newest form of ownership applicable to a private area in a co-owned building. Under this, foreigners are also legally allowed to own a property, provided always that such property is located on the first floor (as opposed to the ground floor) and above. It is more commonly known as “Strata Title” and has recently been practically extended to commercial buildings and in particular shared office complexes.

Tenure and Ownership

The tenure of land in Cambodia is classified into two main categories: freehold and leasehold.

Cambodia recognises a private freehold or ownership right of a person who possesses Cambodian nationality, including any legal entity that is of Cambodian nationality (e.g. 51% of the share capital of the legal entity is held by a Cambodian national).

Foreigners based in Cambodia are also vested with rights of ownership over certain properties. However, such rights are restricted to buildings that have obtained a strata title (available only to newly completed apartment buildings). Foreigners can acquire a private unit of a co-owned building, that is on the first floor and above, subject to a maximum limit on foreign ownership allocation of 70% of the units in any one co-owned building.

Cambodia is rich in land for potential investment and development. Nearly all investments in Cambodia involve immovable property of some sort. For foreigners who wish to explore effective ways of controlling land in Cambodia for personal or business use, one method is the acquisition of long-term leasehold rights, also known as perpetual leasehold rights, from either a private owner or a government entity. A lease is considered a perpetual lease if its term is at least 15 years. A perpetual lease can have a maximum term of 50 years and is renewable.

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Legal Framework for Land Concessions

Only private state lands can be subject to concession. A land concession introduces a grant of rights over an area of land for a specific purpose and function, including agribusiness and redistribution of land to the landless.9

The 2001 Land Law introduces several types of concessions.10 However, the two main types of concession typically granted by the government are social concession and economic concession.

A social land concession is only granted to Cambodian citizens to enable them to build residential construction and/or to cultivate land belonging to the state for their subsistence.

On the other hand, what proves to be more attractive to investors has been the economic land concession (“ELC”). ELC allows the investor/concessionaire to clear the land for industrial or agricultural exploitation. A Sub-Decree on Economic Land Concessions was adopted on 16 December 2015 to establish the criteria for and procedures to obtain rights over ELC. The legal maximum duration of an ELC lease was 99 years,11 but this was later reduced to 50 years.12

Types of Property

(i) Residential

Investors looking at Cambodia should note that there are various types of residential property in Cambodia which are subject to different regulations. Residential properties property can be classified into two categories: public and private residential property.

Public residential property refers to the property granted to Cambodian families under the social land concession scheme. All other residential property is private residential property.

There are also many types of private residential property. In 2010, the government allowed foreigners to own a private unit in a co-owned building.13 In 2011, the government further regulated the management of “Borey”, which is the Cambodian equivalent of a compound or gated community comprising flat houses and villas.14

(ii) Commercial

Commercial property is property used for any purpose that is not residential or industrial. Common examples would include offices, malls, commercial buildings, the hotel component of a development project, and so on.

(iii) Industrial

Industrial property in Cambodia refers to industrial exploitation areas as determined by the government. Industrial property can be located in industrial parks, special economic zones (“SEZs”), or export processing zones.

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9 2001 Land Law, Article 49-50.
10 2001 Land Law, Article 50.
11 2001 Land Law, Article 61.
12 Order No. 01BB on the Measures Strengthening and Increasing the Effectiveness of the Management of Economic Land Concessions (ELC) dated 2012.
13 2010 Law on Foreign Ownership.
14 Sub-Decree 39.
The Cambodian government has established a number of SEZs under the framework stipulated under a Sub-Decree on SEZ (“SEZ Sub-Decree”). All SEZs must be approved for establishment by the Council for the Development of Cambodia (“CDC”).

**Investment through a Share/Asset Purchase**

Cambodia has clocked some of the fastest economic growth in Southeast Asia, recording an average GDP growth of 7% per year since 2010. A 2015 study by the World Bank found that Cambodia’s rate of urban spatial expansion averaged a staggering 4.3% a year.15

Investments usually take the forms of sale and purchase of shares or assets, or the establishment of a new structure or joint venture. Notable points for a potential investor or buyer would be share/asset transfer fees, stamp duties, and other relevant taxes and processing costs involved.

**Investing in Cambodia**

Investors should also be aware of certain issues that may arise, such as restrictions on foreign land ownership, land disputes due to title overlap or boundary disputes, or the existence of encumbrances attached to the property or the shares of companies holding the property.

In addition, investors should be wary of the potential loss of the Cambodian nationality of the land-holding company after a share acquisition by the foreign investor and be sure to make due payment of stamp duty for property transfers, failure of which may lead to serious tax implications post-acquisition when the same property is set for disposal.

(i) **Title Transfer**

Transfers of ownership title or possessory right are only effective after the registration of such transfers is completed and recorded at the relevant cadastral office in the case of ownership title (hard title), and at the Sangkat and Khan offices where the property is located in the case of possessory right (soft title).

(ii) **Tax**

**Stamp Duty**

A transfer of ownership title or possessory right over an immovable property is subject to a stamp duty on property transfer at the rate of 4% of the purchase price or the official threshold value, whichever is higher, to the General Department of Taxation of Cambodia (“GDT”). Per tax regulation, it is the purchaser’s or transferee’s obligation to pay stamp duty. However, practically, parties may agree otherwise in the sale and purchase agreement.

For the transfer of part or all of the shares in a company owning real estate, stamp duty of 0.1% of the value of the shares will be levied.

**Value-Added Tax**

A sale of property is subject to value-added tax at the rate of 10% if the seller is a tax-registered entity. However, sale and purchase of land is not subject to value-added tax, regardless of the tax

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status of the seller. Hence, for property comprising both building structures and land, only the portion attributable to the building structure is subject to value-added tax.

*Property Tax*

Assuming that the value of the property exceeds KHR 100,000,000 (USD24,570), property tax is payable by the owner of the property at an annual rate of 0.1% of the market value of the property.

*Tax on Profit*

All revenue obtained from a sale of immovable property is considered to be taxable income, which is subject to a 20% tax on profit.

*Withholding Tax*

Withholding tax of 14% applies to non-Cambodian citizens or companies who are not tax resident in Cambodia and who have received benefit from rental income. For resident taxpayers, tax at the rate of 10% of the rental income will be levied.

(iii) **Financing**

The supervisory body and regulator who monitors the activities and operations of financial institutions is the National Bank of Cambodia ("NBC").

Both debt and equity financing are common and widespread for real estate and project developments in Cambodia. For debt financing, shareholders’ loans, onshore and offshore financing are all allowable as long as the remittance of the amount is done through an authorized intermediary recognized by the NBC.

Equity financing can be done through either private or public offers, provided always that the consent and approval of the Securities and Exchange Commission of Cambodia is procured. Corporate bond issuance has become more popular amongst overseas institutional investors.

**Conclusion**

It appears that the growth in the real estate sector in Cambodia has been nothing short of phenomenal, with skylines now transformed by high-rise apartments and commercial buildings. At the same time, the government has been very supportive of foreign direct investments, and investors are encouraged by the long-term sustained rates of growth, political stability and the prospects of the frontier economy of Cambodia.

**Our Deals**

- Assisted Crystal International with the Cambodian aspects of its USD575 million IPO on the Hong Kong Stock Exchange, performing due diligence on its subsidiaries in Cambodia.
- Acted for and assisted an ASX listed Donaco International Limited in relation to its USD360 million acquisition of a casino and resort located along Cambodian-Thai border.
- Acted for and advising for a Hong Kong listed company in its proposed USD178 million acquisition of a special economic zone in Cambodia.
Assisted and advised a leading regional cement manufacturer on a proposed USD100 million joint venture to design, construct, operate and maintain a 3 MTPA cement plant in Cambodia, including assisting with the preparation and negotiation of joint venture arrangements and associated management and technical services agreements.

Jointly acting for and advising E.Sun Commercial Bank Ltd., the flagship banking arm of Taiwan-based E.Sun Financial Holding Co., on its acquisition of 70% stake in Cambodia’s Union Commercial Bank Plc. in its USD69 million deal.

Acted for and advised Export-Import Bank of China in relation to the conduct due diligence on a number of companies registered in Cambodia, one of which hold mining license, for the purpose of its debt recovery in the aggregate amount of USD63 million.

Advised both the borrower and lender, Donaco International and Mega International Commercial Bank respectively, on the USD57 million refinancing of a loan.

Jointly acted for and advised PhillipCapital Group on its acquisition of HwangDBS Commercial Bank Plc. in Cambodia and its wholly-owned subsidiary, HwangDBS Securities (Cambodia) Plc. from Hwang-DBS (Malaysia) Bhd., a Malaysian financial service group, in its USD40 million deal.

Assisted and advised TA Corporation Ltd as part of Tiong Aik Construction Pte. Ltd in its multi-millions dollars real estate development project in Phnom Penh, the Gateway; and in preparation of the standard Sale and Purchase Agreement and other relevant transaction documents of the project.

Acted for and advised Teho International Inc Ltd. (publicly listed in SGX-ST) in its multi-million dollars joint-venture with a local partner in the real estate development and investment project;

Acted for and advised the National Bank of Canada, the sixth largest commercial bank in Canada, in relation to its acquisition of 30% equity shares in Advance Bank of Asia Limited, one of Cambodia’s leading commercial bank.

Assisted Cambodia-Laos-Myanmar Development Fund II, L.P and DEG - Deutsche Investitionen – und Entwicklungsgesellschaft Mbh, an investment and development corporation based in Germany in relation to the acquisition of equity in a subsidiary of Forte Insurance (Cambodia) Plc., Cambodia’s leading insurance company.

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CHAPTER 2: CHINA

The real estate industry in China has had a profound impact on the country’s economy, especially since the reform of the housing system started in 1998 and which remains closely associated with the livelihood of Chinese citizens. Past market turbulence has led to a tightening of policies and regulations on inbound foreign investment that have gradually loosened again since mid-2014. Given high property prices in the first-tier cities of Beijing, Shanghai and Shenzhen, investors may find more opportunities in cities that are still developing. What are termed “Second” and “third-tier” cities are ironically the ones with the most investment opportunities, including doubling up as popular holiday destinations. Separately, investment in China for nursing homes and other palliative care treatment centres is gaining traction in light of the aging and greying population.

Cities in China are typically classified into four different tiers according to their GDP, administrative level and population. The real estate landscapes vary across cities of different tiers, leading to the application of different local policies. This chapter mainly focuses on policies and regulations at the national level.
Applicable Law

The real estate legal system in the People's Republic of China (excluding Hong Kong Special Administrative Region, Macau Special Administrative Region and Taiwan for the purposes of this chapter, “China” or “PRC”) is mainly based on principles and provisions under the following laws and regulations:

(i) Laws and Regulations Applicable to Both Land and Buildings

a) The PRC Constitution Law (2018 Amendment) (中华人民共和国宪法);

b) The PRC Property Law (2007) (中华人民共和国物权法), a comprehensive legislation which has established a framework of property rights protection, including protection for real estate;

c) The Urban Real Estate Administration Law (2009 Amendment) (中华人民共和国城市房地产管理法), a comprehensive legislation dealing with real estate development and transaction; and

d) The Interim Regulation on Real Estate Registration (2014) (不动产登记暂行条例), which is the legal basis for establishing a nationwide, unified real property registration system.

(ii) Laws and Regulations applicable to Land

a) The Land Administration Law (2004 Amendment) (中华人民共和国土地管理法), which is the fundamental law governing land matters in the PRC;

b) The Interim Regulations Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas (1990) (中华人民共和国城镇国有土地使用权出让和转让暂行条例), governing the use of state-owned land in urban areas, development and utilization and management of land; and

c) The Land Registration Measures (土地登记规则).

(iii) Laws and Regulations Governing Foreign Investment in Real Estate Industry

a) The PRC Foreign Investment Law (中华人民共和国外商投资法), which will come into effect on 1 January 2020 and will serve as a basic law for foreign investment in China, replacing the three existing laws governing foreign-invested enterprises in China, namely the Law on Sino-foreign Equity Joint Ventures, the Law on Wholly Foreign-owned Enterprise and the Law on Sino-foreign Contractual Joint Ventures;

b) The Catalogue for the Guidance of Foreign Investment Industries (2017) and its Negative List for Foreign Investment (revised in 2018), which is applicable outside of the free trade zones in China, and Negative List for Foreign Investment, which is applicable in the free trade zones in China (collectively referred to as the "Negative Lists");

c) The Opinions on Regulating and Administering Foreign Capital Access to Real Estate in China (2006) (关于规范房地产市场外资准入和管理的意见) ("Circular No. 171");
d) The Circular on Further Strengthening and Regulating the Examination, Approval and Supervision of Foreign Direct Investment in Real Estate Industry (2007) (关于进一步加强、规范外商直接投资房地产业审批和监管的通知) ("Circular No. 50"); and


The real estate laws and regulations in China include legislation regulating land use rights on the one hand, and legislation regulating ownership of buildings and structures on the other. In addition, the Chinese government has also issued a series of rules and regulations specifically governing foreign investment in China's real estate market.

System of Registration

China employs the land and property registration system. According to the PRC Property Law, the establishment, alteration, transfer or elimination of the land use rights or title to property shall become effective only after registration with competent government authorities according to law, failing which it will have no effect except where otherwise prescribed by law. After registration, a certificate will be issued to the owner of the land use right or owner of the property as proof of the title.

Before 2014, the real estate registration system in China was a decentralised system. Different types of real estate had to be registered with different government authorities and governed by complicated and even conflicting regulations. This changed in 2014, when the Interim Regulation on Real Estate Registration was promulgated. Since then, real estate authorities across the nation have been working to establish a unified registration system. The end goal is the consolidation of all registers of land, property, forests, farmland, grassland, construction land use rights, water use rights, easement and mortgages, so as to streamline the registration process and reduce individuals' or enterprises' time costs.

Once a transfer of land or property has been registered with the relevant governmental authority, it will issue a real estate registration certificate. If there is any inconsistency between the information set out in the certificate and the one recorded in the real property register, the information in the register will generally prevail, unless there is evidence to prove that the information recorded in the register is wrong.

Nature and Ownership of Land

Land in China can be generally classified into two main categories, i.e. land in urban areas which is owned by the State, and land in rural and suburban areas which is owned by rural collective economic organizations ("Collectives"). Under such a mechanism, individuals and companies cannot have freehold title to the land. Instead, they can only acquire land use rights of the land for a certain period ("Land Use Rights").

Under the current legal mechanism, any unit or individual who needs land for commercial or residential construction purposes shall apply for Land Use Rights of state-owned land. However, they may not do so for collectively-owned land, as it is reserved for farming or construction of
residences for farmers, or construction of township and village enterprises, public facilities and public welfare undertakings of villages and towns after approval. All collectively-owned land that will be used for commercial purposes must be requisitioned and transferred to become State-owned land in accordance with law first.

In addition, China introduced the rural land reform pilot program in 2015. Under it, rural residents in pilot areas could transfer their land use rights on markets in exchange for benefits and income free of the relevant restrictions on collectively-owned land for the duration of the pilot period (“Pilot Programme”). The Pilot Programme was initially planned to end by the end of 2017 but was extended for another year till the end of 2018.

This year, the issuance of the 2019 No. 1 Document evinces the government’s intention to push forward with rural land reform and speed up the establishment of a unified land market between rural and urban areas. The Chinese government also plans to revise the Urban Real Estate Administration Law and Land Administration Law to facilitate the rural land reform.

Land Use Right

Generally, land use rights can be either granted or allocated by the government to the land use right owners, depending on the purposes of use.

(i) Granted Land (出让土地)

A person who has been granted a Land Use Right is entitled to use the land for a certain period of time after paying the relevant land premium for use of the land to the government authorities.

Acquisition Method. The Urban Real Estate Law specifies that land use rights may be granted through auction, bidding or agreement between the parties concerned. The PRC Property Law further requires that if the land is used for purposes of industry, business, entertainment or commercial dwelling houses, etc. or if there are two or more intended users, the land shall be transferred by means of auction, bid invitation or any other public bidding method.

Written Form. Regardless of whether the granted Land Use Right is acquired by auction, bidding or agreement, it shall be documented by a written land grant contract to be entered into by and between the buyer and the local land authority (or an entity authorized by the local land authority), in which the parties agree on the proposed use of the land, duration of the land use right, land premium, restrictions on the development and transfer, etc.

Maximum Term of Land Use Right. As land is zoned for different uses, the maximum initial term of the Land Use Right is linked to the proposed use of the land. For example:

(a) 70 years for residential use;

(b) 50 years for industrial use;

(c) 50 years for the use of education, science, culture, public health and physical education;

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19 Opinions of the CPC Central Committee and the State Council on Giving Priority to the Development of Agriculture and Rural Areas and Effectively Conducting the Work of "Agriculture, Rural Areas and Farmers" (关于坚持农业农村优先发展做好“三农”工作的若干意见)
(d) 40 years for commercial, tourist and recreational use; and

(e) 50 years for comprehensive use or other purposes.

Expiration of the Use Term. A land use right owner who seeks an extension of the use term must make the relevant application at least one year before the expiration of the term. The application shall be approved unless the land needs to be taken back out of public interest. Once approved, the land use right owner has to re-sign the land grant contract and pay the land premium for the extension. Note however that according to Article 149 of the PRC Property Law, the Land Use Right for residential land renews automatically upon expiration. However, it does not specify the length of such extension term, nor whether an extension payment is required. Based on our current observations, the practice on this varies from city to city. It is still uncertain whether the central government will issue a nation-wide regulation in this respect.

Transfer of the Land Use Right. The granted Land Use Right may be transferred, leased, or pledged. However, such transfer, leasing and pledge shall be subject to the statutory requirements and the restrictions on the use, grant period, etc. provided in the original land grant contract. According to the Urban Real Estate Administration Law, the following conditions shall be fulfilled in order to transfer the granted Land Use Right:

(a) The land premium has been paid in full and the certificate of the Land Use Right has been obtained;

(b) The land must be used for the purpose agreed in the land grant contract, and if the land is agreed to be used for housing construction, 25 percent of the project must be accomplished before the transfer.

(ii) Allocated Land (划拨土地)

The allocation of the Land Use Right refers to the act of the people's government at or above the county level, with approval according to law, to deliver the piece of land to the land use right owner for use without requiring the land use right owner to pay the land premium. However, the land use right owner may or may not be required to pay compensation, resettlement and other fees. In most cases, a Land Use Right obtained through allocation in accordance with this law has no time limit.

It is noteworthy that only the following land can be allocated to land use right owners:

(a) land used by government authorities; or

(b) land used for certain purposes as stipulated under the law, i.e., for military use, for construction of urban infrastructures and public utility and for building energy, communications and water conservancy and other infrastructure projects supported by the State; or

(c) other land as provided for by the law and administration regulations.

An allocated Land Use Right cannot be transferred to any third party unless (a) the competent government authority has approved the transfer; and (2) the land use right owner has paid the

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20 Article 22 of Urban Real Estate Administration Law.
land grant premium to the land authority to convert an allocated Land Use Right to a granted Land Use Right.

The costs of obtaining land through allocation may be low, but the government authorities may also take back the allocated Land Use Right without compensation based on the needs of urban construction and development and the requirements of urban planning, although there may be compensation for buildings and fixtures on the land in light of the actual circumstances.  

Zoning / Permitted Use of Land

China adopts highly rigid rules and administrative control over the use and zoning of the land. All land use right owners must utilize land strictly in compliance with the use indicated in the land grant contract and other relevant documents.

To change the land use of a parcel of land, the owner must submit an application to and negotiate with the local land and planning authority. Subject to the urban or city overall development plan, the local land and planning authority has discretion to approve the change of use after internal discussion with other government authorities. If approved, the owners are generally required to pay an additional land premium to the local land and resources authorities.

Title to the Property

The PRC Property Law has clarified and confirmed that private entities and individuals will have an absolute ownership right to buildings and fixtures on land (including the rights to possess, use, seek profits from and dispose of the real property according to law), although not the land on which the buildings and fixtures are situated. In other words, the ownership right in the buildings/fixtures is absolute, but it is still subject to the restrictions and limitations on time and permitted use of the land on which the buildings and fixtures sit.

The Land Use Right will be transferred or mortgaged automatically along with the transfer or mortgage of the buildings and other attachments built on the land and vice versa.

Foreign Investment in Real Estate Industry in China

(i) Purchasing Property for Self-Use

According to Circular No. 171 and Circular No. 122, branch offices or representative offices (except for enterprises approved to engage in real estate business) which are formed within China by overseas institutions and overseas individuals who work or study in China may purchase commercial housing units for their own use according to their actual needs. For cities implementing house purchase quota policies, the purchase of housing units by overseas individuals shall comply with local policies.

Therefore, an overseas institution without any branch, sub-branch or representative office in China or a foreigner who does not work or study in China may not purchase any commercial house.

21 Article 47 of the Interim Regulations Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas.

22 Article 32 of Urban Real Estate Administration Law; articles 146 and 147 of the Property Law.
(ii) Foreign Investment in Real Estate Industry (Not-for-Self-Use)

No Prior Approval is Required

According to the most recent Negative Lists and the Interim Measures for Administering the Record-filing of Establishments and Modification of Foreign-invested Enterprises (2018) (外商投资企业设立及变更备案管理暂行办法), foreign investment in industries which are not on the Negative Lists needs only be filed with the local agency of the PRC Ministry of Commerce. There is no need to obtain approval, except in the case of roundtrip investment by domestic companies, enterprises and individuals.

Real estate related industries are not included on the Negative Lists. Therefore, no prior approval is required for foreign investors who intend to invest in the Chinese real estate market.

Notwithstanding the aforesaid, it is important to note that although the construction and operation of large theme parks, construction of golf courses and villas are not on the Negative Lists, according to the principle of “national treatment”, approval is still required for investment in those industries by both foreign and domestic investors.

Other Restrictions

Although the Negative Lists have removed restrictions on foreign investments in the real estate market, there are still some requirements and restrictions that foreign investors must comply with, such as those set out below.

Commercial Presence Principle

According to the “principle of commercial presence” as required under Circular No. 171 issued in 2006 and its supplementary rules, foreign investors who intend to purchase not-for-self-use property within the PRC must form a foreign-invested real estate enterprise ("FIREE") before carrying out business activities within its business scope.  

A FIREE can be structured as a wholly foreign-owned enterprise or a Sino-foreign joint venture company, subject to the investor’s commercial strategies and business needs.

It is important to note that no foreign-invested company other than a FIREE may use its foreign exchange capital to invest in real estate.

Single Project Principle

According to Circular No. 50, to apply for the establishment of a real estate company, the applicant shall first obtain the land use right, the ownership of real estate buildings, or have signed an agreement for the appointment and transfer/purchase of the land use right or house property right with the land administration department and the land developer/real estate building owner.

A FIREE is required to undertake a “single project” within its business scope, and if it intends to carry out new project development or operation, it shall expand/amend its business scope to add in the new project.

23 Article 1(1) of Opinions.
Investment through a Share / Asset Purchase

Like in other jurisdictions, investments in Chinese real estate can be done either through share acquisition or asset acquisition. Some decision-making factors include tax considerations and whether the buyer wants to "cherry-pick" the assets that it wants and leave out the assets and liabilities that it does not. The following is a summary of the tax burden of each party under asset acquisition and share acquisition:

<table>
<thead>
<tr>
<th>Tax Payer</th>
<th>Shares Acquisition</th>
<th>Asset Acquisition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value-added Tax</td>
<td>Seller</td>
<td>√</td>
</tr>
<tr>
<td>Enterprise Income Tax</td>
<td>Seller</td>
<td>√   √</td>
</tr>
<tr>
<td>Stamp Duty</td>
<td>Both parties</td>
<td>√   √</td>
</tr>
<tr>
<td>Land Value-added Tax</td>
<td>Seller</td>
<td>√</td>
</tr>
<tr>
<td>Deed Tax</td>
<td>Buyer</td>
<td>√</td>
</tr>
</tbody>
</table>

Land Value-added Tax applies to the sale of land rather than sale of equity interest in a target company. However, if the main assets of the target company are Land Use Rights, buildings and fixtures on the land, the tax authorities may deem that the share acquisition is actually a sale of land. In such a case the seller may be obliged to assume the Land Value-added Tax as well, subject to the practice of the local tax authorities in each city.

As can be seen from the above table, in contrast to the heavy tax burden of an asset sale, the sale of equity is only subject to stamp duty and enterprise income tax. If the foreign investor purchases equity interests in an offshore entity which indirectly owns the project in China through a PRC Company, the transaction may not be subject to Chinese taxes. This is provided that the offshore entity is not deemed to be resident in China for tax purposes, and the transaction structure is not considered as solely transferring the shares indirectly in the underlying Chinese company that lacks reasonable commercial purpose.

Financing

Since 2007, the regulatory authorities have imposed restrictions on the financing of FIREE, attempting to force foreign investors to use lower leverage of capital.

(i) Domestic Loan

According to Circular No. 171 and Circular No. 122, a FIREE shall not obtain any domestic loans unless both of the following conditions have been satisfied:

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24 Announcement on Several Issues concerning the Enterprise Income Tax on Income from the Indirect Transfer of Assets by Non-Resident Enterprises (关于非居民企业间接转让财产企业所得税若干问题的公告) (Circular No. 7); Announcement on Issues concerning the Withholding of Enterprise Income Tax at Source on Non-Resident Enterprises (关于非居民企业所得税源泉扣缴有关问题的公告) ("Circular No. 37").
(a) the certificate of state-owned land has been obtained; and

(b) the project development capital has exceeded 35% of the total project investment amount.

(ii) Foreign Debt

In China, the foreign debt of companies is supervised and regulated by Chinese government authorities through both registration administration and quota administration. However, in terms of borrowing foreign debts, the FIREE is under stricter control and restriction than other foreign-invested companies.

According to the Measures for Administration of Foreign Debt Registration (“外汇债登记管理办法”), a FIREE incorporated after 1 June 2007 is not allowed to incur any foreign debt. For a FIREE incorporated before 1 June 2007, it can incur foreign debts after all the following conditions have been satisfied:

(a) the amount of the company’s foreign debt shall not exceed the difference between the company’s total investment and registered capital; and

(b) if the company has any project under construction, the company shall have obtained the certificate of Land Use Rights and the project development capital has exceeded 35% of the total project investment amount.

Following the foreign debt reform in 2017, foreign-invested companies in China can choose to use “macro-prudential mode” to determine its foreign debt quota through a formula, which currently equals twice the net assets (the result may vary from time to time due to “cross-border financing leverage ratio” and “macro-prudential regulation parameters” as determined by authorities from time to time). However, the new foreign debt regulation expressly states that the aforesaid reform will not apply to real estate companies.

Conclusion

From the Negative Lists to the Foreign Investment Law passed on 15 March 2019, the Chinese government has showed its will and determination to further open up the market and ease market access for foreign investors. At the same time, foreign investors should remain prudent and take cognizance of the various rules and regulations governing the real estate industry and special rules applicable to foreign-invested real estate companies. In addition, due to the ongoing rural land reform and the newly-passed Foreign Investment Law, it is likely that there will be more legal and regulatory changes to come. Foreign investors should keep themselves up-to-date on the latest legal developments relating to the real estate industry in China.

Our Deals

- Advised Singaporean sovereign wealth fund, GIC Pte Ltd, in respect of a joint venture with CapitaLand into the tallest twin towers in Shanghai for a total investment amount of RMB 12.8 billion, which was one of the two largest deals made by foreign investors in the year of 2018.

- Acted for a Singaporean real estate financial investor for joint investment with Beijing Capital Land in a long-term lease apartment project in Shanghai.
• Acted for Macquarie MEAG Prime Real Estate Investment Trust in its RMB 350 million acquisition of a retail mall in Chengdu.

• Acted for a Singaporean-owned foreign invested enterprise in Shanghai in its disposal of land and buildings in a bonded zone to a Singapore listed company.

• Acted for Ascott Serviced Residence (China) Fund in its RMB 367 million acquisition of a Chengdu serviced apartment real property from Shui On China Central Properties Limited, which is a wholly-owned subsidiary of Shui On Construction and Materials Limited (listed on the Hong Kong Exchange).

• Acted for a Singaporean bank in its RMB 2 billion acquisition of a real property in Shanghai, which property will be used as its regional headquarter in China.

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CHAPTER 3: INDONESIA

Our dedicated team of lawyers will help steer you past pitfalls by bringing their experience and professionalism to your real estate transactions. We act for both local and foreign parties, in relation to all sectors of the market, public or private, and whether involving residential, commercial or industrial properties.

Indonesia’s legal land framework is considered complex to most investors, with different types of ownership document that provide different rights to the land title holder. This is further complicated by the abundance of non-registered land, that triggers a complicated sale-purchase procedure.
Replacing the Colonial Land Tenure System

Indonesia's land legal system is complex with a rich pedigree. Unlike more uniform legal frameworks of land law in developed nations, which generally prescribe only two types of land titles, freehold and leasehold, Indonesia's land law is intricate in comparison.

The main land legislation in Indonesia is Law No. 5 of 1960 on Basic Provisions of Agrarian Principles ("1960 Agrarian Law"), which was enacted to repeal and replace the previous colonial land tenure system. The 1960 Agrarian Law recognises the following types of land title: freehold, leasehold, right to cultivate, right to build, and right to use the land.

Indonesian law prohibits foreign individuals and corporations from owning freehold title. Nonetheless, foreign individuals and corporations are allowed, with certain restrictions, to acquire rights over land. For example, certain rules apply to ownership of landed houses and apartments by foreigners residing in Indonesia.

Applicable Law

Besides the 1960 Agrarian Law and its implementing regulations, the other legislative instruments governing real estate in Indonesia include Government Regulation No. 40 of 1996 on Right to Cultivate, Right to Build, and Right to Use of Land, Government Regulation No. 24 of 1997 on Land Registration, and Government Regulation No. 103 of 2015 on Ownership of Residential Property by Foreigners Residing in Indonesia, which is the most recent piece of legislation pertaining to property. Further specific provisions may be found in Law No. 1 of 2011 on Housing and Settlement Areas, and Law No 20 of 2011 on Apartments.

Tenure and Ownership

As explained above, the most relevant types of land ownership for foreign investors through foreign investment limited liability companies are the right to build, the right to use, and the right to cultivate.

In the common meaning of the term "land ownership", only Indonesian nationals may hold freehold title. Foreigners and Indonesian corporations (with some exceptions) cannot hold freehold title.

Types of Land Ownership Title

(i) **Freehold (Hak Milik)**

A freehold title is essentially an ownership right over a plot of land that is hereditary in nature. It is the highest land title that a person can hold and may only be held by Indonesian citizens. They may not transfer their freehold rights to parties that cannot own freehold land.

Despite this, in practice, foreign individuals and corporations may buy freehold land from Indonesian citizens by first transforming the freehold land into a land title that may be owned by foreign individuals and corporations (namely, the right to build, right to use or right to cultivate).

Alternatively, such a right to build, right to use or right to cultivate may be granted on top of a freehold or state land. However, such an arrangement is less favoured as the freehold owner or the state has priority over the land.
Right to Build (Hak Guna Bangunan)

A right to build is given to construct or own a building on such land.

The types of land over which a right to build can be granted are as follows:

1. state land;
2. what is loosely termed as the “right to manage” land areas (this will be elaborated upon in greater depth below); and
3. freehold land owned by an Indonesian citizen.

This title may be held by Indonesian citizens or corporations, including foreign investment limited liability companies established and domiciled in Indonesia.

A right to build is valid for thirty years, which period can be extended for a further twenty years at the request of the right to build holder. The right to build over the same land area may be renewed upon the expiry of such extension period.

However, if a right to build is granted over state land and is not renewed, the right to build holder must clear the buildings and objects located on the said land. Similarly, if the right to build is on top of freehold land, the right to build holder must return the land to the freehold land owner and carry out all obligations under the agreement with the freehold land owner.

A right to build may be encumbered with a mortgage and transferred to other parties through a sale and purchase, private exchange agreement, capital participation, grant, or inheritance.

Right to Cultivate (Hak Guna Usaha)

A right to cultivate is specifically given to cultivate state lands with an area of at least five hectares for livestock, fishery, agricultural, and plantation businesses. This land title can be owned by Indonesian citizens and corporations, including foreign investment limited liability companies.

The maximum area of land given to an individual based on a right to cultivate is twenty-five hectares. The maximum area for corporations, on the other hand, will be decided by the National Land Agency and depends on the location of the land and the type of business.

A right to cultivate is valid for thirty-five years with a possible extension of twenty more years. The right to cultivate on the same plot of land may be renewed upon expiry of the term, including the extension period.

Similar to a right to build, a right to cultivate may be encumbered with a mortgage and transferred to other parties through a sale and purchase, private exchange agreement, capital participation, grant, or inheritance.

Right to Use (Hak Pakai)

A right to use grants the right to use and collect produce from a plot of state land or freehold land owned by an Indonesian citizen.
A right to use may be held by practically any type of individual or entity, such as: (i) Indonesian and foreign nationals, (ii) corporations established and domiciled in Indonesia, including foreign investment limited liability companies, (iii) government authorities, such as ministries, non-ministerial government bodies, and regional governments, (iv) religious and social bodies, (v) representative offices of foreign corporations, and (vi) foreign missions and representatives of international organisations.

The types of land over which a right to use can be granted are state land, the right to manage land areas (elaborated below), and freehold land owned by an Indonesian citizen.

A right to use is valid for a maximum of twenty-five years and can be extended for an additional maximum of twenty years. A right to use may, on the expiration date of its validity or extension period, be renewed.

For residential purposes, foreigners can own landed houses under a right to use and apartments under a right to use apartment unit (Hak Pakai atas Satuan Rumah Susun) subject to certain requirements, such as having a valid residential permit, actually residing in Indonesia and providing benefit, doing business, working or investing in Indonesia. There are also certain qualifications on the price and types of property that can be owned by foreigners.

**Investment through a Share/Asset Purchase**

Investments are commonly carried out in Indonesia through establishing a foreign investment limited liability company or by purchasing shares in an existing company.

Some notable points for consideration would be the taxes that must be paid in land and property transactions. These will be elaborated upon below.

(i) **Right to Manage (Hak Pengelolaan)**

As explained above, a right to build and right to use can be given over a right to manage.

A right to manage is a right of the State to manage the land. As part of the implementation of such authority, the State can delegate the right to manage to another party. A right to manage is available only for: (i) government agencies, including regional governments, (ii) state-owned companies, (iii) regional government-owned companies, (iv) special-authority agencies, and (v) other governmental legal entities appointed by the Indonesian government.

**Investing in Indonesia**

Similar to other jurisdictions, capital gains, including from property, are taxable in Indonesia. Further, as stated earlier, foreigners are prohibited from owning land in Indonesia.

(i) **Capacity**

Foreign individuals or entities cannot purchase property with freehold title in Indonesia. However, these freehold titles may be converted into other types of land titles, such as the right to build, right to cultivate, or right to use, which can be owned by foreign individuals and entities.
(ii) Tax

Land and Building Rights Acquisition Duty

Any property transaction will give rise to land and building rights acquisition duty (*bea perolehan hak atas tanah dan bangunan* or locally known as BPHTB) that must be paid by the buyer of a land right, whether freehold, right to build, right to cultivate, or right to use.

The applicable rate of BPHTB is 5% of the acquisition value of the land right, which in most cases is higher than the market or transaction value or the sale value of the land that is determined by the local government.

Payment of BPHTB by the buyer is typically required in order for any type of land transaction to be finalised by the local land office. A land deed official is even prohibited from signing a land transferring rights deed until the BPHTB for the property transaction has been paid for.

Income Tax

Land and building transactions will also give rise to payable income tax for the seller. In general, the rate of the income tax for the seller in any property transaction is set at 2.5% of the gross value of the property transaction.

Similar to BPHTB, payment of the income tax for a property transaction by the seller is required in order for the property transaction to be finalised by the local land office. A land deed official is prohibited from signing the land transferring rights deed until the income tax for the property transaction has been settled.

Land and Building Tax

Land and building tax is a form of tax chargeable for any type of property (with strict exemptions for public property), which is applied and enforced by regional governments. The rate of the land and building tax varies between regional governments, but the mandated maximum rate is 0.3% of the sale value of the land as is determined by the regional government.

Conclusion

While investors remain keen on making Indonesia their investment destination, they should remain prudent and keep themselves up-to-date with the latest property legal developments in Indonesia.

In addition, since the end of last year, the legislative parliament has been deliberating an amendment to the current Agrarian Law. It is likely that the amendment would be in line with the current government's attempt to further ease restrictions on foreign investments to enable investors to establish operational industries in the country.

Our Deals

- Assisted PT Mass Rapid Transit (MRT) Jakarta in reviewing, negotiating and finalizing EPC Contract Package 107 for Railway Systems and Trackwork MRT Jakarta. We also advised PT MRT Jakarta in connection with legal issues that arose during the contract clarification stage. The contract was worth approximately USD 220 million.
• Represented Petronas Carigali in acquisition of 3,000 m² land for processing plant in Gresik.

• Represented China Fortune Land Development (CFLD) in acquisition of 2,600 hectares of land for development of residential, office and commercial purpose.

• Represented PT Medco Energi Internasional Tbk in a land purchase transaction within an industrial estate.

• Represented PT Inabata Indonesia (a subsidiary of Japan’s company) as purchaser in an acquisition of land in Bekasi Fajar Industrial Estate (BFIE).

• Represented a private client with joint operation scheme (KSO) and land acquisition in relation to the proposed development of residential and commercial areas in Kalimantan, including negotiating and reviewing the draft KSO agreement.

• Advised PT Eneres International Indonesia (Indonesian subsidiary of Japan-based energy efficiency consultancy firm) in relation to Client’s plan to acquire a 0.9-hectare plot of land located in the Dumai Industrial Zone (Kawasan Industri Dumai).

• Represented PT COSL Indo (Indonesian subsidiary of China Oilfield Service Ltd) in relation to Client’s plan to acquire a 7.6-hectare plot of land located in the Indonesia-China Integrated Industrial Park (Kawasan Industri Terpadu Indonesia-China) (KITIC), an industrial estate owned by PT Puradelta Lestari Tbk in Deltamas near Jakarta.

• Advised Marukei Katuobushi on the legal procedures for the utilization of state-owned land for the construction of a fish processing and a refrigeration plant at Kendari Port, Southeast Sulawesi province.

• Represented PT Mitrasraya Adhijasa (a subsidiary of PT Jiwasraya) in the negotiation of its BOT agreement for the development of an office building in Kuningan, Central Jakarta.

• Advised PT Pupuk Sriwidjaya Palembang (Pusri), a state-owned fertilizer producer, on land title and other real property issues related to the development of its new fertilizer plant in Palembang, South Sumatra.

• Advised PT Elleair International Trading Indonesia (an Indonesia-based international trading company) on real property matters in connection with its intention to purchase land near Jakarta for the development of a central warehouse, and also in connection with its intention to dispose of a number of sites located in Jakarta, Bandung and Surabaya.

• Advised PT Bank Muamalat Tbk, one of the biggest shariah-compliant banks in Indonesia, on its USD 96.81 million acquisition of a high-rise building located on a 3,000 m² site in Jakarta’s busiest commercial district. The seller was property developer PT Mitra Pertala Perkasa.

• Acted for an overseas private buyer in the purchase of 10,000 m² of land at a beachside location in Gianyar, Bali.

• Represented PT Benhil Property in preparing its successful bid in a tender held by PT Peruri Properti, a subsidiary of an Indonesian state-owned enterprise, for the construction of a major
residential and commercial project (“integrated city”) on a land owned by PT Peruri Properti in South Jakarta based on a joint operating scheme.

- Advised Lotte Chemical Corp Korea, one of the largest chemicals companies in Asia, on the land acquisition and due diligence processes in respect of a large plot of land to be acquired by Client for the construction of a new cracker plant in the Cilegon Industrial Zone in Banten Province.

- Represented leading Indonesian mobile telecommunications operator PT XL Axiata Tbk (XL) in its USD 577 million disposal of 3,500 mobile telecommunications towers –we handled all real property matters on behalf of XL, including the preparation of agreements and all conveyancing matters.

- Advised international luxury hotel and condotel operator Capella Hotel Group on real property matters and management arrangements for its new Solis Hotel project in Ubud, Bali.

- Assisted Indonesian property developer Karya Griya Bersama in the purchase of 2,750 m² of land for the development of an integrated tourism resort in Bali. The consideration paid was USD 1.5 million.

- Assisted coal mining firm PT Multi Jaya Energy in its acquisition of a mining concession in the province of East Kalimantan on Borneo Island. The advisory included conducting searches on titles, drafting the purchase contracts, and making of the necessary changes in the land registry.

- Assisted PT Makino Indonesia, a subsidiary of Makino Asia Pte Ltd, a Singapore-based manufacturing company, with the acquisition of a 3,000 m² industrial site for the purpose of developing a production facility. The site is located in an industrial estate in Cikarang, an industrial city about 40 km from Jakarta.

- Assisted industrial estate developer Bekasi Fajar in pre-IPO restructuring and IPO (including full due diligence on the company and its subsidiaries, and submission of filings to the Indonesian Financial Services Authority (OJK). The IPO raised IDR 300 billion (USD 31 million) to finance the development of industrial estates.

- Advised PT Batamindo Investment Cakrawala, an industrial estate developer and operator in Batam, on its USD 200 million Senior Secured Transferable Non-Revolving Loan from PT Bank CIMB Niaga Tbk.

- Represented PT General Motors in connection with its proposed acquisition of some 1,300 m² of land in Bekasi at a price of approximately IDR 3 billion to be used for the construction of a production facility. Earlier negotiations for the purchase of 14,000 sqm of land at an estimated cost of IDR 140 billion were aborted at a late stage.

- Represented PT Panca Amara Utama in negotiations for the acquisition of land in Banggai, Sulawesi, for the construction of an ammonium production facility.

- Advised PT Restyle Concept on the procurement of land in the South Jakarta area. Negotiations are currently underway in respect of a 5,910 m² plot after the earlier purchase of a 4,580 m² plot for a consideration of IDR 113 billion.
• Counsel to PT Karya Griya Bersama in its proposed purchase of two plots of land in Bali for the development of a tourist resort at an estimated cost of USD 2 million.

• Represented a Singapore-based manufacturing company with the acquisition of a 3,000 m² industrial site on the outskirts of Jakarta.

• Represented a property developer in an IDR 20 billion (USD 2.34 million) breach of contract claim against the building contractors in an apartment development project.

• Represented an international oil company before the Indonesian National Arbitration Board (BANI) in relation to a breach of contract action arising out of a land transaction.

• Assisted PC Ketapang II Ltd., a subsidiary of Malaysian state energy firm Petronas, in relation to land acquisition matters in Gresik, East Java.

• Assisted PT Holcim Indonesia Tbk with the procurement of land for the development of its new cement plant and quarry in Tuban, East Java.

• Assisted property developer PT Asiana in relation to claims for outstanding payments against its vendors.

• Represented Malaysian state energy company as claimant in arbitration proceedings before the Indonesian National Arbitration Board (BANI) in Jakarta arising from a failure to follow through on a land deal.

• Advised PT UBS Securities Indonesia in relation to the proposed rights issue by Indonesian property developer PT Pakuwon Jati Tbk.

• Counsel to an international bank in connection with a rights issue by listed Indonesian real-estate developer PT Bumi Serpong.

• Advised property developer PT Loka Mampang Indah Realty in its USD 20 million acquisition of a 49% stake in PT Bhumyamca Sekawan.

• Assisted a foreign property developer company in share subscription within an Indonesian company dedicated for the development of apartment building in South Tangerang City, Banten.

• Assisted a local property developer company in sale of 53,637 m² land plot located in Bandung Barat, West Java.

• Assisted an international affiliated private equity company in acquiring a hospital in Bekasi, West Java.

• Assisted a China-based real estate group in acquiring a land located in Karawang Industrial Estate, West Java.

• Assisted a steel company from the People’s Republic of China for the acquisition 36,265 m² land plot for the development of its steel manufacturing plant in East Java.
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Chapter 4: Lao PDR

Laos is generally considered to be small in terms of population, but this is disproportionate when one considers the sheer amount of land. This, coupled with the abundance of natural resources, has attracted many investors from developing countries such as China, Vietnam and Korea to invest in Laos. Laos is slowly but surely breaking out of its developing-nation status and the government aims to achieve this by 2020.

Real Estate in Laos has always been a preferred choice for those who wish to create long-term wealth. However, there is still a level of difficulty for foreigners who wish to invest in Laos as the regulations could be complicated and convoluted to the layman. The government is working tirelessly to amend the related laws and regulations in order to provide ample facilities to support such investment.
System of Registration

The first Laotian Law on Land was promulgated in 1997. At that time, the Laotian system of Land Registration consisted of data that was recorded in what was termed as a land register book (the “Land Register Book”). This was recorded under the ‘Law on Land No. 01/97 NA’, dated 14 April 1997 (the “Land Law 1997”):

“Land registration is the record of data in the Land Register Book, such as: names and surnames of the husband and wife who have received the land use right, land category, land boundaries and area, acquisition method and land location are recorded in the Land Register Book.”

The current Laotian system of Land Registration has not changed significantly from that under the original text of the ‘Land Law 1997’. Data remains recorded in the Land Register Book under the effected ‘Law on Land No.04/Na, dated 21 October 2003’ (the “Land Law 2003”) which provides:

“Land registration is carried out by recording data in the land register book such as names and surnames of the person who has the land use rights, (names of the husband and wife who have received the land use rights if the land is matrimonial property), as well as the land category, land boundaries and area, method of acquisition, and land location.”

The ‘Land Law 2003’ provides for two forms of Land Registration:

“Land registration consists of both (1) Systematic land registration and (2) Land registration based on request.

Systematic land registration is registration without request which is systematically undertaken in a particular area where the management of land, the classification of land regions, and the classification of land categories for management are necessary.

Land registration based on request is registration which is performed according to the request made by any individual or organisation that requires the certification of land use rights.”

The process of registration is provided for under the ‘Land Law 2003’ as follows:

“An individual or organisation that wishes to register its land shall submit a request, through the village administration and the district [or] municipal land management authority, to the provincial [or] city land management authority. The request for land registration shall consist of the following documents:

1. Certificate of acquisition of the land such as certificate of land allocation by the State, [certificate of] transfer or inheritance;

2. The land certificate in the case of agricultural land or forest land;

3. Certificate of land guarantee from the original owner or from the local administrations of the place where the land is located;

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25 Article 43(1) of Law on Land No. 01/97 NA, Dated 14 April 1997.
26 Article 43(New) (2) of Law on Land No. 04/Na, 21 October 2003
27 Article 44 of Law on Land No. 04/Na, 21 October 2003
4. Other necessary documents."

Article 46 of the ‘Land Law 2003’ illustrates the process of review. First, after the village administration and district or municipal land authority has received the request, it will review the facts, laws, and regulations with the village administration where the land is located. It must give an answer to the applicant within thirty days.

If the facts of the application are in order, the land measurement unit shall survey the land and append the resulting land parcel map to the request file. This will be then submitted to the provincial or city land management authority for consideration of land registration.

It remains to be seen if land registration will shift to an electronic system with the pending amendments to the ‘Land Law 2003’. Tax on land, if applicable, may be paid through the bank system (see the ‘Additional Instruction on Notification or Taxable Land through Bank System No.3909’, dated 4 December 2018).

Applicable Law
The main legislation that governs real estate transactions in Laos consists of:

(a) the ‘Land Law 2003’;

(b) the ‘Law on Investment Promotion No. 14/NA’, dated 17 November 2016 (the ‘Law on Investment Promotion 2016’); and

(c) the ‘Law on Tax (Amendment) No. 70/NA’, dated 15 December 2015 (the ‘Tax Law 2015’).

Tenure and Ownership
Land in Laos is State-owned under Article 17 of the Constitution, as reiterated by Article 3 of the ‘Land Law 2003’. An individual or organisation may acquire land use rights through one of three methods:

a. Allocation by the State;

b. Transfer; and

c. Inheritance.

‘Land Use Rights’ as a term of art consists of the following 5 rights:

1. Right to protect land;

2. Right to use land;

3. Right of usufruct, which is the right to collect income or usufruct from the land;

4. Right to transfer the Land Use Right; and

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28 Article 45(New) of Law on Land No. 04/Na, 21 October 2003
29 Article 46(New) of Law on Land No. 04/Na, 21 October 2003
30 Article 52 of Law on Land No. 04/Na, 21 October 2003
31 Article 53(New) of Law on Land No. 04/Na, 21 October 2003
5. The “right relating to inheritance of the land use right”, which is the right to have one’s land use rights pass to one’s successors upon one’s death

Only Laotian citizens are entitled to the right to acquire land and the right to hold Land Use Rights above. However, aliens, apatrids, foreign individuals and their organisations may lease or receive concessions of land from the State.

The maximum period for such leases is embodied in Article 65(New) of the ‘Land Law 2003’:

“The period of land lease or grant of concession from the State to aliens, apatrids or their organisations shall be based on the characteristics, size, and conditions of the intended operations on the land. The maximum period shall not exceed thirty years, but may be extended on a case by case basis in accordance with the approval of the government.

The maximum period for the lease of developed land by Lao citizens to aliens, apatrids and their organisations shall not exceed twenty years. This period may be extended on a case by case basis as agreed between the contracting parties with the approval of the provincial or city administration where the land is located.

The period of land lease or concession by the State to foreign individuals who come to invest in the Lao PDR shall be based on the characteristics, size, and conditions of the intended operations and project. The maximum period shall not exceed fifty years and but may be extended on a case by case basis as decided by the government.

The period of land lease by Lao citizens to foreign investors in the Lao PDR shall be based on the characteristics, size, and conditions of the intended operations and project, and shall not exceed thirty years but may be extended on a case by case basis as agreed between the contracting parties with the approval of the national land management authority, based on the proposal of the provincial or city administration.

In specific economic zones and special economic zones, the maximum period for land lease shall not exceed seventy-five years, but may be extended on a case by case basis with the approval of the National Assembly.

For the lease or concession of land having an area exceeding ten thousand hectares, approval is required from the National Assembly.

The determination of the lease or concession period shall be based on the characteristics, size, and conditions of each intended operation.

Embassies or international organisations wishing to use land in the Lao PDR may lease, exchange, or transfer land based on a contract between the government of the Lao PDR and the government of the concerned country. The lease term for this purpose shall not exceed ninety-nine years.”

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32 Article 64(New) (1) of Law on Land No. 04/Na, 21 October 2003
33 Article 65(New) of Law on Land No. 04/Na, 21 October 2003
Types of Property


(i) Agricultural Land

Agricultural land is land which is determined to be used for cultivation, animal husbandry, agricultural research and experimentation, and for irrigation.\(^{34}\)

The Ministry of Agriculture and Forestry manages agricultural land and oversees the management, protection, development and use of this category of land.

(ii) Forest Land

Forest Land consists of land that is (1) covered by forest, and (2) not covered by forest, but determined by the State to be forest land, as prescribed in the Law on Forestry.\(^{35}\)

The Ministry of Agriculture and Forestry also manages this category of land.

(iii) Water Area Land

Water area land is land which is submerged, or which surrounds bodies of water such as submerged land, land at river sources, river banks, islands, newly-formed land, land formed when water recedes, or land formed by a change or diversion of waterways.\(^{36}\)

The Ministry of Agriculture and Forestry manages this category of land as well.

(iv) Industrial Land

Industrial land is land which is determined by the State to be the location of workshops and factories. It includes housing for workers, industrial centres, industrial zones, industrial estates, places for industrial, technical and scientific research, waste-water treatment stations, industrial waste disposal sites, energy sources, electricity transmission lines, energy and gas pipelines, pipelines for water supply, mining areas, and other land used for industrial purposes.\(^{37}\)

The Ministry of Industry and Handicrafts manages this category of land. Where land is used for electricity transmission lines, energy and gas pipelines, and/or pipelines for water supply, the Ministry must coordinate with the transport, post and construction sector, as well as other concerned sectors.\(^{38}\)

(v) Communication Land

Communication land is land which has been used or reserved for making roads, side-walks and water channels, for road construction, bridge sites, telephone transmission lines and telecommunications stations, as well as airports, harbours, stations for goods and passenger

\(^{34}\) Article 15 of Law on Land No. 04/Na, 21 October 2003  
\(^{35}\) Article 19 of Law on Land No. 04/Na, 21 October 2003  
\(^{36}\) Article 23 of Law on Land No. 04/Na, 21 October 2003  
\(^{37}\) Article 27(New) of Law on Land No. 04/Na, 21 October 2003  
\(^{38}\) Article 28 of Law on Land No. 04/Na, 21 October 2003
transport, tunnels, railways, warehouses, and other land used for communication and transportation.\textsuperscript{39}

The Ministry of Communication, Transport, Post and Construction is charged with managing communication land.

**(vi) Cultural Land**

Cultural land refers to land tied to cultural heritage. It includes land related to historical routes, traditional objects, archaeological sites, temples, natural landscape, cultural buildings, and other places which are determined by the State to be cultural and tourist land.\textsuperscript{40}

The Ministry of Information and Culture is charged with managing cultural land. An individual or organisation intending to use such cultural land must comply with the relevant regulations on its management, use, and protection.\textsuperscript{41}

**(vii) Land for National Defence and Security**

Land for national defence and security is land used for national defence and security work. This includes military camps; the locations of offices, army units, housing places, schools, military and police training fields, and artillery fields; military and police airports, harbours, warehouses, hospitals, workshops, factories, and recreational places; and other land which is used for national defence and security.\textsuperscript{42}

The Ministry of National Defence and the Ministry of Security are charged with managing land for national defence and security.

**(viii) Construction Land**

Construction land is land used for the construction of residential places, buildings, workshops, factories, offices, premise of organisations, and public facilities.\textsuperscript{43}

Construction land is managed by the National Land Management Authority.\textsuperscript{44}

**Investment through a Share / Asset Purchase**

Profit from the sale or transfer of shares of individuals and legal entities is deemed taxable income.\textsuperscript{45} The tax rates for income from selling shares of individuals and legal entities is as follows:

- "In the event that there is a certified document on selling price, it is subject to the payment of ten percent (10\%) of the difference from the transaction;"
- "In the event that there is no certified document on selling price, it is subject to the payment of two percent (2\%) of actual selling price.”\textsuperscript{46}

\textsuperscript{39} Article 30 of Law on Land No. 04/Na, 21 October 2003
\textsuperscript{40} Article 33 of Law on Land No. 04/Na, 21 October 2003
\textsuperscript{41} Article 34 of Law on Land No. 04/Na, 21 October 2003
\textsuperscript{42} Article 35 of Law on Land No. 04/Na, 21 October 2003
\textsuperscript{43} Article 38 (New) of Law on Land No. 04/Na, 21 October 2003
\textsuperscript{44} Article 39 (New) of Law on Land No. 04/Na, 21 October 2003
\textsuperscript{45} Article 46(3) of Law on Tax, No. 70/NA, 15 December 2015
\textsuperscript{46} Article 48(3) of Law on Tax, No. 70/NA, 15 December 2015
Investing in Laos

Laos has recently promulgated a ‘Law on Investment Promotion’ in order to encourage a favourable investment climate. It aims to enable investors to conduct their business operations in a convenient, expeditious, transparent, fair and lawful manner.47

Investments in Laos may be broadly divided into two categories48:

1. **General business**49, of which there are two types; and:

   a. **Activities that are in the Controlled Business List**

      The Controlled Business List includes those businesses that relate to national security, public order, national fine tradition, or may have socio-environmental impact. For businesses in this category, an investment license may only be obtained after screening by the relevant sector authorities.

      The Government will determine the activities on the Controlled Business List from time to time.50

      Some examples of controlled businesses, according to the ‘Decree on the List of Controlled Business and Concession Activities in Laos, No. 03’, dated 10 January 2019, are those pertaining to insurance, legal work (such as law firms), accounting, and auditing.

   b. **Activities that are not in the Controlled Business List**

      General businesses may file for enterprise registration and are authorised to operate under the Enterprise Law and relevant regulations without the need to seek authority approval.51

      There is no limit to the term of investment in a general business, except where the relevant sector authority has issued regulations stipulating such limitations.52

      A foreign investor should consider the following: the Business Activities List for Foreign Investors, the Business Activities Reserved List for Lao Nationals, and the Controlled Business List. Each of these is issued by the related government body.

2. **Concession investment**

   A concession business is one where the investor is authorised by the Government to develop and operate a business. Such a business would typically involve concession of land, development of special economic zones, or the development of zones for: industrial processing for export, mining, electric energy development, aviation, or telecommunication. The Government will determine the list of concession businesses from time to time.53

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47 Article 2 (Amended) of Law on Investment Promotion No.14/NA, 17 November 2016
48 Article 32 (Improved) of Law on Investment Promotion No.14/NA, 17 November 2016
49 Article 33 (Improved) of Law on Investment Promotion No.14/NA, 17 November 2016
50 Article 34 (New) of Law on Investment Promotion No.14/NA, 17 November 2016
51 Article 35 (New) of Law on Investment Promotion No.14/NA, 17 November 2016
52 Article 40 of Law on Investment Promotion No.14/NA, 17 November 2016
53 Article 41 (Improved) of Law on Investment Promotion No.14/NA, 17 November 2016
The following should be noted:

- The term of investment in concession business shall not exceed fifty years;
- Under the ‘Land Law 2003’, the maximum period of land lease or grant of concession from the State to aliens, apatrids or their organisations shall not exceed thirty years; and
- The maximum period of land lease or concession by the State to foreign individuals who invest in Laos shall not exceed fifty years.

But all of these periods may be extended on a case by case basis upon review by the relevant authorities.

(i) Capacity

The ‘Land Law 2003’ prohibits the purchase of land by foreign individuals or entities in Laos. Foreign individuals and entities possess capacity only to lease (from the Laotian government or from a Laotian citizen), or to receive a concession of land from the State, for a period in accordance with the stipulations of the ‘Land Law 2003’.

Article 66 of the ‘Land Law 2003’ is instructive:

Aliens, apatrids, foreign individuals and their organisations that lease or receive concessions in land from the State in accordance with laws and regulations shall have the following rights:

1. To sell personal property relating to the contract of land lease or concession. However, the State has the priority to buy such property;
2. To use personal property relating to the contract of land lease or concession as collateral for dealings with banks or other financial institutions in the Lao PDR. The use of fixed assets on the property as collateral shall require prior approval from the State;
3. To sublease the land lease right. Such sub-lease must first be approved by the State and the maximum sub-lease period shall not exceed the lease period in the main contract;
4. To [pass on by] inheritance the land lease or concession but only for the limited period of the contract;
5. To use the lease contract or concession agreement as capital contribution with another person, but there shall be the prior approval from the State.

The lease of land by aliens, apatrids, foreign individuals and their organisations from Lao citizens shall [give rise to the same rights].

(ii) Tax

Income from rent of property such as land, houses, buildings, vehicles, machinery or other property is subject to a tax of ten percent (10%)\textsuperscript{55}. Apart from this, land transactions are subject to fees and service charges as follows:

\textsuperscript{54} Article 66 (New) of Law on Land No.04/NA, dated 21 October 2003

\textsuperscript{55} Article 48 (revised) of Law on Tax No. 70. Dated 15 December 2015
• Registration of land lease agreements: 0.2% of rental fee;
• Registration for the transfer of lease agreements: 30,000 LAK;
• Registration to allow sub-lease by others: 30,000 LAK; and
• Issuance of a license for state land lease or concession: 50,000 LAK/license.\(^{57}\)

**Conclusion**

Foreign investors looking to invest are advised to be aware of the restrictions and permissions relating to the purchase and usage of land in Laos. However, the government has begun to codify laws to encourage investment. Investors should keep an eye on this dynamic and evolving investment landscape.

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\(^{56}\) Article 79 (2), (8 and (9) of Executive Decree of The President of The Lao People’s Democratic Republic on Fees and Services Charges (Amended 2012) No. 003, dated 26 December 2012  
\(^{57}\) Article 80 (2) of Executive Decree of The President of The Lao People’s Democratic Republic on Fees and Services Charges (Amended 2012) No. 003, dated 26 December 2012
CHAPTER 5: MALAYSIA

Malaysia remains a favourite location for real estate investors within Asia because of its competitive property prices. Malaysia offers one of the cheapest property prices in Asia where investors can get better returns. It is of particular note that foreigners are allowed to own landed property.

Malaysia’s real estate market is typically stable, making it an appealing opportunity for buyers and renters alike.
System of Registration

The land registration system in Malaysia is the Torrens system, which is based on the concept of indefeasibility of title. Under the Torrens system, it is the act of registration that confers title to or interest in land. Once the title or interest is registered, the title or interest cannot be challenged or set aside except in the case of fraud, misrepresentation, forgery or where title or interest was unlawfully acquired.\(^{(58)}\)

Applicable Law

The main land law in Peninsular Malaysia is the National Land Code 1965 (“NLC”). Sabah and Sarawak have their own set of laws, namely the Sabah Land Ordinance (Cap 68) and the Sarawak Land Code (Cap 81) respectively.


Tenure and Ownership

The NLC recognizes two types of land ownership, namely land held in perpetuity (freehold land) and land held for a term of years (leasehold land).

Freehold land may be held indefinitely by a proprietor. However, this right is not absolute as the State Authority can still acquire the land under the LAA subject to compensation.\(^{(59)}\) Leasehold land is land owned by the State Authority, but an individual who has acquired a leasehold title to the land may occupy it for any period not exceeding 99 years.\(^{(60)}\) Upon expiry of the lease, the land reverts to the State Authority, unless it is renewed.

It should be noted that the State Authority is responsible for the planning of the development and use of all lands and buildings within the area of every local authority in the State.\(^{(61)}\) The State Authority is empowered under the NLC to impose such conditions (both express and implied) and restrictions in interest (i.e. the land cannot be sold, transferred, charged or leased without the written consent of the relevant state authority) as it deems fit in respect of a plot of alienated land.

Express conditions are those specifically endorsed or expressed on the land title, while implied conditions refer to the category of use endorsed on the land title, i.e. whether for building, agriculture or industrial. Breach of any of these conditions, if not remedied in time, can result in forfeiture.

Types of Property

(i) Residential

Residential properties include residential houses, condominiums, serviced apartments, apartments and townhouses.
(ii) Commercial

Commercial properties comprise shop offices, shop houses, office buildings, retail stores and shopping centres.

(iii) Industrial

Industrial properties are typically buildings used for manufacturing or warehousing purposes, and include factories, workshops and industrial buildings.

Foreign Investment in Real Property in Malaysia

Malaysia continues to attract interest from foreign investors, especially in the real estate sector. Some guidelines for foreign investors who are interested in investing in real estate in Malaysia are set out below.

(i) Capacity, Conditions and Restrictions

A foreign interest\textsuperscript{62} is allowed to purchase all types of properties in Malaysia except for the following:

a) properties valued at less than MYR1 million per unit;

b) residential units under the category of low and low-medium cost;

c) properties built on Malay reserved land; and

d) properties allocated to Bumiputera interest\textsuperscript{63} in any property development project as determined by the State Authority.\textsuperscript{64}

Acquisition by a foreign interest of a residential unit valued at MYR1 million and above does not require the approval of the Economic Planning Unit of the Prime Minister's Department ("EPU"), but would instead fall within the purview of the State Authority and hence be subjected to the approval of the relevant State Authority.\textsuperscript{65}

The EPU Guideline exempts certain transactions from the requirement of EPU approval. These transactions include, amongst others, the acquisition of a residential unit under the "Malaysia My Second Home" Programme, as well as acquisition of industrial land by the manufacturing company. But the NLC provides that foreign interests may only acquire properties with the approval of the State Authority.\textsuperscript{66}

\textsuperscript{62} Under the Guideline on the Acquisition of Properties issued by the Economic Planning Unit of the Prime Minister's Department ("EPU Guideline"), foreign interest means any interest, that comprises of: (a) individual who is not a Malaysian citizen; and/or (b) individual who is a Permanent Resident; and/or (c) a foreign company or institution; and/or local company or local institution whereby the parties as stated in item (a) and/or (b) and/or (c) hold more than 50% of the voting rights in that local company or local institution.

\textsuperscript{63} Under the EPU Guideline, "bumiputera interest" means any interest, associated group of interests or parties acting in concert, which comprises: (a) A Bumiputera individual; and/or (b) A Bumiputera institution and trust agency; and/or (c) A local company or local institution whereby the parties as stated in item (a) and/or (b) hold more than 50% of the voting rights in that local company or local institution.

\textsuperscript{64} Paragraph 10 of the EPU Guideline.

\textsuperscript{65} Paragraph 2.3 of the EPU Guideline.

\textsuperscript{66} Section 433B of the NLC.
Land matters fall within the jurisdiction of the respective state governments and as such each state authority has the discretion to vary the EPU Guideline based on location, type, minimum purchase price, applicable fees and levy imposed on the property.

(ii) Real Property Gains Tax

With effect from 1 January 2019, the real property gains tax (“RPGT”) rates for the disposal of real property by non-citizen and non-Permanent Resident are as follows:

<table>
<thead>
<tr>
<th>Categories of Disposal</th>
<th>RPGT Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disposal within 5 years</td>
<td>30%</td>
</tr>
<tr>
<td>Disposal in the 6th year or thereafter</td>
<td>10%</td>
</tr>
</tbody>
</table>

(iii) Financing

Bank Negara Malaysia (“BNM”) is the Central Bank of Malaysia established to, amongst other things, regulate the banking and financial services industry and ensure the stability of the country’s financial system. Pursuant to the notices on foreign exchange administration (“FEA Notices”)67 issued by BNM, a non-resident68 investor is allowed to borrow in ringgit from a resident69 to finance activities in the real sector70 in Malaysia. This includes the construction or purchase of a residential or commercial property, except for the purchase of land only. It may not be as easy for investors to apply for financing of real property in Malaysia as compared to other countries.

Structuring Investment

Investments in real property may take various forms, the most common being the purchase of real property directly from the developer or the seller. Investors typically enter into prescribed sale and purchase agreements or private sale and purchase agreements with the developer or seller to purchase the real property at the contracted price.

Alternatively, where the real property is substantial such as an entire building or a large development, the investors may consider acquiring the shares in the company which owns the identified real property. The stamp duty payable in respect of the instrument of transfer of shares is 0.3% of the higher of (i) the consideration paid in respect of the sale of the shares, or (ii) the value of shares as at the date of the transfer. Such stamp duty can be significantly lower than the stamp duty payable in respect of a direct transfer of real property to the investor.

67 Notice 2 Para 10 of the FEA Notices
68 Section 213 of the Financial Services Act 2013 (“FSA”) defines “non-resident” as: (a) any person other than a resident; (b) an overseas branch, a subsidiary, regional office, sales office or representative office of a resident company; (c) Embassies, Consulates, High Commissions, supranational or international organisations; or (d) a Malaysian citizen who has obtained permanent resident status of a country or territory outside Malaysia and is residing outside Malaysia.
69 “resident” is defined under Section 213 of the FSA to mean: (a) a citizen of Malaysia, excluding a citizen who has obtained permanent resident status in a country or a territory outside Malaysia and is residing outside Malaysia; (b) a non-citizen of Malaysia who has obtained permanent resident status in Malaysia and is ordinarily residing in Malaysia; (c) a body corporate incorporated or established, or registered with or approved by any authority, in Malaysia; (d) an unincorporated body registered with or approved by any authority in Malaysia; or (e) the Government or any State Government.
70 “Activities in the real sector” is defined in the FEA Notices to also include activities relating to: (a) the production or consumption of goods or services, other than (i) activities in the financial services sector, whether Islamic or otherwise; (ii) the purchase of security or Islamic security; or the purchase of financial instrument or Islamic financial instrument.
Previously, under the Goods and Services Tax ("GST") regime, commercial properties were subject to 6% GST. However, this has since been abolished with the re-introduction of Sales and Services Tax ("SST"). Notwithstanding the above, investors should be aware of other taxes which may be applicable when investing in real property in Malaysia. A brief overview of these notable taxes is set out in the following sections.

Tax

(i) Stamp Duty

Stamp duty is payable by the purchaser in respect of the acquisition of all real property in Malaysia and such stamp duty is payable on the instrument to effect a transfer of land. The government has recently introduced the following revised stamp duty rates in respect of the purchase of real property:

<table>
<thead>
<tr>
<th>Consideration or adjudicated Value</th>
<th>Scale of fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>First MYR 100,000</td>
<td>1%</td>
</tr>
<tr>
<td>Next MYR 400,000</td>
<td>2%</td>
</tr>
<tr>
<td>On any amount in excess of MYR 500,000</td>
<td>3%</td>
</tr>
</tbody>
</table>

Stamp duty scale from 1st January 2019 – 30 June 2019

<table>
<thead>
<tr>
<th>Consideration or adjudicated Value</th>
<th>Scale of fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>First MYR 100,000</td>
<td>1%</td>
</tr>
<tr>
<td>Next MYR 400,000</td>
<td>2%</td>
</tr>
<tr>
<td>Next MYR 500,000</td>
<td>3%</td>
</tr>
<tr>
<td>On any amount in excess of MYR 1,000,000</td>
<td>4%</td>
</tr>
</tbody>
</table>

Stamp duty scale from 1st July 2019 onwards

(ii) Real Property Gains Tax ("RPGT")

RPGT is a capital gains tax chargeable on profits made from the disposal of real property (defined as any land situated in Malaysia and any interest or other right over such land) or disposal of shares in a real property company.71

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71 A real property company is a controlled company holding real property or shares in another real property company of which the defined value is not less than 75% of the value of the company’s total tangible assets.
With effect from 1 January 2019, the RPGT rates are as follows:

<table>
<thead>
<tr>
<th>Categories of Disposal</th>
<th>RPGT Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Companies</td>
</tr>
<tr>
<td>Disposal within 3 years</td>
<td>30%</td>
</tr>
<tr>
<td>Disposal in the 4th year</td>
<td>20%</td>
</tr>
<tr>
<td>Disposal in the 5th year</td>
<td>15%</td>
</tr>
<tr>
<td>Disposal in the 6th year or thereafter</td>
<td>10%</td>
</tr>
</tbody>
</table>

Conclusion

The value-driven real estate market with continuable growth potential has made Malaysia an attractive property investment destination and option for investors. However, investors should take cognizance of the various changes introduced or to be introduced by the government from time to time in respect of the real estate industry in Malaysia.

Our Deals

- Representing a subsidiary of a Malaysian state energy firm in a land acquisition project in East Java, Malaysia.

- Acted for foreign owned property development company in relation to the acquisition of a shopping mall in Johor, Malaysia for purposes of redevelopment.

- Acted for REIT in relation to the redevelopment, reconfiguration and renovation of strata parcels within shopping mall in Malaysia.

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CHAPTER 6: MYANMAR

Real estate in Myanmar has always been a crucial natural resource with potential to be capitalised for long-term development of the country, given its solid growth prospects.

At the same time, immovable property is one of the areas in which foreign ownership and participation have been largely restricted as a matter of governmental policy. Our lawyers can assist with navigating Myanmar’s complex land system, both from the perspective of novel legal issues and practical considerations on the ground.
Foreign Ownership Restrictions

Pursuant to the Transfer of Immovable Property Restriction Act 1987 ("TIPRA"), foreign individuals and foreign companies are prohibited from owning or entering into a lease of more than one year of any immovable property, subject to certain exceptions.\(^{72}\)

Under the newly enacted Myanmar Companies Law 2017 ("MCL"), a “foreign company” is defined as a company in which an overseas corporation and/or any foreign person has an ownership interest of more than 35%.\(^{73}\) As such, foreign investors can acquire an indirect minority interest in immovable property situated in Myanmar by way of an investment of up to 35% in a “local company”.

One exception from the lease restriction is provided for in the Myanmar Investment Law 2016 ("MIL"), which allows a “foreign company” that has obtained approval from the Myanmar Investment Commission ("MIC") to enter into a lease of land for up to 50 years, subject to two further extensions of 10 years each upon MIC’s approval.\(^{74}\)

Similarly, the Special Economic Zone Law 2014 ("SEZ Law") allows a “foreign company” which has obtained approval from the Management Committee of the relevant Special Economic Zone ("SEZ MC") to enter into a lease of land for up to 50 years, subject to a further extension of 25 years with the SEZ MC’s approval.\(^{75}\)

Another exception is found in the Condominium Law 2016 ("Condo Law") and its implementing rules, the Condominium Rules 2017 ("Condo Rules"), which permit a foreign individual or foreign company to hold proprietary interest in a unit (regardless of which floor the unit is located on) in a condominium for as long as the tenure of the condominium remains valid, provided that the condominium is registered in accordance with the Condo Law.\(^{76}\) This is subject to the condominium developer’s ability to sell up to a maximum of 40% of the total floor area of the condominium to foreigners.\(^{77}\)

Ownership of Land

Pursuant to the Myanmar Constitution 2008 ("2008 Constitution"), the Government of Myanmar is the ultimate owner of all land in Myanmar.\(^{78}\) While this is the legal position, this is not always the case in practice, as there are instances of private ownership of land.

In this respect, there is no formal system of registration of land ownership in Myanmar, as opposed to that in neighbouring countries such as Singapore. Proof of a private entity’s proprietary interest is typically in the form of land grants or title deeds which are issued by the relevant regulatory authorities.

It is also worth highlighting that during the subsistence of a Buddhist marriage recognised in Myanmar, neither the husband nor the wife has a legal right to mortgage or sell the entire joint
property acquired by either of them, whether before or during the marriage, except with the consent of the other party or as the agent of the other party.  

Regulatory Authorities

While there is no single regulatory authority which manages all land situated in Myanmar, land plots within the major cities, such as Yangon, Mandalay and Nay Pyi Taw, typically fall under the purview of the relevant local Development Committees in practice, unless expressly exempted by the relevant statutory instruments. For instance, the Yangon City Development Committee is not the regulatory body in respect of farmlands, vacant land, and tax-exempted monastery land within the Yangon Region.

Types of Land

There are several different types of land in Myanmar, including freehold land, grant land, farmland and vacant, fallow and virgin land.

(i) Freehold land

Freehold land can only be held by citizens of Myanmar. The owner of freehold land is not required to pay land revenue for such land. Freehold land is evidenced by way of title deed and is transferable to other citizens of Myanmar only. It is generally held in perpetuity subject to the avenues of acquisition by the Government of Myanmar for a public purpose under the Land Acquisition Act 1894 (“LAA”) or under the State Public Housing Rehabilitation and Urban and Rural Development Board Act 1951 (“SPH Board Act”).

However, freehold land is not typically utilised in relation to foreign investments, as it is comparatively rare in practice.

(ii) Grant land

Land grants are typically made by the Government of Myanmar to citizens of Myanmar or “local companies” on terms stipulated therein (including the amount of fees or rent payable by the land grant holder to the Government of Myanmar). In practice, grant land is widely situated across different cities and towns in Myanmar, but is rarely found in villages.

Land grants are in effect a grant of proprietary interest from the Government of Myanmar to the land grant holder on a long-term basis, which may range from 10 years to 90 years. Extensions can be granted upon application, although there is no set practice in respect of the maximum number of times an extension can be granted (if at all), or the maximum period of extension.

The land grant holder is allowed to transfer, sub-lease, mortgage or sell his interest in the grant land to other citizens of Myanmar or “local companies”, subject to the terms and conditions within the land grant. Typically, the land grant holder may then lease the grant land to a “foreign company”
either on a yearly basis, or on a long-term basis in accordance with an approval from the MIC under the MIL or its predecessor legislation.

(iii) Farmland

Farmland refers to low land, upland, silty land, hill-side cultivation land, perennial crops land, nipa palm land, garden land or horticulture land and alluvial land.\(^{85}\)

Acquisition of farmland for developmental projects remains a sensitive issue in Myanmar to date. Although the Farmland Law 2012 ("FL") prescribes the types of compensation payable to the displaced farms in connection with acquisition of farmlands, there are growing concerns that the law in its current state is unable to adequately protect the full spectrum of land-related rights of ordinary citizens, in particular farmers who are in the lower economic stratum.

(iv) Vacant, fallow and virgin land

Vacant land or fallow land refers to land specifically reserved by the State for agriculture or livestock breeding business which was but is no longer leased.\(^{86}\) On the other hand, virgin land includes valid land and wild forest land on which no cultivation has been undertaken at all.\(^{87}\)

Investors of foreign investments which have been approved in accordance with the MIL may apply to the Central Committee for the Management of Vacant, Fallow and Virgin Lands for a permit granting the right to cultivate or utilise vacant, fallow or virgin land for purposes of agriculture, livestock breeding, mineral production or other lawful businesses permitted by the Government of Myanmar ("VFVL Permit"). The issuance of the VFVL Permit is subject to fulfilment of certain prescribed criteria, including approval of the relevant Ministry (e.g. Ministry of Natural Resources and Environmental Conservation for mineral production).

**Common Forms of Investment**

Investments relating to immovable property in Myanmar typically take the following forms: (a) land grant; (b) long-term lease agreement; or (c) Build-Operate-Transfer ("BOT") agreement.

Some notable points for consideration from the perspective of bankability of the relevant development projects would be whether proprietary interest is conferred, term of lease, and the ability to confer proprietary interests to end-customers. These points are elaborated upon in turn below.

While grant land confers on the land grant holder proprietary interest as close to ownership interest as possible, a long-term lease is likely to be vulnerable to termination or cancellation of the head lease (including the land grant). On the other hand, a BOT agreement confers on the concessionaire a contractual right to use the relevant land for a particular purpose (usually for public benefit) and upon expiry or termination of the BOT agreement, the relevant land, including any buildings/constructions thereon, has to be transferred back to the Government of Myanmar and/or the BOT-issuing governmental authority.

\(^{85}\) Section 3(a) of the FL

\(^{86}\) Section 2(e) of the Vacant, Fallow and Virgin Land Management Law 2012, as amended in 2018 ("VFVL Law").

\(^{87}\) Section 2(f) of the VFVL Law.
A land grant may be issued for a period ranging from 10 years to 90 years. However, the term of the lease agreement or the BOT agreement is necessarily limited by the permissible lease period under the MIL or the SEZ Law (i.e. a maximum of 50+10+10 years, or a maximum of 50+25 years).

In housing and infrastructure development projects, it is crucial for the developer to be able to assure its end-customers (e.g. purchasers of apartment units) that they will be issued with the relevant proprietary interest (e.g. land grant, title certificate, etc.). Accordingly, such developers typically enter into either a head lease agreement or a development rights agreement with the relevant government authority. This subjects the relevant government authority to an obligation to issue or procure the issuance of land grants or title certificates to the persons nominated by the developer.

Condominiums

Under the Condo Law, foreign individuals and foreign companies are not prevented from participating in condominium development projects. However, in the event that a foreigner wishes to obtain a Condominium Development Permit (as defined below), the developer will be required to appoint a Myanmar national or local company as the joint developer, with the approval of the relevant Administrative Committee.88

Condominium developers are required to obtain a general licence to undertake business as a developer (the “Business Licence”) and a specific permit to undertake the development of a specific condominium (the “Condominium Development Permit”), which are both issued by the Administrative Committee in the relevant State or Region.89

The Condo Law also prescribes certain requirements in respect of the land over which the condominium is to be developed, including a minimum area of at least 20,000 square feet.90 In addition, a condominium is required to consist of more than six floors.91 The land and the condominium must also be registered in accordance with the Condo Law.92

Investing in Myanmar

Generally, investors should be familiar with the foreign exchange regulations in Myanmar. In particular, a prior written approval by the Central Bank of Myanmar is required for all offshore loans, including loans by foreign shareholders. In addition, investors should be generally cognisant of the tax regime in Myanmar. We set out below a high-level overview of some of the relevant heads of taxation which may be applicable in infrastructure or development projects.

(i) Stamp Duty

In Myanmar, the sale and purchase of immovable property attracts stamp duty of 4% of the value of the property.93 On the other hand, a long-term lease (including sublease) of immovable property beyond 3 years is subject to stamp duty of 2% of the average annual rent reserved.94

88 The Administrative Committee is formed in respect of each State or Region pursuant to the Law, with the promulgation of the Ministry of Construction. Each Administrative Committee is chaired by a Minister who has been tasked to do so by the relevant State or Regional Government.
89 Chapters 3 and 4 of the Condo Rules.
90 Section 10(d) of the Condo Law.
91 Section 2(a) of the Condo Law.
92 Chapter 5 of the Condo Law.
93 Item 31 of Schedule I to the Myanmar Stamp Duty Act.
94 Item 35(a)(iii) of Schedule I to the Myanmar Stamp Duty Act.
As such, it may be more tax-efficient to novate the existing lease agreement, which will attract stamp duty of 2% of the consideration for the novation,\footnote{Item 63 of Schedule I to the Myanmar Stamp Duty Act.} where such consideration is lower than the consideration for purchase or average annual rent reserved for the relevant property.

(ii) **Capital Gains Tax**

In Myanmar, capital gains tax is levied on gains from the sale, exchange or transfer of capital assets (including land) if the total value of the assets sold, exchanged or transferred during the year is more than MMK 10 million. It is typically assessed in Myanmar kyat or in the foreign currency in which the transaction was conducted.

In relation to the oil and gas exploration sector, capital gains tax is assessed on a graduated basis, ranging from 40% to 50%. In all other sectors, capital gains tax is set at 10% of the relevant gains.\footnote{Section 13 of the Income Tax Law.}

(iii) **Commercial Tax**

Property tax is imposed by the relevant local development committees on immovable property situated within the relevant area. For instance, immovable property situated within the Yangon Region is subject to the following categories of property tax, namely:

(iv) **Property Tax**

Property taxes are imposed by the relevant local development committees on immovable property situated within the relevant area. For instance, immovable property situated within the Yangon Region are subject to the following categories of property tax, namely:

(a) general tax up to 8% of the annual value;

(b) lighting tax up to 5% of the annual value;

(c) water tax up to 3.25% of the annual value; and

(d) conservancy tax up to 8.5% of the annual value. In this regard, “annual value” refers to the gross annual rent for which the relevant land and building may be expected to be leased on an unfurnished basis, as periodically determined by the Yangon City Development Committee (or the relevant local development committee).

**Conclusion**

All in all, as the economy of Myanmar develops, the real estate sector is poised to grow, particularly in first tier cities of Yangon and Mandalay. As such, investors would do well to be kept abreast of the relevant legal developments, the tax regime and the practice on the ground which govern their ability to undertake these investments.
Our Deals

- Assisting in the structuring of the developer and management companies collaborating in a major commercial cum residential development, as well as assisting with preparation of the documentation relating to sale of the units of the development.

- Advising an international developer on the refurbishment of the Yangon Secretariat, one of the largest colonial buildings in South East Asia.

- Advising a consortium of Japanese investors on a mixed-use real estate development project in Yangon, Myanmar.

- Advising the consortium led by Min Dhama Company Limited on the successful bid in relation to the project for refurbishment of the Yangon Central Railway Station.

- Advising Shwe Taung Group on the negotiations with the Ministry of Construction on the smart city development project in Dagon Township, Yangon, Myanmar.

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CHAPTER 7: PHILIPPINES

Considered one of the fastest-growing economies in the region, the Philippines exhibited an increase in gross domestic product ("GDP") of 6.7% in 2017 and 6.8% in 2018, continuing to pave the way for different sectors to flourish including the real estate industry. The buoyant performance of the country’s real estate sector is anticipated to grow further in the years to come and while real estate prices continue to increase, the market is still far from its historic peak.

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99 Business World.
The ushering in of the "golden age of infrastructure" is helping to unlock land value in areas outside of Metro Manila and stimulate business activities in the countryside. Among the trends that defined the Philippine real estate industry in 2018 are the growth of Foreign Direct Investments by 31% during the first eight months of 2018, expansion of business process outsourcing ("BPO") companies in the region, and the rise of co-working spaces. There were record highs in condominium pre-sales and sustained demand from outsourcing and offshore gaming firms in 2018, as well as an 8.0% annual rise in office rents due to high-quality new supply and a tight market.

1. Legal Framework on Ownership and Registration

On Ownership

The real estate industry remains highly regulated in the Philippines. Ownership of private lands in the Philippines is reserved for Philippine citizens and corporations that are considered Philippine nationals. This restriction is reflected in the 1987 Philippine Constitution as well as the Eleventh Regular Foreign Investment Negative List ("FINL").

However, subject to the provisions of R.A. No. 4726 or the Philippine Condominium Act (the "Condominium Act"), foreign nationals and foreign companies may own condominium units in condominium projects registered with the Philippine Housing and Land Use Regulatory Board. Likewise, foreign nationals and foreign companies may also lease land, the terms of which are also regulated by law. As a rule, leasing of private land by foreign companies is allowed for a period of 25 years and renewable for another 25 years. However, the Philippine Investors’ Lease Act allows for a maximum lease term of 50 years renewable for another 25 years, which shall be registered with the Philippine Department of Trade and Industry.

Transacting in real estate is primarily governed by the Republic Act No. 386 or the Civil Code of the Philippines (the "Civil Code"), where real estate is encompassed by the greater concept of real property. The Civil Code provides for the nature as well as the general principles for obligations and contracts involving real property, such as sales and donations.

However, the public policy considerations surrounding real estate have resulted in the enactment of laws that are intended to ensure that the transactions affecting ownership and transfer of real estate are exclusive to Philippine nationals, such as the FINL, Commonwealth Act No. 108 or the Anti-Dummy Law, and the Condominium Act.

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105 See Sections 2, 3 and 7 of Article XII of the 1987 Philippine Constitution. As a general rule, only Filipino citizens and corporations or partnerships where at least 60% of the capital is owned by Filipinos are entitled to acquire land in the Philippines.
106 Promulgated recently through Executive Order No. 65 pursuant to Republic Act ("R.A.") No. 7042 or the Foreign Investments Act of 1991. The 11th FINL limits foreign equity ownership of private land to 40% consistent with Section 2, 3 and 7 of Article XII of the 1987 Philippine Constitution.
107 See also the FINL.
108 In the Philippines, real estate encompasses the land and all those items which are attached to the land, including all the additions or improvements on, above or below the ground. (Republic Act No. 9646, sec. 3(c))
On Registration

Prior to 1978, the system of land registration in the Philippines was governed by three different systems, namely the system under the Spanish Mortgage Law, the Torrens system, and the system of recording for unregistered lands. To simplify and streamline land registration proceedings, the Philippine government consolidated all pre-existing laws on property registration into one: Presidential Decree No. 1529, or the Property Registration Decree ("PRD"). Under the Torrens system of registration, registration is not compulsory for the transfer of legal title but serves as a prudent measure to protect landowners from fraudulent claims, as well as to inform third persons of the burdens and incidents affecting a particular property. Nevertheless, registration is recommended as registered land cannot be acquired by acquisitive prescription nor by adverse possession.

Moreover, every conveyance of property would require registration as notice to the world whereby third persons are presumed to have examined every instrument of record affecting the title. More pertinently, the lapse of one year from the issuance of a decree registration of a title conclusively grants title to the registered landowner, making title indefeasible.

The PRD effectively brought a number of lands in the Philippines under the Torrens system managed by the Land Registration Authority, whereby a land title becomes the basis of future transactions affecting the property described therein.

2. Type of Properties

Under Philippine law, land, buildings, and other improvements are classified according to their actual use, or the purpose for which the property is principally or predominantly utilized by the person in possession thereof. If the properties are used for more than one purpose, they are classified on the basis of their principal or predominant use for taxation purposes.

Residential and commercial properties and areas are designated as such by the Local Government Units ("LGUs") through zoning ordinances. The distinction between the different classifications is relevant for purposes of taxation, as commercial areas are generally assessed and taxed at higher values than residential areas.

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108 As amended by Republic Act No. 6732 (An Act Allowing Administrative Reconstitution of Original Copies of Certificates of Titles Lost or Destroyed Due to Fire, Flood And Other Force Majeure, Amending For The Purpose Section One Hundred Ten Of Presidential Decree Numbered Fifteen Twenty-Nine And Section Five Of Republic Act Numbered Twenty-Six), Executive Order No. 292(Instituting The 'Administrative Code of 1987), Batas Pambansa Blg. 594 (An Act Limiting the Collection Of Contributions To The Assurance Fund Only Upon The Entry Of A Certificate Of Title In The Name Of The Registered Owner And Upon The Original Registration On The Certificate Of Title Of A Building Or Other Permanent Improvements On A Registered Land, Amending For The Purpose Certain Sections Of The Property Registration Decree), and Executive Order No. 649 (Reorganizing The Land Registration Commission Into The National Land Titles And Deeds Registration Administration And Regionalizing The Offices Of The Registrars Therein).

109 See Secs. 51 and 54, PRD.

110 See Secs. 1 and 47, PRD.

111 See Secs. 52, PRD.

112 See Sec. 31, PRD.

113 See Sec. 32, PRD.

114 See Sec. 44, PRD.

115 See Sec. 53, PRD.

116 See Sec. 217, Republic Act No. 7160, or the Local Government Code ("LGCA").

Residential

Residential land is land principally devoted to habitation. Buildings and improvements devoted principally to habitation are considered residential properties.

Commercial

Commercial land is land devoted principally to the object of profit and is not classified as agricultural, industrial, mineral, timber, or residential land. Buildings and improvements devoted to activities principally for the object of profit are considered commercial property.

Industrial

Industrial land is land devoted principally to industrial activity as capital investment and is not classified as agricultural, commercial, timber, mineral or residential land. Buildings and improvements subjected principally to industrial activities are considered industrial property.

Foreign Investment

The Philippines is currently experiencing a boom in foreign investment in real estate. In Metro Manila, condominium pre-sales have reached a historical high, while around seven thousand new condominium units are expected to be completed per annum from 2019 to 2021. On the other hand, commercial units have seen high, sustained demand from outsourcing and offshore gaming firms; rent is expected to increase at 8.0% per annum to reflect the high-quality new supply and the tight market from 2018 to 2021.

Despite the influx of foreign investors, relatively stricter regulations persist in the Philippines. The 1987 Philippine Constitution expressly limits the ownership of private lands to individuals, corporations, or associations who are qualified to acquire and hold public domain land, i.e., Philippine citizens and Philippine corporations. For corporations, the FINL limits foreign equity to 40%. The Philippine Condominium Act likewise restricts foreign ownership to an aggregate of up to 40% ownership in the land and only for specific areas in a building.

It is important to comply with the nationality requirements as the officers of corporations that engage in industries and activities restricted to Philippine citizens (such as the ownership of land) run the risk of being penalized and imprisoned under the Anti-Dummy Law.

(i) Structuring Investments

Foreign individuals and entities can employ a variety of ways to invest in Philippine real estate, a few of which are discussed below.

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118 Sec. 199(u), LGC.
119 Sec. 217, LGC in relation to Sec. 199(u), LGC.
120 Sec. 199(i), LGC.
121 Sec. 217, LGC in relation to Sec. 199(i), LGC.
122 Sec. 199(n), LGC.
123 Sec. 217, LGC in relation to Sec. 199(n), LGC.
125 See Republic Act No. 4726, otherwise known as "The Condominium Act."
First, foreign nationals and foreign companies may acquire a minority interest (up to a maximum extent of 40%) in a domestic corporation, which can own and lease private property. However, it is important to note that the Supreme Court of the Philippines is cognizant of the schemes used by corporations to evade the nationality requirements, such as i.e., corporate layering and use of dummies. It has thus previously looked into these schemes, particularly when there is doubt as to the actual ownership of the domestic corporation.126

Second, foreign individuals can invest instead in infrastructure, as there are no restrictions on building on leased land. The foreign corporation can enter into a lease agreement with a qualified Filipino owner, thereby avoiding the problem of meeting the required foreign equity for ownership of land. Foreigners may have 100% interest in buildings and other forms of real property other than land.

Third, foreign individuals and foreign corporations can purchase or lease condominium units, whether residential or commercial, owned by condominium corporations that are, in turn, mandated to observe the required foreign equity limit of 40%.

(ii) Tax Consequences of Investing in Real Estate

In addition to the costs of acquiring or leasing real estate, Philippine laws provide for taxes on certain properties or transactions that must be considered by an investor before entering into contracts for the purchase, sale or lease of these properties. The taxes usually associated with transactions in real estate are as follows:

Capital Gains Tax

Capital gains tax (“CGT”) is generally levied by the national government on the sale, exchange, or other disposition of real property classified as capital assets and located within the Philippines. This tax covers both land and improvements made on land. CGT exists to allow the Philippine government to tax the gain that the seller or owner of the real property will realize from the transaction.

A 6% CGT is applied to the gross selling price of the real property or its fair market value, whichever is higher.

Income tax and value added tax

Income tax, value added tax (“VAT”), and percentage tax are levied on real property that is held as an ordinary asset, i.e., held by a seller in the ordinary course of trade or business or a seller involved in the real estate business.127

Income tax is levied on the income realized from the sale, lease or other disposition of property, while VAT is a consumption tax imposed on sale, barter, exchange or lease of goods and properties, at every stage of the distribution process.128 Income tax is taxed at a schedular rate as applied to the income from the transaction, while VAT is taxed at a rate of 12% of the gross selling price.

126 See Roy III v. Herbosa, GR No. 207246, April 18, 2017. For further reading, the case of Narra Nickel Mining and Development Corp. v. Redmont Consolidated Mines Corp. (G.R. No. 195580, January 28, 2015, 748 SCRA 455, 478) is instructive.
127 Sec. 106, Republic Act No. 8424, or the National Internal Revenue Code.
128 Sec. 4.105-2, Revenue Regulation No. 16-2005.
Real Property Tax

Real property tax ("RPT") is a tax levied by the LGUs on the ownership or use of real property.

Real property is taxed at a rate of 1% or 2% of the current fair market value of the property, depending on where it is located. Additionally, the LGU can levy a special education fund at 1% of the assessed value of the real property.

It is vital to pay RPT, which attaches to the property. Failure to do so will allow the LGU to enforce the value of the tax against the property.

Documentary Stamp Tax

Documentary stamp tax ("DST") is a tax on documents, instruments, loan agreements and papers evidencing the acceptance, assignment, sale, or transfer of an obligation, right, or property thereto. In transactions involving real property, DST is usually levied on contracts of sale or lease.

For contracts of sale, the DST is fifteen Philippine Pesos (PhP15.00) per P1,000.00 or fractional part thereof in excess of P1,000.00.

For contracts of lease, the DST is six Philippine Pesos (PhP6.00) for the first two thousand Philippine Pesos (P2,000.00), and an additional two Philippine Pesos (P2.00) for every P1,000.00 or fractional part thereof in excess of P2,000.00.

Transfer Taxes

Since gratuitous transfers of real property are not subject to CGT, DST, or income tax, transfer taxes are imposed by the national government on the privilege of being able to choose to whom property is transferred. This measure is intended to safeguard against parties hiding commercial transactions behind gratuitous transfers to escape taxation. Under Philippine law, there are two kinds of transfer taxes, (a) estate tax and (b) donor’s tax.

(i) Estate Tax

Estate tax is levied on the privilege of transferring property gratuitously upon the death of the owner. Under Republic Act No. 10963, or the Tax Reform for Acceleration and Inclusion Act (the “TRAIN Law”), the estate tax is at a flat rate of 6%.

(ii) Donor’s Tax

Donor’s tax is levied on the privilege of transferring property gratuitously during the lifetime of the owner. Under the TRAIN Law, donor’s tax is also at a single rate of 6%.

Conclusion

Despite the restrictions on foreign ownership in private lands, the real estate industry in the Philippines is thriving, and has yet to realize its full potential. Foreign investments are still pouring in as the number of condominium projects (residential and/or commercial), demand for retail

\footnote{129 Sec. 173, NIRC.}
spaces from foreign and local entities, office occupancy from BPOs and online gaming companies, and the need for flexible workspaces continue to increase.

Likewise, infrastructure projects are given priority by the Philippine government through its Build Build Build Program, which aims to increase infrastructure spending for various expressways, airports, roads and bridges to be constructed throughout the Philippines, and to encourage more foreign investments in the country through public-private partnerships and other forms of investments.

Our Deals

- Assisted the country’s top real estate developer in acquiring several parcels of land, which are separately owned by various sellers. The acquired lots will be developed for residential or mixed-use real estate project.
- Advised potential foreign investor regarding structure for development of potential township project.
- Advised top real estate company regarding agrarian laws in relation to potential acquisition of raw land for potential development project.
- Conducted due diligence on several parcels of land as potential acquisition targets for the real estate units of various conglomerates.
- Advising a Filipino conglomerate in relation to a potential acquisition (with a Japanese joint venture partner) of a property for a residential/mixed use development in Laguna.
- Revised deed of restrictions for a condotel project in Boracay.
- Drafted joint venture agreement relating to the potential development of a beachfront property.
- Represented a chain of F&B outlets in negotiating an agreement with a nationwide operator of malls that grants rights of first refusal to lease of commercial spaces for F&B outlets in the mall operator’s malls across the country.
- Represented high net worth individual in relation to the acquisition of penthouse units in a high-end condominium development in Makati City, Philippines.
- Advised buyers of lots in residential subdivisions in relation to disputes before the Housing and Land Use Regulatory Board.
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CHAPTER 8: SINGAPORE

Real Estate in Singapore has always been a preferred choice for long-term investments due to the city-state’s regional hub status and stable growth prospects. With land being a scarce asset, Singapore has become one of the most expensive countries in the world to own real property.

Because the real estate industry is so intertwined with the lives of the people, it is very closely monitored by the government and has been subject to many revisions in legislation and public policy.
System of Registration

Prior to 1956, the system of Land Registration in Singapore was under the Registration of Deeds Act\textsuperscript{130}, a model of the common law (the “Deeds System”) where legal title in land was transferred when a deed is signed, sealed and delivered. Under the Deeds System, registration of legal title was not compulsory and was for the purpose of establishing priority and admissibility.\textsuperscript{131}

Under this system, every conveyance of property would require a laborious (and repetitive) physical investigation of the deed which would have to be scrutinised to inspect the “good root” of title.

The passing of the Land Titles Act\textsuperscript{132} in 1993 effectively brought most of the land in Singapore under the Torrens system managed by the Singapore Land Authority, which enforced a structure of compulsory registration to pass title.\textsuperscript{133} The Land Titles (Torrens) system comprised a definitive land register that is available online. This essentially dealt away with the arduous task of a physical title investigation under the Deeds System. More pertinently, every successful registration of a title would conclusively grant good title to the registered proprietor, creating an “indefeasibility of title”.

Applicable Law

The main legislations which govern real estate transactions in Singapore are under the Land Titles Act (“LTA”), Land Titles (Strata) Act\textsuperscript{134} (“LTSA”), Conveyancing and Law of Property Act\textsuperscript{135} (“CLPA”), Planning Act\textsuperscript{136}, Housing Development Act\textsuperscript{137}, Housing Developers (Control and Licensing) Act\textsuperscript{138}, Residential Property Act\textsuperscript{139}, Building and Maintenance Strata Management Act\textsuperscript{140} and the Executive Condominium Housing Scheme Act\textsuperscript{141}.

Tenure and Ownership

The tenure of land in Singapore may be broadly classified into three main categories: estate in fee simple (or freehold which can be held forever), estate in perpetuity (which is also a freehold tenure but is derived from statute and subject to terms under the State Lands Act) and leasehold estates (e.g. 30-year, 99-year or 999-year leasehold estates).

Given the scarcity of land and an ever-increasing population, most properties in Singapore enjoy a leasehold of 99-years. This implies that the estate would revert to the state at the expiry of its tenure without compensation. This serves to renew real estate resources and to maintain a modern civilisation. Notwithstanding and irrespective of the type of estate held, it is noteworthy

\textsuperscript{130} (Cap. 269)
\textsuperscript{131} https://www.sla.gov.sg/Services/Property-Ownership (accessed 10 February 2019)
\textsuperscript{132} (Cap. 157)
\textsuperscript{133} The project to convert all land to the Torrens System was completed on 31 December 2012 although it should be noted that there are still pockets of land held under the old common law system which are not intended to be compulsorily converted to the Torrens System (Principles of Singapore Land Law, Tan Sook Yee 3rd Edition 2009 at 13.6)
\textsuperscript{134} (Cap. 158)
\textsuperscript{135} (Cap. 61)
\textsuperscript{136} (Cap. 232)
\textsuperscript{137} (Cap. 129)
\textsuperscript{138} (Cap. 130)
\textsuperscript{139} (Cap. 274)
\textsuperscript{140} (Cap. 30C)
\textsuperscript{141} (Cap. 99A)
that all land may be acquired by the State under the LTA\textsuperscript{142} and the Land Acquisition Act\textsuperscript{143} ("LAA") in return for compensation which is determined by the government. The matters to be considered in determining the quantum of compensation is set out in section 33 of the LAA\textsuperscript{144}. Further, any development of land is subject to planning controls under the Planning Act.

It is also noteworthy that, unique to Singapore, a majority\textsuperscript{145} of owners in a strata-titled development may compel a collective sale on the remaining minority who do not wish to do so under the growing "en-bloc" phenomenon pursuant to section 84 of the LTSA.

It would appear then that while ownership of land in Singapore is highly sought after, it may not necessarily be an unencumbered prerogative on its own nor a perpetual matter as it seems.

Types of Property

(i) Residential

Investors looking at Singapore should note that residential properties are classified under two categories: public and private properties. Public housing, also known as Housing Development Board ("HDB") flats, are subsidised properties built by the government of Singapore. 81%\textsuperscript{146} of the residents in Singapore reside in HDB flats which are cheaper alternatives to private housing. Eligible households may also qualify for various schemes and grants from the government to finance the purchase of such flats. Various eligibility conditions apply when purchasing a new HDB flat but notably, a foreigner will generally not be eligible to purchase a HDB flat unless he or she is a spouse to a Singapore Citizen.

(ii) Commercial

Commercial properties are any properties used for anything other than for a residential or industrial purpose. Common examples would include office buildings, retail spaces, gyms, co-working spaces etc.

(iii) Industrial

Industrial properties in Singapore are generally managed and administered by the Jurong Town Corporation of Singapore ("JTC"). Industrial properties can be directly allocated by JTC to industrialists in Singapore (by application), by way of tender, or purchased by way of private treaty from an existing industrialist. Developers with a track record or licensed trusts/investment funds (such as REITs) may also qualify for the Third-Party Facility Provider Scheme and participate in the development of industrial land, which would eventually be leased out to industrialists.

For a direct allocation of land to the industrialist, JTC typically requires that a minimum investment criteria be met, and the development be completed within a prescribed time period, before the lease over the JTC land is issued to the industrialist. For a private treaty purchase, JTC’s prevailing policies for its consent to the transfer or assignment of the property will also apply. Such

\textsuperscript{142} See Section 143 of the LTA (n 4)
\textsuperscript{143}(Cap. 152)
\textsuperscript{144} Section 34 of the LAA sets out the matters to be disregarded in determining the quantum of compensation.
\textsuperscript{145} Where a property is 10 years or older, a “majority” would be 80% of the subsidiary proprietors of the lots with not less than 80% of the share values and not less than 80% of the total area of all the lots.
policies include a prohibition period against sale or transfer of the property for a period of at least 5-10 years, depending on the remaining lease tenure.

Compliance with JTC’s other prevailing policies are required in the operation of JTC properties. Examples would include the requirement to apply for subletting approvals (for end-user lessees), or for a minimum anchor subletting quantum (for third-party facility providers).

One of the policy intents of recent times is that land allocated for industrial use should not be for speculative purposes. Seller’s Stamp Duty will also apply to industrial land in Singapore (see section (ii) below).

**Investment through an Asset Purchase**

Investments are commonly done in Singapore through the sale and purchase of an asset, which is the traditional form of acquisition where the purchaser buys the real estate asset from the vendor at a determined price.

Buyer’s Stamp Duty (“BSD”) is payable generally for all kinds of properties. For residential properties, in addition to BSD, purchasers and vendors may also be liable to bear Additional Buyer’s Stamp Duty (depending on the profile of the buyer) and Seller’s Stamp Duty (“SSD”) (depending on the holding period of the property) respectively. Vendors may also be liable to bear SSD for industrial properties.

Beyond these stamp duties, purchasers may be liable to bear Goods and Service Tax (“GST”) for non-residential properties.

These will be elaborated on in greater depth in the sections below.

Purchasers who acquire leasehold properties governed by State Leases (i.e. those issued by the government) and who wish to enhance the value of the land (for example, re-development with an intensification of the land) might also be liable to pay a Differential Premium (“DP”). In such a case, the purchaser must apply to SLA for the lifting of any title restrictions in the State Lease and must pay the DP before commencing development works.

DP serves to remove the original ‘title restriction’ for the approved use and/or intensity of the land and its computation is based on a ‘Development Charge’ (“DC”) table of rates.

Where the tenure of the land is leasehold, the DC rates will be adjusted to reflect the remaining tenure of the land using the Leasehold Table. However, in suitable cases where the State Title contains special restrictions, the DP payable may be determined using other methods and the resultant amount could be higher than the rate determined by the DC table.

Where the use stipulated in the title restriction does not fit into any of the Use Groups in the DC Table, the DP payable will be determined by the Chief Valuer on a case-by-case basis.

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147 Please see SLA’s article for more information: [https://www.sla.gov.sg/Services/Land-Lease-Conditions](https://www.sla.gov.sg/Services/Land-Lease-Conditions) (accessed 10 February 2019)
148 It is noteworthy that where the tenure of the land is leasehold, the DC rates will be adjusted to reflect the remaining tenure of the land using the Leasehold Table [please see SLA’s website (n 20) for more details]. However in suitable cases where the State Title contains special restrictions, the DP payable is likely to be determined using other methods and the resultant amount could be higher than the rate determined in the DC table.
Investment through a Share Purchase

Where the real property involved is substantial (e.g. an entire building), it is increasingly common for the sale and purchase to be by way of the disposition of the shares in a Special Purpose Vehicle (“SPV”) which was previously incorporated solely to hold the property. The stamp duty payable on the instrument of transfer of the sale of the shares is 0.2% of the higher of (1) the consideration attributed to the sale of the shares; or (2) the net asset value attributable of the sale of the shares.

In some circumstances, purchasers may also be liable to pay Additional Conveyance Duties. This will be elaborated on in greater depth in the sections below.

Investing in Singapore

In considering whether to invest in real property in Singapore, investors should be cognisant of certain statutory restrictions and tax regiments that may apply to them before they decide to commit. We set out in broad strokes the salient ones in the sections below.

(i) Capacity

There are no restrictions for foreign individuals or entities to purchase commercial or industrial properties in Singapore. However, foreigners will need to apply to the government for approval to purchase certain types of residential properties pursuant to the Residential Property Act (“RPA”).

Some of these restricted residential properties include vacant residential land, terrace or semi-detached houses, bungalows, strata landed houses (which are not within an approved condominium development under the Planning Act), but does not include landed housing in Sentosa Island.

(ii) Tax

Buyer’s Stamp Duty

Buyer’s Stamp Duty (“BSD”) is payable on the purchase of all real property in Singapore, which is computed on the purchase price as stated in the document to be stamped or market value of the property (whichever is the higher amount).

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149 A foreign person means any person who is not a Singapore Citizen, Singapore company, Singapore limited liability partnership or Singapore Society. It is noteworthy that under this definition, a foreign company or a society (1) incorporated outside Singapore or (2) though incorporated in Singapore, has directors or members who are not Singapore citizens would also be considered a foreign person for the purposes of this definition.

150 (Cap 274)
The current BSD rates are as follows:

<table>
<thead>
<tr>
<th>Purchase price/market value (whichever higher)</th>
<th>New BSD Rates(^{a})</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>For residential component</td>
</tr>
<tr>
<td>First $180,000</td>
<td>1%</td>
</tr>
<tr>
<td>Next $180,000</td>
<td>2%</td>
</tr>
<tr>
<td>Next $640,000</td>
<td>3%</td>
</tr>
<tr>
<td>Exceeding $1,000,000</td>
<td>4%</td>
</tr>
</tbody>
</table>

\(^{a}\)BSD is to be rounded down to the nearest dollar

**Additional Buyer’s Stamp Duty**

The Additional Buyer’s Stamp Duty (“ABSD”) was introduced on 7 December 2011, to be paid by certain groups of people who acquire residential properties on or after 8 December 2011, as part of a slew of property cooling measures at that time. ABSD rates were revised and announced on 11 January 2013 for the purchase of property on or after 12 January 2013. Whether ABSD is payable and the rate of ABSD depends on the profile of the buyer – whether the buyer is an individual or non-individual, his residency status and the count of residential properties owned by him. The ABSD rates are to be applied to the actual price paid or the market value of the property, whichever is higher, and it is to be paid on top of the BSD.

As property prices had increased sharply by 9.1% in 2017\(^{151}\), the government announced a further increase in ABSD rates for most purchasers except Singapore Citizens (“SC”) and Singapore Permanent Residents (“SPR”) buying their first residential property on 5 July 2018.

The new ABSD rates are set out below:

<table>
<thead>
<tr>
<th>Profile of buyer</th>
<th>Previous ABSD Rates (between 12 Jan 2013 to 5 Jul 2018)</th>
<th>New ABSD Rates (options issued on or after 6 Jul 2018)</th>
</tr>
</thead>
<tbody>
<tr>
<td>SC buying 1(^{st}) residential property</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SC buying 2nd residential property</td>
<td>7%</td>
<td>12%</td>
</tr>
<tr>
<td>SC buying 3rd and subsequent residential property</td>
<td>10%</td>
<td>15%</td>
</tr>
<tr>
<td>SPR buying 1(^{st}) residential property</td>
<td>5%</td>
<td>5%</td>
</tr>
</tbody>
</table>

Profile of buyer | Previous ABSD Rates (between 12 Jan 2013 to 5 Jul 2018) | New ABSD Rates (options issued on or after 6 Jul 2018)
--- | --- | ---
SPR buying 2nd and subsequent residential property | 10% | 15%
Foreigners (FR) buying any residential property | 15% | 20%
Entities buying any residential property | 15% | 25% (may be remitted for housing developers (licensed and unlicensed), subject to conditions)

Additional 5% for housing developers (licensed and unlicensed) *(cannot be remitted)*

Nationals and permanent residents of Iceland, Liechtenstein, Norway and Switzerland and nationals of the United States of America shall be accorded the same stamp duty treatment as Singapore citizens under the respective Free Trade Agreements signed with these countries.

Housing developers will be able to obtain remission on 25% of the ABSD if they are in the business of construction and sale of housing units, and if they are able to sell all units in the new development built within 3 years (for unlicensed developers building 4 or less units) or 5 years (for licensed developers building 5 or more units). Additional Conveyance Duties for acquisition of shares in residential property-holding entities has also been correspondingly increased such that the same rate of duty as ABSD applies.

**Seller Stamp Duty**

The Government re-introduced the Seller’s Stamp Duty (“SSD”) on short term transactions for residential properties in February 2010 to curb short term speculative behaviour in the residential property market. SSD is payable by sellers on residential property purchased on or after 20 February 2010 and sold within a certain duration.

There were several rounds of revision in the SSD rate and currently, for those selling properties in the first year of their purchase, they would pay 12%, 8% for those sold within the second year of purchase, while properties sold in the third year will be subject to a rate of 4%.

SSD for industrial properties was also imposed on 11 Jan 2013 for industrial properties which are acquired on and after 12 Jan 2013 and disposed of within three years. For those selling industrial properties in the first year, they would pay 15%, properties held between 1 to 2 years – 10%, and properties held between 2 to 3 years – 5%. Industrial Properties held for more than 3 years would not incur SSD.

**Government Service Tax (GST)**

GST is payable for inter alia, the sale and lease of non-residential properties, the supply of movable furniture and fittings (when a residential property is furnished) and land including land
that is zoned ‘local shopping’. Where the contract is silent on the payment of GST and the contract is subject to the Law Society’s Conditions of Sale 1999 or 2012, the liability to pay GST is on the purchaser.

Presently, GST is at 7% of the consideration but this shall be raised by 2 percentage points to 9 per cent sometime between 2021 to 2025.

In an asset or share purchase, there is a possibility where GST can be exempted. GST can be exempted when a sale of assets or shares is treated as an out of scope supply if the sale qualifies as a transfer of business as a going concern, provided it fulfils the conditions issued by the Inland Revenue Authority of Singapore (“IRAS”). This is where the vendor represents to IRAS that the purchaser would use the property to carry on the same kind of business as that carried out by the Vendor, and hence IRAS should treat it as an “excluded” GST transaction. It should be noted that where the quantum of the sale consideration is large and the GST amount is significant, it is advisable to seek a ruling from the Comptroller of Goods and Service Tax to confirm the GST treatment of the sale.

Property Tax

This tax is payable by the registered proprietor of the property and is determined based on the annual value of the property, as registered with the local tax authorities – Inland Revenue Authority of Singapore.

Withholding Tax

For non-Singapore citizens and companies who are not tax residents in Singapore and who have been assessed as “property traders”, withholding tax of 15% of the entire sale price will have to be paid.

Additional Conveyance Duties

For investors looking at a share sale or a purchase of a company, Additional Conveyance Duties (“ACD”) shall also be levied on qualifying acquisitions and disposals of equity interests in property-holding entities whose primary tangible assets are Singapore residential properties. Such entities shall have at least 50% of its total tangible assets comprising prescribed immovable properties in Singapore. The purpose is to address the stamp duty rate differential between direct acquisition or disposal of residential properties and indirect acquisition or disposal of residential properties via an entity.

Under the ACD provisions, a qualifying acquisition or a disposal of equity interest in a property-holding entity will be treated as a transfer of interest in addition to the share transfer duty which may apply on the acquisition or disposal of equity interest a company.

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154 Budget 2018 (as announced by Finance Minister, Mr Heng Swee Keat on 19 February 2018)
156 Section 5, Stamp Duties (Section 23) Order 2017
There is also the possibility of additional conveyance duties being levied on purchasers and vendors. This very much turns on whether or not the target company and its subsidiaries have substantial residential property holdings, and if so, whether the purchaser or vendor is a significant owner (i.e. holding directly or indirectly more than 50% equity interest or voting power in the target property holding entity).\footnote{See https://www.iras.gov.sg/irashome/Other-Taxes/Stamp-Duty-for-Property-Holding-Entities/Learning-the-basics/Stamp-Duty-Basics-for-Property-Holding-Entities/ (accessed 10 February 2019)}

**Financing**

The activities and operations of financial institutions granting banking and/or credit facilities for property financing are closely monitored and regulated by the Monetary Authority of Singapore ("MAS") which act in a supervisory capacity and also as a banker and financial advisor to the government.

Due consideration should be given, in particular, to MAS Notices 632 and 645. The former regulates the loan quantum that can be granted to a borrower for the purchase of residential properties in Singapore or where the credit facility is secured by residential property, while the latter governs the assessment of a borrower’s ability to repay the loan. MAS Notice 645 is a far-reaching set of guidelines which seek to regulate all loans taken in Singapore for properties in Singapore and even outside of Singapore. In a nutshell, financial institutions have to take into account the ‘Total Debt Servicing Ratio’ ("TDSR") of a borrower. MAS Notice 645 applies to indirect and part share purchases of properties as well (e.g. the purchase of shares in an SPV that holds the property). The general rule of thumb is that the total debt obligations of a borrower cannot exceed 60% of its gross monthly income. Property loans granted in excess of the TDSR threshold of 60% should only be granted on an exceptional basis and financial institutions should clearly document the basis for granting property loans in excess of this 60% threshold.

**Conclusion**

The real estate industry in Singapore is a dynamic and constantly rejuvenating scene in light of the insatiable demand for real property. At the same time, investors would do well to be kept abreast of the legal developments, the tax regiments and the statutory guidelines which govern their ability to finance these investments and their tax liabilities.

**Our Deals**

- Advised social media giant Facebook on its S$1.4 billion first-in-Asia data centre in Singapore. The landmark Singapore data centre is located in Tanjong Kling and will be an 11-storey, 1.8 million square feet facility estimated to start operations in 2022 and is completely powered by renewable energy and new StatePoint Liquid Cooling System, which minimises power and water consumption. It also features a facade made out of a perforated lightweight material. The negotiations involve Jurong Town Corporation, Public Utilities Board, Info-communications Media Development Authority and the Economic Development Board.

- Acting for Viva Industrial Trust Management and Viva Industrial Business Trust on the proposed S$936.7 million (US$687.5m) merger of ESR-Reit and Viva Industrial Trust, by way of a trust scheme of arrangement with a combined S$3 billion in assets. The proposed merger, a first in Singapore between two Reits, will create Singapore’s fourth largest industrial Reit. The real estate portfolios of ESR-Reit and Viva Industrial Trust cover properties, predominantly for business parks and other industrial uses. In connection with the merger,
the firm is also acting for Viva Investment Management on the proposed sale of shares in Viva Industrial Trust Management to ESR Funds Management.

- Acted for Areca Investment Pte Ltd (wholly-owned subsidiary of CapitaLand’s CRL Realty Pte Ltd) in the S$728 million purchase of all the strata lots and common property in the residential development known as Pearl Bank Apartments, situated at 1 and 1A Pearl Bank, Singapore, through a private treaty collective sale. The landmark horseshoe-shaped 288-unit development in centrally located District 3, which is zoned as “Residential” under the 2014 Master Plan, obtained a top up of a fresh 99-year leasehold interest.

- Acted as counsel for CWT Pte. Limited. and its related companies in the sale of five logistics properties in Singapore for an estimated sale price of S$730 million to Mapletree Logistics Trust. Upon completion of the sale, CWT/its related companies will leaseback the properties from Mapletree Logistics Trust.

- Acted for Gaw Capital Partners in the S$710 million acquisition of the entire issued and paid-up share capital in Arch Investment Limited, a Cayman Islands company whose wholly-owned Singapore subsidiary is the registered proprietor of the property situated at 77 Robinson Road, Singapore. The transaction also involved taking banking facilities from a syndicate of two banks.

- Acted for RHB Bank Berhad in an Islamic financing of S$120 million granted to the owner of luxury downtown hotel, SO Sofitel Singapore Hotel. The transaction represents the world’s largest Islamic hotel financing, via commodity murabahah term financing facilities allowed under Shariah laws at the time of announcement.

- Acted a global interconnection and data centre company listed on NASDAQ in relation to a build-to-suit lease of a data centre facility in Singapore.

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CHAPTER 9: THAILAND

With housing prices rising steadily in the last decade, Thailand’s real estate market continues to grow significantly - fueled predominantly by Chinese, Japanese and Singaporean buyers.

The nation’s thriving hospitality sector has also attracted foreign and local investors to fund the constructions of hotels and resorts. Due to its status as a regional business and tourism hub, Thailand continues to be a popular choice for real estate investment, even in the midst of ongoing political uncertainty.
System of Registration

Under Thai law, transfers in ownership of land (or land and building) must be registered in writing by a competent official at the local Land Office with jurisdiction over the relevant property, failing which the transfer of ownership will be void.\(^{159}\)

Similarly, a lease with a tenure of more than 3 years is also required to be registered at the local Land Office, otherwise such lease will be enforceable only for 3 years.\(^{160}\)

Parties to such transactions must provide the requisite documents and pay the applicable government taxes and fees (discussed in detail below under “Tax”).

Applicable taxes and fees for the transfer of ownership include (i) transfer fee (ii) income tax (payable as withholding tax) (iii) stamp duty or specific business tax, as the case may be. Applicable taxes and fees for registered leases comprise a registration fee and stamp duty.

The location for registration of such transfers or lease transaction is the local Land Office in the province where the property is located. For properties located in Bangkok, the registration location is the relevant district Land Office.

Applicable Law


Tenure and Ownership

Ownership/Freehold

Under Thai law, land ownership is evidenced by a land title deed or Chanote which can be issued for ownership of land plots under the Land Code 1954 or for ownership of condominium units under the Condominium Act 1979. Land title deeds specify details such as the ownership, boundaries, area measurements and encumbrances of a particular land plot or condominium unit. In practice, an original set of a land title deed is kept at the relevant land office where the title transfer was registered, and the other copy is kept with the registered owner of the property.

Aside from the land title deed, which is indefeasible evidence of land ownership, there are also three basic rights of possession which are evidenced by a Confirmed Certificate of Use (Nor Sor Saam Gor), Certificate of Use (Nor Sor Saam) and Certificate of Possession (Sor Kor Neung).

Lease

Under Thai law, a lease is a contractual right. Generally, the maximum lease term of a residential property is 30 years with an additional renewal lease term of up to 30 years. As stated above under “System of Registration”, a lease of a residential property with a tenure exceeding 3 years is required to be registered, failing which it will be enforceable only for 3 years.

\(^{159}\) Section 1299, paragraph 1, of the Civil and Commercial Code

\(^{160}\) Section 538 of the Civil and Commercial Code
Leases for commercial or industrial purposes can be of a term of not less than 30 years but not more than 50 years with an additional renewal lease term of up to 50 years. Leases for commercial or industrial purposes (of any duration) are also required to be registered, otherwise they will be void.

Under Thai law, more specifically, the Rental of Immovable Property for Commerce and Industry Act 1999, it is commercially more advantageous to lease commercial or industrial properties, as compared to leasing residential properties.

Commercial and industrial properties may be leased up to a maximum of 100 years, while residential properties may be leased up to a maximum of only 60 years. In addition, commercial and industrial properties may be leased for commercial or industrial purposes under the Rental of Immovable Property for Commerce and Industry Act 1999 which requires that the lessor be the sole owner of the property. Unlike residential leases, leases for commercial or industrial purposes can also be mortgaged to secure loans.

It is noteworthy that the Eastern Special Development Zone Act 2018 (“EEC Act”) has been enacted for systematic development of the areas in the east of Thailand. In this respect, the provinces of Chachoengsao, Chonburi, Rayong (including any other areas as prescribed by the royal decree) are designated as the Eastern Special Development Zone.

The EEC Act prescribes special measures to facilitate and promote investments of operators inside the Eastern Special Development Zone. Under the EEC Act, the maximum lease term is 50 years with an additional renewal lease term of up to 49 years. As with the position on leases outside the Eastern Special Development Zone, a lease of more than 3 years is required to be registered, failing which it will be enforceable only for 3 years.

Types of Property

(i) Residential

Residential properties in Thailand comprise mainly of houses and condominiums. Matters relating to housing estates, and condominiums are mainly governed by the Land Allocation Act 1992 and Condominium Act 1979, respectively.

(ii) Commercial

Commercial properties in Thailand are used for such intents and purposes, e.g. as an office building, department store, grocery store, shop, etc.

(iii) Industrial

Foreigners looking to invest in industrial properties should note that, due to restrictions in land ownership by foreigners, foreigners may only be able to own properties in Thailand if they successfully obtain permission to do so under the Investment Promotion Act 1977 or the Industrial Estate Authority of Thailand Act 1979 or the EEC Act.

161 Section 3 of the Rental of Immovable Property for Commerce and Industry Act 1999
162 Section 5 of the Rental of Immovable Property for Commerce and Industry Act 1999
163 Section 6 of the Rental of Immovable Property for Commerce and Industry Act 1999
Investment in Thailand

(i) Capacity

In principle, foreigners are prohibited from owning land under Thai law. However, one may be exempted from the restriction on foreign land ownership under certain conditions and Thai laws.

*Land Code*

Foreigners are entitled to own land in Thailand if they satisfy certain conditions, including:

- hold land up to 1 rai (1,600 square meters) for residential purpose;
- invest such amount as prescribed by a ministerial regulation (but no less than Thai Baht 40 million) into Thailand;
- invest in a Thai company whose business purpose is important and beneficial to the economic and social development of Thailand, or where its business purpose is designated as being for promotion of investment under Thailand’s investment promotion law;
- maintain the investment for not less than 3 years; and
- hold land located in Bangkok, Pattaya, or in an area prescribed as a residential area under Thailand’s city planning law.

*Investment Promotion Act 1977*

A promoted person (as defined in the Investment Promotion Act 1977) is permitted to own land required for the promoted activity in such size as the Board of Investment of Thailand may prescribe, even though it may exceed the limit prescribed under other laws.

*Industrial Estate Authority of Thailand Act 1979*

Industrial operators and operators of trading for export may be permitted to own land in an industrial estate or in an export industrial zone, for the operation of business in an area deemed reasonable by the Board of Investment of Thailand, even though it may exceed the limit fixed under other laws.

*EEC Act*

Foreign companies operating businesses in the Special Economic Promotional Zone shall be entitled to own land under the EEC Act.

*Condominium Act 1979*

Foreigners are entitled to acquire condominium units in Thailand so long as 51 per cent. of the total area of all condominium units in the building is owned by Thais.

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164 Section 96 bis of the Land Code Amendment Act (No. 8) 1999
165 Section 27 of the Investment Promotion Act 1977
166 Section 44 of the Industrial Estate Authority of Thailand Act 1979
167 Section 49 of the EEC Act
168 Section 19 bis of the Condominium Act 1979
Foreign individuals who are eligible to own condominium units are:

- Foreign individuals who have obtained residence permits in accordance with Thai immigration laws; 169
- Foreign individuals who have been permitted to enter Thailand under Thai investment promotion laws; 170 or
- Foreign individuals who have brought foreign currencies into Thailand to fund the purchase of the condominium unit(s), or who have withdrawn funds from a Thai Baht bank account of a non-resident, or who have withdrawn funds from a foreign currency bank account. 171

Foreign juristic persons eligible to own condominium units are:

- Foreign juristic persons who are registered as such (pursuant to Sections 7 and 98 of the Land Code); 172
- Foreign juristic persons that have been promoted by the Board of Investment of Thailand; 174 or
- Foreign juristic persons that have brought foreign currencies into Thailand to fund the purchase of the condominium unit(s), or who have withdrawn funds from a Thai Baht bank account of a non-resident, or who have withdrawn funds from a foreign currency bank account. 175

(ii) Tax

Transfers or leases of real properties are subject to taxation and government fees.

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169 Section 19 (1) of the Condominium Act 1979
170 Section 19 (2) of the Condominium Act 1979
171 Section 19 (5) of the Condominium Act 1979
172 Section 97 of the Land Code states that:

"The following juristic persons shall have rights in land as if they were foreigners:

(1) A limited company or a public limited company whose shares constitute its registered capital and are held by foreigners by more than forty-nine percent of its registered capital, or whose foreign shareholders make up more than one-half of the total number of its shareholders, as the case may be;

For the purposes of this Chapter, if any limited company issues a bearer share certificate, such share certificate shall be deemed to be held by a foreigner.

(2) A limited partnership or registered ordinary partnership whose contributions by foreigners make up more than forty-nine percent of its total capital or whose foreign partners make up more than one-half of the total number of its partners, as the case may be.

(3) An association including co-operative whose foreign members make up more than one-half of its total number of members or which operates exclusively or substantially for the benefit of foreigners;

(4) A foundation whose objectives are exclusively or substantially for the benefit of foreigners."

173 Section 19 (3) of the Condominium Act 1979
174 Section 19 (4) of the Condominium Act 1979
175 Section 19 (5) of the Condominium Act 1979
**Transfer of real properties**

**Transfer Fee**

A transfer fee will be charged at a rate equivalent to 2 per cent. of the officially appraised value of the property (and not the contracted sale price). The transfer fee may be borne equally by the seller and the buyer as mutually agreed by both parties.

**Income Tax**

Income tax is payable (as withholding tax) in the following cases:

- where the seller is a juristic person/legal entity: the higher of the amount equivalent to 1 per cent. of the officially appraised value or the contracted sale price of the property; or

- where the seller is an individual: the withholding tax will be calculated at the personal income tax rates ranging from 5 to 35 per cent, based on the officially appraised value (regardless of whether the contracted sale price is higher). Basically, income tax deduction for expense is allowed based on the number of years in possession. Calculation methods are as follows:

  (i) the officially appraised value of the property is deducted by a specific amount of expense based on the number of years in possession (see table below) and the resulting amount is then divided by the number of years; and

  (ii) Initial amount of tax is calculated on this income gain in accordance with the Personal Income Tax Rates (see table below) and is then multiplied by the number of years in possession.

<table>
<thead>
<tr>
<th>Years of Possession</th>
<th>Income Tax Deduction for Expense (per cent. of the Officially Appraised Value)</th>
<th>Income Amount (THB)</th>
<th>Personal Income Tax Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 year</td>
<td>92%</td>
<td>1 – 150,000</td>
<td>Exempted but 5% will be withheld for withholding tax purpose</td>
</tr>
<tr>
<td>2 years</td>
<td>84%</td>
<td>150,001 – 300,000</td>
<td>5%</td>
</tr>
<tr>
<td>3 years</td>
<td>77%</td>
<td>300,001 – 500,000</td>
<td>10%</td>
</tr>
<tr>
<td>4 years</td>
<td>71%</td>
<td>500,001 – 750,000</td>
<td>15%</td>
</tr>
<tr>
<td>5 years</td>
<td>65%</td>
<td>750,001 – 1,000,000</td>
<td>20%</td>
</tr>
<tr>
<td>6 years</td>
<td>60%</td>
<td>1,000,001 – 2,000,000</td>
<td>25%</td>
</tr>
<tr>
<td>7 years</td>
<td>55%</td>
<td>2,000,001 – 5,000,000</td>
<td>30%</td>
</tr>
<tr>
<td>8 years</td>
<td>50%</td>
<td>More than 5,000,000</td>
<td>35%</td>
</tr>
</tbody>
</table>

Withholding tax payable shall not exceed 20% of the selling price (ie. the officially appraised value of the property).

Withholding tax payable in respect of a non-resident individual seller is normally a final tax. However, a resident individual seller can elect to treat the withholding tax paid as a final tax or file an annual personal income tax return by declaring the actual income obtained from the sale of the property in order to obtain a refund of any overpaid tax (if any).

Withholding tax will be payable at the time of transfer at the competent land office.
**Specific Business Tax**

Specific Business Tax is payable by all companies and individuals holding the property for less than 5 years. It is charged at a total amount equivalent to 3.3 percent of the officially appraised value or the contracted sale price, whichever is higher.

An individual will be exempt from Specific Business Tax if the property has been used as the principal place of residence of the seller, whose name must have been on the household registration certificate for at least 1 year.

**Stamp Duty**

Stamp duty is charged at the equivalent of 0.5 per cent. of the officially appraised value or the contracted sale price (whichever is higher), and is only payable where Specific Business Tax is not applicable.

In general, stamp duties will apply if the property has not been transferred within the last 5 years. If it has, Specific Business Tax will apply.

Thai law requires that stamp duty be borne by the seller; however, in practice, this can be mutually agreed otherwise by both the seller and the purchaser.

**Lease of real properties**

**Lease Registration Fee**

For leases that are registered, there is a registration fee of 1 per cent of the total rental value throughout the registered lease term.

Registration fees may be borne equally by the lessor and the lessee, subject to mutual agreement of both parties.

**Stamp Duty**

Stamp duty is payable on the equivalent of 0.1 per cent of the total rent.

Thai law requires that stamp duty be borne by the lessor but, in practice, this can be mutually agreed otherwise by the lessor and lessee.

**Conclusion**

With the extension of mass transit lines currently under construction in Bangkok, these new infrastructure developments will improve access to and from inner city areas and link midtown areas. In light of this, the real estate industry in Thailand appears to be on an incline.

However, the real estate business in Thailand is expected to face a series of changes in the near future. New land and property tax laws are slated to come into effect in early 2020 aiming to increase the effectiveness of land use, reduce inequality and restructure taxation. Investors must be mindful of potential impacts on their real estate investments.
Our Deals

- Represented an investor to acquire a new hotel in Pattaya, Chonburi Province, Thailand.

- Represented a state enterprise bank in financing of acquisitions of hotels in Phuket Province and Samui Island, Surat Thani Province.

- Represented a subsidiary of an industrial estate in a joint venture with a Japanese investor to construct a six-star hotel in the industrial estate area.

- Represented a Thai company in acquiring a hotel in central Bangkok area.

- Represented a government bank in financing of a hospital construction in the central Bangkok area.

- Represented various lessees in reviewing office lease/service agreements in office buildings in central Bangkok area.

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CHAPTER 10: VIETNAM

Vietnam has emerged as an attractive destination for foreign investors looking to enter the real estate market. Driven by a fast-growing economy, a high rate of urbanization and an ever-expanding middle-class, cities like Hanoi, Da Nang and Ho Chi Minh City have become dynamic and lucrative metropolises.

For those willing to take on the risks, the Vietnamese market offers substantial rewards and great potential over the coming decades.
Overview on Real Estate in Vietnam

All land in Vietnam is theoretically the property of and owned by the people as represented and uniformly managed by the State. This means no person or company can own land on an indefeasible freehold basis.

Instead, what “land owners” own is the right to use the land – whether allocated by or leased from the State for a definite or indefinite period of time.

Certificate of Land Use Right, House Ownership and Other Assets Attached to Land

The ownership and the right to use the land and its ancillary assets are recorded in the Certificate of Land Use Right, House Ownership and Other Assets Attached to Land or what is simply known as the Land Use Rights Certificate (“LURC” or Sổ Đô in Vietnamese).

The LURC governs the use and the purpose of the land. This would include whether the land is used for residential, commercial, construction or agricultural use. Land users are required to comply strictly with the denoted land use, or risk having their LURC being revoked (and consequentially, their use of the land).

Applicable Law

The main legislations which govern real estate transactions in Vietnam are as follows:

(1) the Law on Real Estate Business No. 66/2014/QH13 dated 25 November 2014 (“LREB 2014”);

(2) the Law on Housing No. 65/2014/QH13 dated 25 November 2014;

(3) the Law on Land No. 45/2013/QH13 dated 29 November 2013 (“LL 2013”);

(4) the Law on Construction No. 50/2014/QH13 dated 18 June 2014; and


Other authoritative sources would include subsidiary legislations, decrees and circulars flowing under these legislations.

Under these laws, the State agencies responsible for managing and monitoring land use, real estate business and construction in Vietnam would include the Ministry of Natural Resources and Environment, the Ministry of Construction and Provincial/City People’s Committee.

Ownership and Restriction

In Vietnam, there are two broad categories of ownership (which would include quasi-ownership) and interests relating to real property.

(i) First, the land-use rights (or LURs for short). This relate to land and entitle the rights-holder to exclusively use and deal with the land in a specified manner.

(ii) Second, one could possess ownership of the assets attached to the land (e.g. owning the building rather than the land). This implies that the owner does not own the land itself, but rather, the buildings and the other structures attaching to land.
In general, a land user can secure land from the State through the following two forms: (1) an allocation, with or without payment of a land use fee for a definite or indefinite term and (2) through a lease with payment of an annual fee or a lump-sum payment for the whole of the lease term.

Accordingly, foreign-owned entities may obtain the LURs by way of several means, including:

- Leasing the land directly from the State, with payment of rent on an annual basis or entirely up-front as a lump sum;
- Being allocated the land from the State, with payment of a land use fee;
- Receiving the land as capital contribution by a Vietnamese party, if foreign-owned entities are engaged in a joint venture with this party;
- Sub-leasing the land from the developer of an industrial park; or
- Acquiring a part or whole of a project that is attached to land from other investors.

Notably, LURs in the form of allocated land can be allotted for a fixed term or an indefinite term. However, holding LURs in the form of allocated land is technically not equivalent to freehold ownership as specified under the Constitution of Vietnam as the Constitution specifies that all land in Vietnam is owned by all of the people of Vietnam and is administered by the State on behalf of the people.\(^{176}\)

In the meantime, State leased land is generally leased to the Vietnamese LUR holder for a term of between 50 and 70 years,\(^ {177} \) with such lease terms renewable only at the discretion of the Department of Natural Resources and Environment or other relevant government authorities.

As a general rule, foreign-owned companies (whether fully or partially foreign-owned) are not granted LURs in the form of allocated land (except in the event that the land is to be used for residential housing projects for sale and/or lease)\(^ {178} \), but are granted LURs in the form of State-leased land or land subleased from the licensed infrastructure developers.

**System of Registration**

The registration of LUR in Vietnam is executed in compliance with the LL 2013. Accordingly, land registration is compulsory for land users and people who are allocated land for management. At the request of the owner, the ownership of houses and other land-attached assets is correspondingly conducted.\(^ {179} \)

It should be noted that the registration of land, houses and other land-attached assets includes the first registration and change of registration which are conducted at the land registration organization (normally Land Registration Offices) under the land administration agency (Local PC).\(^ {180} \)

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\(^{176}\) Constitution 2013, Art. 53

\(^{177}\) LL 2013, Art. 126.

\(^{178}\) LL 2013, Art. 55.3.

\(^{179}\) LL 2013, Art. 95.1

\(^{180}\) LL 2013, Art. 95.2.
Land users and owners of land-attached assets are recorded in the cadastral book and granted a LURC if they so request and if they are eligible according to the laws. In the event of a change of registration, land users are granted the LURC, or have the change certified in the granted LURC.

**Foreign Investment**

In the first half of 2018, Real Estate became the second-largest sector, trailing only after the Processing and the Manufacturing sector. Real Estate brought in $5.54 billion in foreign direct investment ("FDI"). This represented 27.2% of the total foreign investment in Vietnam.\(^{181}\) The increasing amount of FDI heading to the property sector expresses greater expectations about the market among investors.

For legal aspects, as of 1 July 2015 when LREB came into force, foreign investors are allowed to conduct the following investment activities:

- Rent houses and constructed facilities for subleasing purposes;
- Build houses on land which is leased by the State to lease and build houses or constructions other than houses on such land for sale, for lease, or for lease purchase;
- Receive the entirety or a part of a real estate project from investors to build buildings on it for sale, for lease, or for lease purchase;
- Build houses on land which is allocated by the State for sale, for lease, or for lease purchase;
- Build buildings on land which is leased out or transferred in industrial parks, industrial complexes, export-processing zones, hi-tech zones, or economic zone for trading for the proper land use.

One of the most common queries from foreign entities and individuals ("foreigners") when coming to Vietnam is how to own houses for their own use or reinvestment. Legally speaking, foreigners are only allowed to acquire houses including apartments and detached houses, of commercial housing construction projects, *except* in areas utilised for national defence and security purposes.\(^{182}\)

Further, foreigners may only purchase properties from owners of housing construction projects or from other foreigners.\(^{183}\) In other words, foreigners may not purchase a house directly from a Vietnamese individual or organisation who is not the owner of the housing development project.

After acquiring properties in Vietnam, foreigners are required to apply for a LURC. The LURC sets out the term of the LURC and the land use purpose. It should be noted that the LURC may be used only for the specific purpose for which it was granted. Non-compliance with the permitted use as specified in the LURC may result in the withdrawal of the LUR by the State.

Some notable points for consideration would be the stamp duties, notarization fee, real property tax, CIT and PIT. These will be elaborated in greater depth in the sections below.

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182 Decree 99/2015/ND-CP, Art. 75.1.
183 Decree 99/2015/ND-CP, Art. 76.2.
Taxation

(i) Notarization Fee and Stamp Duty

In Vietnam, most real property documents and transactions are required to be notarized by a licensed public notary officer. The notarization fee is determined in accordance with the value of the transaction.

Accordingly, for a real estate conveyance, the maximum notarization fee is VND 70 million (approximately USD 3,290) per transaction. For a lease of real estate, the maximum notarization fee is VND 8 million (approximately USD 376).\(^\text{184}\)

Vietnamese laws do not strictly require which contractual party shall pay the notarization fee. In practice, therefore, either buyer/lessee or seller/lessor, pursuant to contract agreements, may incur the notarization fee.

Land and houses that are subject to registration of the LUR are subject to stamp duty. The applicable stamp duty rate for land and houses is 0.5% of value of such land and houses.\(^\text{185}\) Normally, transferees who are transferred the LUR of houses will pay Stamp Duty upon the registration of the LUR with competent authorities. However, parties may agree transferors incur such Duty.

(ii) Real Property Tax

Foreign investors may pay rental fees for LUR. The range of rates is wide depending upon the location, infrastructure, and the industrial sector in which the business is operating.

In addition, owners of houses and apartments have to pay land tax under the Law on Non-Agricultural Land Use. The tax is based on the specific land area used based on the prescribed price per square metre at progressive tax rates ranging from 0.03% to 0.15%.\(^\text{186}\)

(iii) CIT and PIT

For investors who make any capital gain upon a conveyance of an LUR or house ownership are required to pay Corporate Income Tax or Personal Income Tax, depending on whether investors are corporates or individuals.

Specifically, the tax rate imposed on corporate investors is generally 20%,\(^\text{187}\) whereas personal income gained from real property conveyance is levied with tax rate of 25% (if the taxable income is determined by the difference between the initial purchase price and conveyance price) or 2% (if the taxable income is determined on the conveyance price).\(^\text{188}\)

Conclusion

In a nutshell, Vietnam has recently witnessed a burgeoning growth of the real estate industry, yielding an insatiable demand for real property. For better integration into this market, investors

\(^{184}\) Circular 257/2016/TT-BTC, Art. 4.2(b).
\(^{185}\) Decree 140/2016/ND-CP, Art. 7.1
\(^{186}\) Law on Non-Agricultural Land Use Tax 2010, Art. 7.1.
\(^{187}\) Amended Law on Corporate Income Tax 2013, Art. 1.6.
\(^{188}\) Law on Personal Income Tax 2007, Art. 23.2.
should be cognisant of the rapid change in the legal framework, the tax regiments and the government guidelines which govern their investments and their tax liabilities.

Our Deals

- Advising Keppel Land Corporation in their various on-going property developments in Vietnam.
- Advising Core Pacific Group – a leading Taiwanese real estate developer for their projects in Vietnam.
- Assisted Chiaphua Group – a well-known Hongkong corporation in its development of Masteri Parkland real estate project.
- Assisted Pau Jar Group in providing legal support to number of their real estate projects in Vietnam including lease and sale of property.
- Advised in the development of Mapletree Business City in Binh Duong New City, Vietnam.
- Advised Binh Thien An on its development of the US$500 million Diamond Island Sky Resort in District 2, Ho Chi Minh City.
- Advised Mapletree Investments on matters in connection with its development of the US$140+ million VivoCity in District 7, Ho Chi Minh City.
- Assisted Nam Long JSC in the cooperation for Nam Long’s strategic joint venture with Hankyu Realty and Nishi Nippon Railroad for the implementation of the Kikyo Residence real estate project, with an investment capital of VND 630 billion.
- Advising Savills on a retainer basis for various real estate matters, including in assisting its foreign clients in the acquisition of real property.
- Advised Son Kim Land Corporation with respect to regulatory and commercial matters for its Gateway residential project in Thao Dien.
- Advised Kajima Corporation in acquiring Indochina Riverside Towers in Da Nang, Vietnam, one of the city’s most prominent mixed-use developments.
- Advised Oxley Holdings on transactional and regulatory aspects of its acquisition of a Vietnamese company licensed to develop a 200ha greenfield mixed used residential and commercial project in Ho Chi Minh City.
- Assisted the garments arm of the Far Eastern Group in its US$1+ billion expansion in the garments industry in southern Vietnam, including in land procurement for its manufacturing megaproject in industrial parks.
- Acted for a Singaporean real estate developer in its joint venture with a Thai investor for the development of what would become one of Ho Chi Minh City’s largest shopping complexes.
- Advised China Fortune Land Development in its proposed new city township project in Vietnam, and in establishing its operational office in Vietnam.
• Acted for Country Garden in establishing its sales operations in Vietnam and advising on various investment matters.

• Acted for Mapletree Investments in its US$215 million acquisition of Kumho Asiana Plaza from Asiana Airlines and Kumho Industrial.

• Acted for Mapletree Logistics Trust in its S$43 million acquisition of logistics facilities in Vietnam-Singapore Industrial Park.

• Assisted Boustead on various real estate operational and investment matters in Vietnam.

• Acted for one of China’s largest investment companies in its acquisition of a parcel of land in the CBD of Ho Chi Minh City.

• Acted for the Lotte Group in its development of Lotte Center in Hanoi, including in all material licensing phases in connection with the construction and developments.

• Acted for one of Korea’s largest developers on matters in connection with its new township project in Vietnam.

• Acted for Soilbuild on matters in connection with its partnership with CT Group for the development of residential projects in Vietnam.

• Acted as local counsel for NakedHub’s joint venture with Gaw Capital for the rollout of its branded co-working space business in Vietnam, and subsequent US$400 million global sale to WeWork.

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